

IN THE MATTER OF:

NURSING AND MIDWIFERY COUNCIL (“NMC”)

GOSPORT WAR MEMORIAL HOSPITAL

**INSTRUCTIONS TO COUNSEL
TO PROVIDE OPINION**

The NMC is the statutory body charged with maintaining a register of those entitled to practise as nurses and midwives, and taking action in respect of allegations of misconduct/impairment of fitness to practise against registrants.

In respect of all allegations received by the NMC prior to 1 August 2004, the NMC’s fitness to practise procedures were governed by the Nurses, Midwives and Health Visitors Act 1997 and the Nurses, Midwives and Health Visitors (Professional Conduct) Rules 1993 Approval Order 1993 (SI 1993:893). Together, these are known as “the old rules”.

The procedures for all allegations received on or after 1 August 2004 are governed by the Nursing and Midwifery Order 2001 (SI 2002:253) and the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (SI 2004:1761). These are known as “the new rules”.

The transition from the old rules to the new rules was governed by the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004 (SI 2004:1762).

The full background to the matters upon which Counsel is asked to provide [his/her] opinion is set out in the internal memorandum of Clare Strickland, in-house lawyer, dated 20 April 2007, and the attachments thereto. We do not propose to repeat that background here.

Further information is in the internal memorandum of Clare Strickland dated 16 May 2008, and the letter from Sarah Ellson of Field Fisher Waterhouse LLP dated 26 June 2008.

Counsel is instructed by the NMC’s in-house legal team to provide [his/her] opinion on the following issues:

1. Whether any issues of misconduct arising from police files concerning patient deaths where the NMC has not received a complaint about named nurses should be dealt with under the old or new rules?
2. The prospects of establishing misconduct likely to lead to removal in any case against any registrant against whom the NMC has already received an allegation (to include consideration of successfully rebutting any abuse of process argument)?

3. In any other case, the prospects of establishing misconduct likely to lead to removal/a case to answer in respect of impairment of fitness to practise by reason of misconduct (test to be applied to depend on whether case dealt with under old or new rules)?
4. The management of the existing allegations in light of the forthcoming inquest and GMC proceedings thereafter.

Please contact Clare Strickland, s [Code A] email
 [Code A] pr s [Code A] bn: [Code A]
 [Code A] if there are any questions.

Enclosures

1. Nurses, Midwives and Health Visitors Act 1997
2. Nurses, Midwives and Health Visitors (Professional Conduct) Rules 1993 Approval Order 1993
3. Nursing and Midwifery Order 2001
4. Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004
5. Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004
6. NMC internal memorandum Clare Strickland 20 April 2007 and attachments
7. NMC internal memorandum Clare Strickland 16 May 2008
8. Letter from Sarah Ellson, Field Fisher Waterhouse LLP, 26 June 2008