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Registrant: BARTON, Jane

Email received: 11/03/2010 15:34:10

Sent From: Code A

Subject: 100310 Internal email re Peter Mant advice

From: Michael Andrews
 Sent: 10 March 2010 15:59
 To: Tim Bailey; Harry Cayton
 Cc: Rachael Martin
 Subject: RE: Peter Mant advice

Tim

Thanks. As discussed I think the original advice should be in the normal form ie pointing us to the issues that we should consider when we are assessing whether the decision is unduly lenient and it is necessary to refer for the protection of members of the public. Only if we feel that these two tests are met should we have advice from the lawyers on the strength of the case. I made this point to Bakers when we first asked for the advice and again last week. Could you please discuss again with Joanna.

Mike

From: Tim Bailey
 Sent: 10 March 2010 15:22
 To: Harry Cayton; Michael Andrews
 Cc: Rachael Martin
 Subject: Peter Mant advice

Harry, Mike

Joanna Ludlum just called me to reassure us that we will not have been tainted by the original advice given by Peter. She says that it would have been proper for us to take account of that advice before reaching our decision. This is because he is concentrating on the legal issue of the likelihood of the courts thinking that the "undue lenience" test is applicable. He is laying out the factors that weigh either side on whether the test is met, and then adding his overall conclusion. She said that this is similar to our seeking counsel's view after our recent Nthinya case meeting - and counsel's view may have led us to reconvene and change our decision.

She said she is happy to talk about this next week at the case meeting, and happy for either of you to call her to discuss. But she just wanted to reassure us that having received the previous advice from Peter would not be a problem. She has in any case re-edited the advice without Peter's personal views, and sent it to him to sign off.

Finally, it occurs to me we should probably plan a contingency in case we need a case meeting whilst you are both away. I'll check the procedure to see who can act as a substitute.

Tim

Timothy Bailey
Scrutiny Manager

Council for Healthcare Regulatory Excellence

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Code A

From: Tim Bailey
Sent: 10 March 2010 14:01
To: Harry Cayton; Michael Andrews
Cc: Rachael Martin
Subject: RE:

I've asked Bakers to get him to resubmit, but without the sentences in which he expresses a view on the merits of the case.

Tim

Timothy Bailey
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Code A

From: Harry Cayton
Sent: 10 March 2010 08:54
To: Michael Andrews
Cc: Tim Bailey
Subject:

Mike, can you just clarify for me what Peter Mant's 'advice' is?

I thought we'd asked for a summary and analysis of the evidence in the case. I'm wary of having our views shaped for us before the case meeting by Counsel's opinion. Or am I being over cautious?

Harry

Harry Cayton
Chief Executive

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