

In the matter of:

Nursing and Midwifery Council (NMC)

Gosport War Memorial Hospital

FURTHER INSTRUCTIONS TO COUNSEL

Since our consultation on 8 September 2008, we have obtained the following further material:

- Information from the GMC (see Clare Strickland's filenote of telephone call to Juliet St Bernard 9.9.08, attached)
- Information from the coroner (see Clare Strickland's filenote of telephone call on 9.9.08 to Mr Bradley, HM Coroner dealing with the inquest, attached)
- UKCC Code of Professional Conduct 1992 (in force during the relevant period, attached)
- Guidance to the Preliminary Proceedings Committee (PPC) of the Nursing and Midwifery Council (prepared by Ward Hadaway, attached)

It is of particular note that the inquest will not take place until March 2009. In these circumstances, we are of the view that an earlier consideration of the matter by the PPC would be appropriate, and we will take steps to arrange this.

Accordingly, I have prepared a report to the PPC, a copy of which is attached along with the proposed bundle index. This report provides a summary of the factual background, and analysis of the allegations and material received to date.

Counsel is asked to advise whether the NMC should instruct a legal assessor to attend the PPC meeting and advise the panel.

Counsel is also asked to prepare a guidance note to the PPC, similar in terms and format to the Ward Hadaway report referred to above (which will not be put before the PPC). In particular, the following points should be dealt with:

- At paragraph 4 of the Ward Hadaway guidance note, there is reference to the criminal standard of proof. By virtue of a recent change in the law, the standard of proof to be applied at all NMC hearings from 3 November 2008 is the civil standard;
- Counsel is asked to address the issue of the passage of time in this case. Counsel should advise what regard, if any, the PPC may have to potential abuse of process arguments based on delay when making its decision at this stage.

- If counsel advises that the PPC may have regard to potential abuse of process arguments based on delay, she is asked to advise if the change to the standard of proof is a relevant factor in such arguments, and if so, what effect it will have on the likelihood of an abuse argument succeeding.
- Counsel should also address the effect of the passage of time generally on the panel's considerations at this stage.

Given that the bulk of the guidance note will be similar in terms to the Ward Hadaway guidance note, we consider that the research and drafting of this guidance note should take no more than 10 hours.

Please do not hesitate to contact Clare Strickland on **Code A** or **Code A** there is anything you wish to discuss.