

IN THE MATTER OF:

NURSING AND MIDWIFERY COUNCIL (“NMC”)

GOSPORT WAR MEMORIAL HOSPITAL

**GUIDANCE TO THE PELIMINARY PROCEEDINGS COMMITTEE OF THE NURSING
AND MIDWIFERY COUNCIL OPERATING UNDER THE NURSES MIDWIVES AND
HEALTH VISITORS (PROFESSIONAL CONDUCT) RULES 1993**

In relation to these cases of alleged misconduct (cases relating to patients Page, Carby, Middleton, Wilkie and Devine) which are to be determined in accordance with the 1993 Rules, the Preliminary Proceedings Committee (“PPC”) should follow the guidelines set out below.

1. Where there is more than one practitioner facing allegations, each practitioner must be considered separately.
2. The PPC must consider separately each allegation made against a practitioner.
3. In relation to each allegation the PPC must:
 - a. Review the allegation which is made.
 - b. Review the evidence which is available in relation to the allegation and any response to the allegation which has been submitted by or on behalf of the practitioner concerned.
 - c. Bear in mind that:
 - i. The PPC has a limited filtering role and is considering the case in private on documents alone.

- ii. Public confidence and the legitimate expectation of complainants require that allegations will be publicly investigated by the Conduct Committee in the absence of some special and sufficient reason.
- iii. It is rarely if ever the PPC's role to resolve conflicts of evidence, issues of admissibility, weight or inference, or to anticipate potential defences that might be run – that is the function of the Conduct Committee.
- iv. Any doubt as to whether a complaint should go forward is to be resolved in favour of the investigation proceeding.
- v. The PPC should be particularly slow in halting a complaint against a practitioner who continues to practise.
- vi. The PPC should exercise the utmost caution before declining to forward a complaint based on a finding made by another medically qualified body, for example, another regulator, or a coroner or a judicial inquiry after it has heard oral evidence in public.
- vii. The PPC may at any stage:
 - require further investigation to be conducted;
 - adjourn consideration of the matter;
 - refer the matter to the professional screeners;
 - take the advice of the NMC's solicitor and may instruct him to obtain such documents, proofs of evidence and other evidence in respect of the allegations as he considers necessary; and/or
 - require, in the case of a complainant who is not acting in a public capacity, that the complaint be verified by way of a statutory declaration.
- d. With the factors set out in paragraph (iii) above in mind, the PPC must decide the main matter: whether there is any question raised which is capable of resulting in a finding of misconduct bearing in mind that an allegation must be proved on the balance of probabilities, that is so the Conduct Committee is of the view that it is more probable than not that the allegation is correct.
- e. In order for the PPC to answer this question they must consider whether there is a real (as opposed to fanciful) prospect of the factual element of the allegation being established. In this regard the PPC should have regard to the delay in these cases coming before it and effect of that delay on the real prospect of each allegation being established. If there is such a prospect, the PPC must consider whether there is a real (as opposed to fanciful) prospect the Conduct Committee might decide to

remove her name from the register as a result.

- f. In deciding the main matter, it is not for the PPC to attempt to answer any question which is raised by the complaint: that is for the Conduct Committee, if the complaint otherwise passes muster. This means the PPC should not decide conflicts in the evidence whether factual or expert.
- g. With the factors set out in paragraph (iii) above in mind, the PPC may decide whether in these cases to take into account the effects of the delay upon them and whether the delay is such that the proceedings in relation to any allegation should be stayed for abuse of process.
- h. Whether proceedings are an abuse of process is generally a question for the Conduct Committee. The PPC should only refuse to refer a case on the basis of delay in highly exceptional cases where it is very clear that a fair hearing cannot take place. If it is not clear the PPC should, if satisfied of the criteria set out in 3(d) above, refer the case to the Conduct Committee and allow it to consider whether a fair hearing can take place and whether steps can be taken to enable the registrant to have a fair hearing.
- i. When determining whether a case should be stayed on the ground of delay the PPC should bear in mind the following principles:
 - i. even where delay is unjustifiable, a permanent stay should be the exception rather than the rule;
 - ii. where there is no fault on the part of the complainant or the NMC it will be very rare for a stay to be granted;
 - iii. no stay should be granted in the absence of serious prejudice to the registrant so that no fair hearing can be held;
 - iv. on the issue of serious possible prejudice there is a power to regulate the admissibility of evidence and the trial process itself should ensure that all relevant factual issues arising from the delay will be placed before the Conduct Committee which can take all into account in deciding the case.

If having considered all of these factors the PCC's assessment is that a fair hearing may be possible, a stay should not be granted.

4. If the PPC decides that it is very clear in any case that no fair hearing can be held it should refuse to refer the case to the Conduct Committee and stay the proceedings for abuse of process.

5. If the PPC decides:

a. there is a real prospect that the factual element of the allegation could be established and that there is a genuine possibility that the Conduct Committee might find misconduct established and removal from the register to be satisfied

and

b. has not concluded that this is an exceptional case in which it is very clear that no fair hearing can be held

then:

i. it must direct the Registrar to send to the practitioner a Notice of Proceedings together with the documents referred to in Rule 9(1)(b) & (c) of the 1993 Rules, and then consider any written response and re-determine the matters set out in paragraph 3(d) above; and

ii. if the Notice of Proceedings stage has already been completed, it must forward the allegation for hearing before the Conduct Committee.

6. If the PPC decides there is no real prospect that the factual element of the allegation could be established on the basis of the available evidence, it must consider what further investigations could (and bearing in mind the factors set out above) should be conducted before a final decision is made on the case by the PPC, and must order those investigations to be made. Subject only to this obligation, if the PPC decides at any point, that no question capable of resulting in a finding of misconduct and removal from the register arises, it may decline to proceed with the allegation.

7. If the PPC decides that there is a real prospect that the factual element of the allegation could be established before the Conduct Committee and that the Conduct Committee could consider it to amount to misconduct, but that there is no genuine possibility the Conduct Committee could consider that misconduct to justify removal from the register then:

a. if the PPC considers that the practitioner's fitness to practice may be seriously impaired by reason of her physical or mental condition, it must refer the case to the professional screeners; and

b. if the case is not to be referred to the professional screeners and if the practitioner has admitted the facts alleged in the Notice of Proceedings, the PPC may determine whether the practitioner has been guilty of misconduct and, if so, whether it is appropriate to issue a caution as to the practitioner's future conduct (and if so it shall direct the Registrar to issue a caution.)

8. The PPC must record brief reasons for each decision it makes.