

**Ryan Davison**

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**From:** Tim Bailey  
**Sent:** 19 May 2010 14:45  
**To:** Code A  
**Subject:** Your letter about CHRE consideration of Dr Barton case  
**Attachments:** 100519 Letter TB to Blake Laphorn re Barton.pdf

Dear Mr White

Please find attached my response to your letter of 11 May.

I shall also send you a copy in the post.

Best regards

Tim Bailey

Timothy Bailey  
**Acting Director of Scrutiny and Quality**

**Council for Healthcare Regulatory Excellence**

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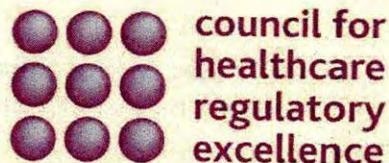
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Code A

John C White  
Blake Laphorn  
New Kings Court  
Tollgate  
Chandlers Ford  
Eastliegh  
Hampshire  
SO53 3LG



19 May 2010

Dear Mr White

Thank you for your letter of 11 May 2010.

We note the points you make in relation to the CHRE's decision on the case of Dr Barton and your request for an explanation as to why we do not consider the that the CHRE's decision is susceptible to judicial review.

You have suggested that the CHRE's decision is flawed because it took into account:

1. "inappropriate material", namely the positive testimonials given by patients of Dr Barton before they were aware of the finding of Serious Professional Misconduct ("SPM") against her; and
2. Dr Barton's decision to retire, which you inferred was made by Dr Barton to avoid being removed from the register and therefore "no longer relevant".

Taking the first point, there was no evidence before the CHRE that knowledge of the SPM finding would have altered the patient testimonials. Counsel for Dr Barton informed the Independent Panel that those giving testimonials had seen both the heads of charge and the Panel's findings of fact, and yet had confirmed they wished their testimonials to be used. The Indicative Sanctions Guidance, paragraph 30, indicate that a Panel should consider whether those giving testimonials are aware of the events leading to the hearing, which they were in this case, and attach weight to the testimonials accordingly. In any event, when making its determination the CHRE took into account not only the testimonials, but also other mitigating factors, including the circumstances in which Dr Barton was working at the time of her misconduct.

In relation to the second point, the fact that Dr Barton is no longer practicing is a relevant consideration for the CHRE to take into account in assessing the need for public protection. The issue of Dr Barton's motivation for ceasing practice is irrelevant. In any case, there was no evidence before the CHRE

that Dr Barton had retired for the reason you suggest, and it was therefore not a conclusion it could reach or take into account.

Secondly, you claim that it was not open to the CHRE to disagree with the Independent Panel's decision but then to refuse to refer it to the High Court. The full reasons for the decision are available on our website. You will see from this that the Case Meeting considered that the appropriate sanction for Dr Barton was erasure – that is to say that the CHRE members, had they been sitting as the GMC Independent Panel, would have decided to erase her name from the register. However, the role of the CHRE is not to substitute its decision for that of the Independent Panel, or even to revisit the Panel's decision, but rather to consider whether that decision was unduly lenient in accordance with section 29 of the Act (as interpreted by relevant case law). In this case the CHRE decided that the tests for referral to the High Court were not met.

We hope that this letter allows your clients further to understand the reasons for the CHRE's decision.

Yours sincerely

**Code A**

Tim Bailey  
Acting Director of Quality and Scrutiny