

CPS COPY.

HAMPSHIRE CONSTABULARY

Paul R. Kernaghan QPM LL.B MA DPM MCIPD
Chief Constable

Fareham Police Station
Quay Street
Fareham
Hampshire
P016 ONA

Our Ref. Operation Rochester

Code A

Your Ref.

28th April 2005

Mr Paul Philip
Director of Fitness to Practise
General Medical Council
2nd Floor
Regents Place
350 Euston Road
LONDON
NW1 3JN

Dear Mr Philip

Operation Rochester - Investigation into Deaths at Gosport War Memorial Hospital

Thank you for your letter of 25th January 2005, acknowledged by E-mail on 28th February to yourself with an update of the position of the Hampshire Constabulary, and latterly your letter to ACC Watts dated 21st April 2005 arriving on my desk this morning 27th April 2005.

In response may I acknowledge your request for what is termed as 'limited disclosure' of information in respect of the police investigation into the death of Elsie Devine, in particular:-

Witness statements
Medical records
Written representations and transcripts of tapes
Recorded interviews with Dr Barton
Experts reports

May I advise you that as the Senior Investigating Officer in this case I am not minded to make disclosure of any record in relation to the Elsie Devine investigation other than the medical records of the deceased, these having previously been served upon Dr Barton.

The other records requested are to form the basis of challenge interviews with Dr Barton later this year, it cannot be either in the public interest or the interests of justice, particularly in the interests of an effective and continuing interview strategy and criminal investigation to allow these documents into the domain of the GMC ultimately to be served upon Dr Barton in pursuance of a professional conduct committee hearing.

Secondly, I have concerns that such information might not just reach Dr Barton but also the public thereby, affecting the fairness of potential proceedings caused by adverse prior publicity.

My view is that the process of criminal investigation/prosecution and a GMC disciplinary investigation/proceeding should not be blurred by simultaneous proceedings using evidence that may be germane to a criminal prosecution.

I would like to take this opportunity to set out our position having taken advice from Counsel.

Firstly, I would like to summarise my interpretation of events to date and concerns arising from our meeting of 13th January 2005.

The purpose of our meeting was to discuss progress in terms of the police investigation and to consider a request by the GMC for further information in respect of category 3 cases in the light of a decision made on the 12th September 2002 to suspend GMC investigation whilst deciding to formulate a charge against Dr Barton to be heard by a professional conduct committee.

I made particular reference to our understanding that:-

- 1. The GMC has a duty to satisfy itself that there are no matters of professional conduct or performance warranting formal action.*
- 2. The GMC's right to demand disclosure under s.35A Medical Act 1983 when necessary to carry out a statutory/regulatory role.*
- 3. The principles of Woolgar v Chief Constable Sussex 2000.. weighing the balance of competing public interests.*
- 4. Previous significant disclosures made by the police in February 2002 (case papers in respect of deceased Page, Cunningham, Wilson, Wilkie and Richards) and the current categorisation of those cases. Furthermore, disclosure of 47 category 2 cases to the GMC and NMC between September and December 2004.*
- 5. Result of Interim Order Committee hearings of 12th Sept 2002, 19th September 2002 and 7th October 2004.*

We then discussed the Generic issues in respect of Dr Barton indicating the initial response by evidential experts:-

That Dr BARTON commenced the post of Clinical Assistant to the Geriatric Division at Gosport War Memorial Hospital in 1988(in addition to her GP role).

She worked 20 hours a week but 24 hour a day cover. An experienced GP working autonomously.

Consultants Drs Lord, Tandy and others provided limited cover in 1998/99 due to sickness.

Dr Bartons workload and note taking suffered as a consequence.

Dr Barton felt obliged to adopt a policy of proactive prescribing outside Trust policy, to give nurses a degree of discretion to administer within a range of medication.

Dr Barton comments that prescriptions were reviewed on a regular basis by Consultants.

Dr Bartons workload continued to increase due to increasing bed occupancy and patient dependency, as a result of increasing time pressures corners were cut.

Dr Barton had clearly failed the duties of the post particularly in note taking and providing 24 hour medical cover.

I informed those present that papers had been submitted to the Crown Prosecution Service on 24th December in respect of the death of Elsie Devine the brief circumstances being that:-

Dr Barton had incorrectly treated her for a non- existing Myeloma (cancer diagnosis).

Mrs Devine had been treated for chronic renal failure. It was debatable however, that this condition was an irreversible terminal event or decline in renal function that could have been stabilised or reversed.

Morphine and a fentanyl patch were prescribed outside the range of other appropriate analgesia (for severe intractable cancer pain and to relieve anxiety and agitation).

An excessive dose of strong opioids were administered to Mrs Devine to enable nursing care.

There was a lack of clear assessment of a worsening condition.

The patient died 2 days after administration of Diamorphine and Midazolam.

The diagnosis of Multiple Myeloma would be clarified with a Haematologist.

The renal failure issue with a Renal Physician.

Finally I informed Mr Philip that investigations were ongoing, the Dr Barton was to be interviewed regarding 9 further cases, and that other healthcare professionals may be interviewed under Caution. The priority cases should be complete by the middle of the year, but realistically, the investigation would span the duration of 2005.

Mr Philip explored the possibility of incremental disclosure of category 3 expert evidence following particular interviews under Caution, the problem with this approach was that interviews were likely to extend throughout the year, and it would be difficult to assess whether revealing the information to the GMC would prejudice the criminal investigation.

The issue of the risk posed by DR Barton was discussed. The voluntary arrangement seemed to be holding but Mr Philip was concerned that Dr Barton could practice even in a short term locum position without being supervised and that a risk under those circumstances existed, as did the voluntary arrangement itself.

Mr Philip was reluctant to go to an administration hearing over the issue of disclosure however, it was agreed by parties present that he would write a formal letter setting out the position of the GMC and concerns, and that the police would respond through our own Counsels advice. It may be that having documented the issues that this would suffice if the risk was perceived as low.

Mr Philip was encouraged to make contact with the NMC to establish whether they were held similar concerns regarding the position of nursing staff.

I note that the GMC are to consider serving a Notice to Disclose Under Section 35A of the Medical Act 1983.

In declining the disclosure requested I have considered the ACPO protocols for the notification and disclosure of information, 'Managing Risks to Public Safety from Health Care and Teaching Professionals.

As the Senior Investigating Officer, I am advised to carefully balance the need to ensure 'Confidentiality' and the 'Security' of the criminal investigation, and the human rights of the individual including Article 6 The Right to a Fair Trial, with the need to protect the public.

I am mindful that there has been significant previous disclosure to the GMC between August 2002 and October 2004, including full evidence of what ultimately were assessed as category 3 cases, Cunningham and Wilson, the interim Order Committee did not make any Order against Dr Barton, seemingly content with her voluntary acceptance of conditions in terms of the prescription of controlled drugs.

Yours sincerely,

David Williams
Detective Superintendent