

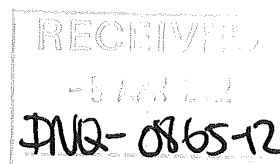
2 Franklin Street, Belfast, BT2 8DQ
DX 2842 NR Belfast 3

Your Ref:
AD-0281-12 &
AD-0322-12

Our Ref:
HYP S071/1

Date:
5th April 2012

Ms Anne Dillon
Solicitor to the Inquiry
Inquiry into Hyponatraemia-related deaths
Arthur House
41 Arthur Street
Belfast
BT1 4GB



Dear Madam

RE: INQUIRY INTO HYPONATRAEMIA RELATED DEATHS- CONOR MITCHELL
Our client: The Southern Health and Social Care Trust

I refer to the above matter and to your letters dated 25th January 2012 and 23rd March 2012 (references as quoted above). I also refer to the Reasons for the Substantive Hearing by the NMC Conduct and Competence Committee Panel which you forwarded by e-mail to our Mrs Crawford on 30th March 2012.

As you are aware from the Reasons for the Substantive Hearing by the NMC Conduct and Competence Committee Panel's Hearing dated 11th to 13th July 2011, the Panel was required to consider three specific allegations of misconduct and how that impaired the Registrant, Registered Nurse Ruth Bullas's fitness to practise. The Panel's remit was confined to considering whether the specific allegations of misconduct on the part of the Registrant were proven, on the evidence, and if so, what sanction to impose upon the Registrant. At no stage, did the Panel's jurisdiction extend to the consideration of any potential acts or omissions by fellow nursing staff and clinicians. Nor did the Panel's jurisdiction extend to the consideration of any alleged deficiencies in the wider Trust body.

It is the Trust's position that it cannot challenge the NMC's decision in respect of Nurse Bullas as it was not a party to those proceedings. However, in response to the question contained in the penultimate paragraph of your letter dated 25th January 2012, I have been instructed by my client that it did indeed challenge the NMC Panel's comments. In correspondence to Professor Dickon Weir-Hughes, NMC Registrar and Ms Jackie Smith, Director of Fitness to Practice, dated 21st July 2011, the Trust asked that the Panel share its definition of, and provide evidence of what it considered constituted the "...wide ranging and systematic deficiencies..". In addition, the Trust requested a copy of the Transcript of the Hearing, in order to ascertain what evidence the Panel had on which to base its assertion.

Providing Support to Health and Social Care



I am further instructed that the NMC declined to provide an explanation of what its Panel considered to be "wide ranging and systematic deficiencies". The Trust did receive a copy of the Transcript and it spent considerable time mapping the evidence presented at the Hearing with the Panel's Decisions. Ultimately, the Trust found that no evidence had been presented at the Hearing itself which would support the Panel's assertion that there had been wide ranging and systematic deficiencies in the treatment or care given to Conor Mitchell, or indeed within the wider Trust. Please confirm whether you have obtained a copy of the transcript of the Hearing. If not, please confirm whether you require us to provide you with a copy of same.

In the absence of such supporting evidence, the Trust's Executive Director of Nursing, Mr Francis Rice, spoke to Prof. Dickon Weir-Hughes on 20th September 2011, seeking further clarification and information on the reasons for the Panel's findings in respect of the Trust. Mr Rice was simply informed that the Panel is not accountable to the Registrar or the NMC for its findings. This is contrary to our interpretation of the Nursing and Midwifery Order 2001, whereby each member of the Panel is individually and collectively responsible to the Registrar for all decisions made on the Council's behalf. No further clarification was forthcoming from the Registrar.

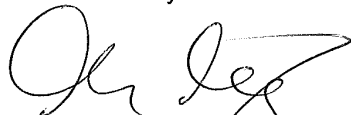
The Trust neither accepts the aforementioned comments made by the Panel in their decision regarding Nurse Bullas nor does it accept that the Panel had either the jurisdiction or indeed sufficient evidence upon which to base said comments. Whilst the Trust has not, at this time, entered into any further correspondence with the NMC as regards this matter, it reserves the right to do so.

I would further maintain that the purpose of the NMC Hearing was to decide upon the Conduct and Competence of Nurse Ruth Bullas, and specifically whether her acts and omissions amounted to misconduct which impaired her fitness to practice. It is not within the NMC Panel's jurisdiction to decide upon matters pertaining to the care of Conor Mitchell by clinical and other nursing staff, and issues of governance within the wider Trust. I would submit that any such criticisms are correctly viewed as *obiter* statements, and do not constitute a formal finding of the NMC Panel.

I would further submit that the case of *Sibbery's Application (No. 2)* (2008) [NIQB 147], (also relating to an inquisitorial investigation) applies in this case. On this authority, I submit that the Decision of the NMC Panel in respect of the Registrant Nurse Bullas should be excluded from the evidence in relation to Conor's case, as to include it would be unfair to my client within the confines of *Wednesbury* unreasonableness.

I trust this clarifies the position.

Yours faithfully



ALPHY MAGINNESS
Chief Legal Adviser

Direct Line: [REDACTED]
E-mail address: alphy.maginness@[REDACTED]