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Our Ref: 516130/000003/JCW/GOSPORT/JDB

Your Ref:

11 May 2010

Dear Sirs

Re: Dr Jane Barton - Gosport War Memorial Hospital

Thank you for your letter dated 1 April 2010. We refer in the first instance to the quoted comment at the end of paragraph 5 of your letter. It does seem to us very clear that the Independent Panel's decision as to sanction in this case, *"is manifestly inappropriate having regard to the Practitioner's conduct and the interests of the public"*.

As you are aware we have written to you on two previous occasions. This was to highlight the following two issues:-

1. Testimonials from Dr Barton's patients: It was clear that the independent Panel had given significant weight to the positive testimonials from patients which the Panel emphasised were given even though those patients knew of the allegations against Dr Barton. As we pointed out however, those patients could not have been aware that the allegations of serious professional misconduct against Dr Barton would be upheld, because that determination had yet not been reached when the testimonials were provided. It is our contention that it was procedurally inappropriate and irrational for the Independent Panel to receive this sort of material from patients in mitigation, when at the time it was provided that they were not aware that the allegations against Dr Barton would be substantiated. Whilst we acknowledge your view that they gave evidence as to safe practice following the time of the allegations, they would have been much more cautious in providing such information had they appreciated that there were proven fundamental flaws in Dr Barton's clinical practice. It is our contention that it was unsafe and unreasonable of the Panel to give the weight to this material that they did.
2. Dr Barton's retirement from medical practice. The Independent Panel gave significant weight that it would in their view be in the interests of a section of public opinion that she continued to practice. At best, it can be said that Dr Barton changed her opinion when the findings of serious professional misconduct were upheld. More likely we believe that she adopted the tactic of resignation to avoid erasure from the medical register. It is wrong therefore that a factor which was of such importance to the Panel should continue to be taken into account when it is clearly no longer relevant.

We understand your explanation as to the test applied by the Court as to whether the decision as to sanctions was one which could reasonably have been imposed. Our point however is that the Panel had taken into account when making their decision:-

- Inappropriate material in 1. above which would have been tainted by the belief by those referees that the allegations of misconduct would not be upheld; and
- Material in 2. above that had become no longer relevant.

It is simply not good enough for the CHRE to support the Panel's decision as being one that could have

reasonably arrived at, when the basis of that decision was flawed. The CHRE itself acknowledges that it thought the Independent Panel's decision was wrong. A wrong decision is a wrong decision and the CHRE cannot retain credibility by attempting to have it both ways; on the one hand condemning the Panel's decision and on the other, refusing to correct it. This is a disgraceful outcome and one which we consider calls into question the effectiveness of the CHRE's regulatory role.

Family members have now asked us to explore Judicial Review Proceedings. We ask therefore that you consider the above points carefully and explain to us why you do not consider that they are susceptible to review.

The deadline for the CHRE's jurisdiction under Section 29 of the National Health Service Reform and Health Care Professionals Act 2002 expired on 5 April 2002 and you reported at the last minute, being 31 March 2010, in respect of the real deadline, which was 1 April 2010 because of the Easter Holiday. Please advise what rights there now are to continue with an appeal against the Panel's decision and the most appropriate way in which this can now be pursued.

We would be grateful if you would return to us no later than 14 days and we look forward to hearing from you.

Yours f

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