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Our ref: ISPB/jh/9900079/Legal
 Your ref: TET/00492-15579/6636488 v1
 23 January 2008

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Dear Sirs

General Medical Council - Dr Jane Barton

Thank you for your letters of 18 January. We have of course spoken about the issues raised in the course of two telephone conversations, but I am pleased now to provide you with a formal response.

With reference to the issue of Professor Black's expert evidence, I am pleased to confirm that we would not raise objection on the basis of the position you have outlined here. I hope that is of assistance.

With reference to the issue of preparation and supply of documentation, at the risk of pointing out what you already know, when you wrote to me on 29 August 2007, the expectation was that this case would involve up to 13 patients. Obviously since then, that number has increased rather than decreased. I appreciate it is conceivable that the number of patients may reduce to 11, but clearly for everyone concerned it is unhelpful if there remains this degree of uncertainty.

My understanding of the position back in August last year was that you had hoped to indicate the nature of the charges which might be brought against Dr Barton and the identity of the individuals concerned by about November. The agreement at the Case Conference was that the GMC would disclose evidence and the final charge by 18 January 2008. According to your letter of 18 January, however, you would only be proposing to serve a draft Notice of Hearing, by 3 March 2008. That represents a significant delay.

It would seem that further witness statements on which you may rely would yet be served.

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Indeed, clearly you envisage that there will be service of evidence even beyond 3 March, with as you suggest expert reports being served at the beginning of April, some three months after the date which had previously been agreed.

I am concerned to have further explanation and would be grateful if you could let me know how these difficulties comes about. Please understand this is not forward as a criticism. I am conscious that this matter is potentially profoundly complex, and I hope that is consistent with my understanding of your position in the course of the last telephone conference on 6 September 2007. The difficulty which arises, however, is that the time for preparation of a defence is inevitably compressed if the prosecution has not concluded its own preparations within the time specified, and it is simply not possible for us to confirm that the hearing can proceed as planned in the absence of the relevant materials – and then adequate time within which to deal with them.

The defence position at the time of the previous telephone conference was that we hoped to be ready effectively 8 months after the provision of all materials and the final charge. That was in part based on the amount of time you reasonably envisaged it would take you to prepare your case. If you have had to take longer, there is no reason to suppose that we will fare better, and yet as things stand, our time will now be compressed. I appreciate you understand the position. As I say, it would be appropriate to have a detailed explanation as to how the difficulties come about.

In your letter of 18 January, you have indicated your presumption that the documents which you have provided already would enable me to commence hearing preparation and instruct an expert. From the defence perspective I am afraid there is some significant difficulty with this. If I cannot be clear as to the identity of the patients concerned let alone the nature of the charges, or indeed what an expert might say in some of the potential cases, expert instruction is profoundly hampered. I can tell you that I have previously refrained from instructing an expert in the hope that I would have the requisite information. You will appreciate that I would be asking an expert to assist in something of a vacuum which ought not really to exist.

Can I turn to the question of documentation. You have of course made available an amount of materials, with the mutual understanding that you were not indicating at that stage whether the materials would actually be used as part of the case against Dr Barton, or would form unused material. I had been working on the basis though that by 18 January 2008 – from the product of the telephone conference in the previous September – you would be able to tell me which materials were to be used and which would be considered unused. It would be very helpful if you could let me know what the position is in this regard.

You have also mentioned the significant quantity of unused material provided by the Police, and in conversation with Tamsin Hall, I understand that you will take steps to let me have copies of that material as soon as you reasonably can. Appreciating that it is voluminous, if you can process that as soon as you are able, that would be much appreciated.

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Finally, and with reference to the Stage 2 telephone conference scheduled to take place tomorrow, I would agree that the sensible approach is to adjourn this in circumstances in which it would seem there would be little to be gained. Perhaps once you have had an opportunity consider this letter we can review that issue further. As I say though it would be helpful now to have a full explanation of the position, appreciating that your difficulties may well arise from the volume of material and the complexities of the case.

Yours faithfully

Ian S P Barker
Solicitor