

BY EMAIL

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NMC

17 May 2016

Dear ██████████

Feedback points

Decisions of the Conduct and Competence Committee of the Nursing and Midwifery Council on 11 March 2016 and 7 April 2016

Catherine McCullough and Gretta Dixon

We considered these cases at a section 29 Case Meeting. Whilst we concluded that the outcome in each case was sufficient for the protection of the public, we identified deficiencies in the NMC's and panel's approach and several Learning Points.

First, we had concerns in respect of evidential material not obtained and/or adduced by the NMC. We noted that there was material in the NMC's possession in relation to these cases which was not provided to the panel, for example the father's near contemporaneous statement. We consider that all relevant material should be placed before the panel, particularly in circumstances such as those arising in these cases where there is a factual dispute and the material could assist the panel in resolving that dispute. We noted that there was also material which appeared not to have been obtained by the NMC, for example the mother's near contemporaneous note of events. When taking witness statements, investigators should ask witnesses whether they have any material to corroborate their account and/or any contemporaneous record of what occurred. Where relevant material is mentioned by a witness in evidence, as happened here in relation to the mother's note, the case presenter should ask that that material be obtained and placed before the panel. Failing that the panel should be proactive in enquiring about any evidence referred to in a hearing that is not before them. Finally, material such as a Coroner's findings and/or the transcript of an inquest should be placed before the panel where relevant to the issues arising notwithstanding that the panel will not be bound by any such findings.

Second, we had concerns about the investigation undertaken by the NMC in these cases. The evidence of the parents of the baby, called by the NMC as witnesses to its case,

related to conversations they had with more than one person. The panel could not be sure who the parents spoke to and when, because they were seen by two midwives on the day in question. We considered that the NMC should have sought to identify any other persons involved in the care of the mother and to obtain their evidence.

Third, we had some concerns as to the panel's decision that there was no case to answer in the case of McCullough. Panels and legal advisors should be aware of, and properly apply, the *Galbraith* test. In the case of McCullough, the Authority considered that there was evidence before the Committee in respect of charge 1 that satisfied the second limb of that test, namely:

Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses' reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury

Fourth, whilst we recognise a general need to preserve patients' anonymity, we noted that in this case that the parents of the deceased baby had indicated a wish to waive anonymity and to refer to their baby by name. All parties must have been aware that this was a case which was already in the public domain. We considered that the father's wishes ought to have been communicated by the NMC to the panel ahead of the father entering the hearing room to give evidence. Alternatively, if there was a need for this to be agreed by the panel after he entered the hearing room, this should have been explained clearly to the father in advance. The father has told us the manner in which the chair of the panel dealt with the issue was hurtful to him and his wife and it was unhelpful to the conduct of the hearing.

Finally, it is recognised that there is a right to cross-examine and question witnesses. However, panels, legal advisors and case presenters should be watchful of the conduct of Counsel and their treatment of witnesses, and should intervene where appropriate.

I hope that you understand our reasons for bringing these matters to your attention.

Yours sincerely



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