



Gillian M McKenzie

**Code A**

1 April 2010

Dear Ms McKenzie

**Dr Jane BARTON**

Further to previous correspondence we are now in a position to provide you with our decision on this case. However, firstly we would like to offer our condolences for the death of your Mother.

I can confirm that we considered the decision of the General Medical Council's Fitness to Practise Panel's decision on 29 January 2010 in the case of Dr Barton in accordance with our normal procedure under Section 29 of the NHS Reform and Health Care Professions Act 2002.

Before we can exercise our discretion to refer a decision to Court under Section 29 we have to be satisfied that the decision is unduly lenient and that it is necessary to refer the decision for the protection of members of the public.

We noted the concerns you have raised in your correspondence. The case was given detailed consideration in accordance with our usual process. We analysed the transcript of the hearing and the exhibits available to the Committee, as well as the information we received from interested parties.

However, we have decided not to refer this decision to the High Court under Section 29. Taking account of all of the circumstances of the case, we considered that the decision would not meet the test of undue lenience which has been set out by the Court. In this respect I would refer you to the Court of Appeal judgment on 20 October 2004 in the cases of Ruscillo and Truscott (ref [2004] EWCA Civ 1356). The test applied by the Court (and which therefore should be considered by CHRE) is whether the decision as to sanction was "*one which a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could reasonably have imposed*". We also need to consider whether "*having regard to the material facts, the decision reached has due regard for the safety of the public and the reputation of the profession*". Ultimately for the Court to allow an appeal by CHRE, it must decide that the decision as to sanction "*is manifestly inappropriate having regard to the practitioner's conduct and the interests of the public.*"

Further information regarding our reasons for not referring the decision can be found on our website at <http://www.chre.org.uk/media/18/214/>

Our power to refer decisions to the Court under section 29 is by no means our only way of dealing with fitness to practise issues. We have wide ranging powers contained in Sections 25 and 26 to enable us to improve the quality of healthcare regulation and to promote good practice.

You might be interested to know that we regularly meet with officials from the General Medical Council to discuss issues arising from cases where we have had concerns but where these concerns were not sufficient to merit referral to the High Court.

I appreciate that you will be disappointed that we have decided not to refer this case to Court under Section 29 but I hope that you will understand our reasons for this.

I would be very happy to discuss the issues raised by this case.

Yours sincerely

**Code A**

**Tim Bailey**  
**Scrutiny Manager**  
**CHRE**