

Mills & Reeve .

John, Lisa

From: Stuart Knowles [Code A]
Sent: 07 November 2012 08:34
To: Horsley, David
Cc: John, Lisa; Mellor Peter - Company Secretary; Jacqueline Haines; Sue.Skye [Code A]
Subject: Portsmouth Hospitals NHS Trust - G R - Inquest
Importance: High

Dear Mr Horsley

G Ric - Inquest**Our ref: BSPK/3000019-1307/BJZM**

I am writing following receipt of your letter dated 5th November and received by me on 6 November 2012 .

Could I ask you to make sure your office includes our reference (or at least my name) on future correspondence.

I have to say that this letter, giving me notification that this matter is listed for a two week Jury inquest starting on 3rd December (less than four weeks hence), comes as a considerable surprise.

Concerns

I am extremely concerned and perturbed that this high profile and complex inquest with a jury (and which concerns a death in the 1990s) has been listed without adequate notice and certainly without reference to this firm, my client or, it appears to the witnesses.

I need to put you on notice that there may be inadequate time for preparation in the circumstances . I may take the view that this is procedurally unfair as far as my client and their witnesses are concerned. Certainly I take the view that the contact and liaison from your office is not in line with the Coroner's charter and I refer in particular to paragraphs 3.13 (keeping in touch) and 3.15 (timing of the inquest). You will be aware that, where ever possible the Coroner's office should take into account the views of interested parties when considering the timing of an inquest.

Conduct

I think it is important for me to put the conduct of this matter into context, especially bearing in mind that, on behalf of my client, I have made it clear to you that we will do all that we can to help and facilitate a timely and proper conclusion to this inquest.

- There was a pre-inquest hearing which I attended on 12th May 2011 . At that hearing it was determined that the inquest should be listed for two weeks and that a jury should be sworn in. The witnesses were discussed and agreed.
- The inquest was set for 24th October 2011
- Prior to the inquest, matters were put in hand to discuss issues with relevant witnesses; to offer support and to ensure they were properly placed to deal with you enquiry.
- For totally understandable reasons you adjourned the inquest by way of a letter dated 22nd September 2011. Discussions with my client were 'put on hold' pending the matter being relisted.
- In your letter of 22nd September you indicated it was your intention to relist the matter in the first three months of 2012 and you requested availability dates which would be convenient.
- We wrote to you on 17th October 2011 indicating that there would be no dates in the first three months which would be inconvenient to us or to our client. We received no response to this letter.
- We wrote to you again on 28th February 2012 asking for an update and suggesting that it would be likely that we would need to get further dates from the witnesses as the matter had not been listed. Again, we received no response from your office to this letter.

The last communication from your office with us was therefore the letter of the 22nd September 2011 (over 12 months ago) notifying us of the adjournment.

Recent conduct

I have had sight of an email from Lisa John to Sue Skye (who works at the Trust). I am not entirely clear why your office is communicating the dates of the inquest and is in discussion about witnesses with my client directly when this firm is on the record. Nevertheless, the setting of a date clearly came as a surprise to those instructing me. Ms John indicated that "[t]he Coroner has been in discussions with the Solicitors direct in this case and has arranged everything with them."

Most certainly there has been no contact with me.

Current position

I can not say whether the dates set are convenient to the witnesses, or even if they are available. I will check and let you know as soon as I am able.

I am dealing with two other very high profile inquests in the weeks leading up to the 3rd December and I am listed to attend the Coroner's court elsewhere on Tuesday 4th December so it would be extremely difficult for me to attend on that date. I do appreciate that the convenience of advocates is not your first concern, but I do believe it would have been appropriate to consider it in this case. You will be aware that I had been instructed on the 'Gosport inquests' since 2008 and I conducted the original inquests along with counsel. I am familiar with the issues. It will be considerably more expensive for the Trust if it becomes necessary to involve another advocate and, particularly so, if it is necessary to instruct counsel. My client was happy for me to assist the Trust, and the various witnesses, bearing in mind my experience in advising the NHS and in conducting inquests as a trained Coroner.

I also note that the witness list you have now provided includes a number of people who were not on the original list and some of whom I have no knowledge. In particular I refer to:

- FI Lt Edmondson
- Philip Warren
- Mrs O'Brien
- Prof Ferner

The way forward

Realistically, the first chance I will have to review these papers is at the weekend. I will liaise with my client as soon as I am able to. I will take instructions and contact you directly. Although I am without instruction at the moment, I feel that it may be necessary to seek an adjournment if matters can not be dealt with in time or if a witness is not available. If that becomes necessary I will let you know straight away.

In the meantime, perhaps I could ask you to consider the following questions for me and ask your office to let me have an immediate response so I can consider matters with my client.

- Why are additional witnesses being called? How do you feel they will help the inquest?
- Why has there been such a long delay since the previous adjournment? I have indicated before that such a delay can only be prejudicial to the process and to the witnesses. It is, after such a long period of time, arguably unfair on them. You will be aware that the Chief Coroner considers a delay of over a year to be a serious matter.
- Has your office been liaising with other solicitors and interested parties over this new date, or in connection with any matters?
- Why has your office not been in contact with us or responded to our letters?
- Can you confirm that, in the circumstances of this case, it will not be appropriate to issue a Rule 43 report in respect of the NHS. I know you have suggested in the past you could not do so, but, frankly, the circumstances pertaining at the time no longer exist and so any rule 43 report would be useless and unfair. If the Trust had comfort on this, then it may make representation at the inquest easier to manage. If you would like specific submissions on this point in order to make a ruling, I can provide these if it would help.

Let me say that I very much regret having to write to you in these terms but I think it is important that the position of the Trust and the witnesses is not prejudiced in any way. I would like to think that in my Coronial practice I would not have listed a matter like this without reference to the parties and without offering the opportunity to comment on suitable dates.

You might feel that a telephone discussion would help. I would be happy to do that. I am at a training day for West Midlands Coroners today (Wednesday) but you can contact me on my mobile. Code A

Let me conclude by saying that I will do all that I can to try and make this work, but I am concerned about the lack of time. If there is anything you think I can do to assist you in any other way, please do just let me know.

Yours sincerely,

Stuart Knowles
Consultant
for Mills & Reeve LLP

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