

Client: Hampshire Primary Care Trust - 4007152-0002

Matter: Gosport Inquests (Joint Instruction)

Date of Attendance: 13 January 2009

Fee Earner: [REDACTED]

[REDACTED] and [REDACTED] engaged in telephone conference with Peter Mellor.

PM began by indicating his appreciation of the report which he had received. It was good and he had noted all the detail.

He said that he had one or two questions.

1. Counsel

PM indicated that he was concerned with regard to Michael Mylonas (MM). We sold his CV and said that he was the right man for the job. It appears that he was willing and able to assist and then we are told he is not available. Is Briony Ballard (BB) better? He was concerned to know what had happened with regard to 3 Serjeant's Inn.

[REDACTED] indicated that we had been in discussions with 3 Serjeant's Inn and we booked MM to do the hearing last October upon our instruction. There were further discussions in December with regard to the Counsel's availability for a conference and also to consider dates and fees. Since that time (in the last week) the clerks have indicated that Michael Mylonas doesn't have capacity to do the preparatory work.

PM wondered whether this was because there hasn't been contact in the last few weeks and he had been told he'd chosen to take an offer elsewhere.

[REDACTED] asked where he got that information from and PM wasn't forthcoming ([REDACTED] note in discussion on 19 January, PM confirmed that the information came via KB).

[REDACTED] indicated that was certainly not our understanding of the conversation with the clerks.

2. Cost of Counsel

PM indicated that he wanted Hampshire PCT and the PHT to share the cost of Counsel. He was concerned that the PCT may not go with that and that the PHT will have to pay 100%.

[REDACTED] indicated that we are waiting to hear from the clerk in respect of the costs and the fees and we are anticipating a brief fee of around £17.5k. We have informed KB in respect of the position of Counsel and we have had no feedback from her yet. [REDACTED] did indicate that MM and BB are one of five or so Counsel at these chambers that we will rate to deal with this matter. [REDACTED] also indicated that we would not envisage two separate Counsel and that would make sense.

3. Leslie Humphries' Work

PM noted paragraph 33 and how we described that a lot of work had been done around LH's statement.

PM was concerned about Leslie Humphries' documents and whether or not the Coroner would accept her evidence. He wondered whether this had been misdirected and whether

LH's time had been wasted in that respect. He could see on the one hand that it might have been a very clever move but it could be a total waste of time, energy and money. If the Coroner has no wish for her to be called PM is not sure where we go.

█ explaining that if the Coroner requests LH's evidence then he would, effectively, be saying that he does not want to hear about the context and Rule 43.

In some respects there is no backup plan but it would be difficult for the Coroner to reject evidence. █ explaining that he has never known a Coroner not to want such evidence, for example, Trust often proffer SUI's. Here we are proffering a statement. However, in any event, it was a vehicle for getting the assurance document.

If the Coroner rejects it, we can reconsider the position. Two things flow from it, there is no one else we could go to. If he did not listen to it it would be very difficult for him to make Rule 43 Reports. He would not have informed himself.

█ suggesting that the Coroner could avail himself of NM, could ask for the Chief Executive or ask if the Chief Executive is informed. LH has, at least, done the donkey work.

█ flagging up the fact that he knows that LH is concerned that she has now left the service. However, her statement is first class and if the Coroner decides he doesn't want to hear from a Manager but wants to summon the Chief Executive, that is his prerogative. However in █ experience Coroners prefer to hear from those on the ground, i.e. the Managers.

#### 4. Article 2

PM is concerned because he is of the view that the Coroner is under some political pressure in this matter and will be under media pressure too. He is of the view that the Ministry of Justice have concocted this Inquest to "put this to bed". He is concerned that the Coroner will allow more latitude than normal and there will be more questions and an Article 2-type inquest.

The MOJ have fobbed the family off with an Inquest. There is political, media and family pressure. He is under all of that. He is likely to allow more latitude than he normally would, which would effectively equate to Article 2, though he knows he should not to pacify the different parties.

█ answer to this is don't give any information now. We know from the PCT and the Police what documents there are. We have copies, although some are irrelevant. █ could see how the 1997/98 Policies might be relevant. If the Coroner goes down that route then he is in control but we should not proffer to the inquiry anything which may prompt others to ask more difficult questions.

If we immediately disclose it the Coroner, then it is immediately on the public records. It could be grist to the mill for all other parties.

If the Coroner does allow questions then we know we have got LH. We know we have got the PCT document if he does down that route.

█ accepting that we won't have those witnesses but that is the Coroner's fault. If he chooses to call someone after Monday, we still have time to help the Coroner to get more information.

We don't want to interview those who may not be relevant.

If the Coroner wants to hear from someone in the Inquest then we can try and deal with it there and then, for example, Fiona Smart/Cameron. We think she was only involved in the early part of this decade.

PM agreeing that we cannot cover every eventuality but his fear (and that of Hampshire PCT) was that all our eggs were in one basket with Lesley Humphrey. If the Coroner chooses (and he is entitled to do so) to divert from her, then we have not done the preparation and are not ready.

He did take the point that within the six weeks of the Inquest we could prepare.

He also accepted that we could prepare until the cows come home. He would bow to our knowledge and expertise. However, he said assuming [REDACTED] is wrong, PM will be hung out to dry! We have to rely on our best guess.

[REDACTED] saying he isn't rejecting that this may happen but, on balance, it is unlikely. We will have a better idea after the Pre Inquest hearing which is the first time that we have been able to know which way the wind is blowing.

PM then moving on to discuss Benita Playfoot's comments with regard to LH's statement. He queried how LH had received these.

He felt that Benita was wanting too many changes then LH would be unwilling to be the author.

[REDACTED] confirming that he had spoken to LH who had been irritated by Benita's comments. He has been emailed with LH's response. [REDACTED] view is that the statement has taken on more of a life than was originally intended. He is going to review LH's observations on Benita's comments and has a check call-in with Benita.

[REDACTED] explaining that when she was at the last hearing group meeting, she got the impression that Benita had not totally appreciated the role of the statement and as long as her concerns were picked up in the assurance process, then she would be happy.

PM agreeing with this.

#### 5. Hours and Costs

This was a problem for PM because initially PM and UW had tried to argue that the PCT pay the lot. The PCT had pleaded poverty and had a problem with finance and persuaded the PHT to agree a 50/50 split. Despite surprise over the initial total bill, they were still committed to a 50/50 split.

PM needs to pick up the remainder of the M&R bill and possibly all of Counsel (if the PCT did not like BB see above). He was concerned that their total exposure might reach £100k in that respect.

[REDACTED] indicated that she appreciated that and that cost reductions for chargeable rate had been made (which PM appreciated).

**Code A**



# Code A

█ indicated that she will speak to JH about the rates and will also consider final costs and fees of Counsel.

Three concluding points were made:-

- █ indicated that she had satisfied herself about the other points and was disappointed with Counsel. She thought there was (for PHT) an £18k bill approximately so far.
- PM indicated that his concern now was the media interest and the damage that could do. He suggested that he came to the Pre-Inquest Hearing to assess the Coroner and we confirmed that was a good idea. █ indicated that he would inform the Coroner accordingly.
- PM was disappointed that Counsel had been allowed to slip away. However, he has satisfied himself with regard to other concerns – not financial.

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