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30 July 2004

*Paul*

**OPERATION ROCHESTER – GOSPORT WAR MEMORIAL HOSPITAL  
 Guidance to expert witnesses and Disclosure to GMC**

1. Attached please find a letter from the Hampshire police, which addresses these two topics.
2. Regarding the guidance on law etc to the experts I also attach two notes which I have prepared, relying heavily in part on Steve O'Doherty's training material for deaths in custody, which I would propose we send to Hampshire to incorporate into their guidance.
3. I would welcome your comments on these.
4. As to the second topic, that of disclosure to the GMC, my initial reaction is that the suggested disclosure limited to the category two material would be unobjectionable. However, I am concerned that it could lead to what is described as a high profile discipline hearing which would I assume probably precede and potential criminal trial. That would indeed be potentially prejudicial.
5. I do not know if disclosure could be on condition of no publicity or failing that an undertaking that there would be no disciplinary hearing until after a decision not to prosecute or the conclusion of the criminal proceedings whichever is the later.
6. Again I would welcome your views.

**Code A**

**Code A**

**R Drybrough-Smith  
 Head London Division II**

*Sorry for slippage  
 of course I agree with the  
 law notes (2 as a) ! Hence your  
 old working file with SP's advice  
 in case law in it may assist.  
 As to (4) & (5) I do not know the  
 answer - can we discuss? I think I  
 keep changing my mind! Paul 11/8*



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27<sup>th</sup> July 2004

Mr R Dryborough Smith  
Crown Prosecution Service  
50 Ludgate Hill  
London  
EC4m 7EX

Dear Mr Dryborough SMITH

Re: OPERATION ROCHESTER - Investigation into deaths at the Gosport War Memorial Hospital.

Following our meeting of the 6th July 2004, as discussed please find enclosed 2 documents.

The first relates to the issue of disclosure of material to the General Medical Council in respect of the Investigation for the purposes of an Interim Orders Committee Hearing.

The document details a chronology of events and representations made to date by the GMC.

During a meeting between myself and Detective Chief Superintendent Watts on 23rd July 2004, it was decided that unless there was a clear risk of compromising the ongoing criminal investigation, or the fairness of any possible criminal proceedings against hospital employees, then the preferred position of the Hampshire Constabulary would be to disclose medical notes, and associated police reports in respect of the 60 or so cases that have been assessed into the sub optimal category. These documents would ordinarily fall within the unused material.

Continued/.....



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The effect of disclosure of this material would be to allow the GMC to further their investigation, and produce new prima facie evidence to the IOC in respect of sub optimal care, possibly enabling the GMC to make an order affecting the registration of Dr Barton.

In addition it would be our preferred option to give the GMC access to the clinical team of five experts that have screened these cases. They have not made witness statements in respect of the criminal prosecution, and are not expected to give evidence as prosecution witness. Two fresh experts have been commissioned to produce evidential statements in respect of the 9 negligent cases being further investigated.

Secondly, please find enclosed a copy of a guidance to 'medical experts document' prepared for the attention of the commissioned experts.

During our meeting of the 6th July, Detective Chief Supt. Watts commented that he would wish the Crown Prosecution Service to actively be involved in the briefing of the expert witnesses in terms of the legal issues around Homicide. It was agreed that the Police would produce a briefing note to the experts. Your observations in respect of the accuracy of its content would be appreciated.

Finally, may I confirm the proposed timescales for this investigation.

Four cases have been selected for fast tracking to the CPS, I confirm that these are being progressed expeditiously and the case papers should be with you by early October 2003.

Yours sincerely

**Code A**

David Williams  
Detective Superintendent  
Operation Rochester



## OPERATION ROCHESTER.

Disclosure of Material to the General Medical Council.

### Situation Report.

Operation ROCHESTER is an investigation into the circumstances of a number of deaths of elderly patients at the Gosport War Memorial Hospital between 1988 and 2000.

Police investigation first commenced during 1998 following the death of patient Gladys RICHARDS on the 21<sup>st</sup> August 1998. It was alleged that prescription of Opiates by Dr Jane BARTON hastened Mrs RICHARDS death.

Papers were forwarded to the Crown Prosecution Service who concluded that upon the basis of those papers that there was not a sufficiency of evidence to prosecute.

Following an upheld complaint that the matter had not been fully investigated the investigation was passed to Det Chief Inspector BURT on 29<sup>th</sup> September 1999.

The services of a medical expert Professor LIVELEY were commissioned. In November 2000 he concluded that Dr Jane BARTON prescribed drugs Diamorphine, Haloperidol, Midazolam and Hyoscine in a manner as to cause her death. He added that as a result of being given these drugs Mrs RICHARDS death occurred earlier than it would have done from natural causes.

In August 2001 the Crown Prosecution Service, following advice from Treasury Counsel David PERRY concluded that there was no reliable evidence that Gladys RICHARDS was unlawfully killed, that Bronchopneumonia as a cause of death could not be contradicted and that Dr BARTON'S decisions could find support amongst a reasonable body of medical opinion.

During July 2001 following media reporting of the investigation, four further families reported serious concerns regarding the deaths of their family members at Gosport War Memorial Hospital.

Esa PAGE Died 3.3.1998.

Brian CUNNINGHAM Died 26.9.1998.

Robert WILSON Died 18.10.1998.

Alice WILKIE Died 21.8.1998.

The Senior Investigating Officer (Det Supt JAMES) decided to investigate these deaths and employed the services of 2 further medical experts Dr MUNDY and



Professor FORD to review the appropriateness of care afforded to those patients and Gladys RICHARDS prior to death.

Professor FORD reported an 'inappropriate and reckless prescription of Opiate and sedative drugs.'

Professor MUNDY reported that 'Morphine had been started prematurely, that Diamorphine was excessive, and that no analgesia had been tried prior to morphine, there was no documentation of pain experienced by patients'.

Between October 2001 and May 2002 the Commission for Health Improvement interviewed 59 staff at Gosport War Memorial Hospital reporting that 'had adequate checking mechanisms existed in the trust the level of prescribing would have been questioned, and that a number of factors contributed towards the failure of trust systems to ensure good quality patient care'.

During May 2002 the Crown Prosecution Service having reviewed the evidence in respect of patients RICHARDS, CUNNINGHAM, WILSON, WILKIE and PAGE, determined that there was not a sufficiency of evidence to prosecute Dr BARTON in respect of the deaths of those patients.

In September 2002 a third police investigation into deaths at Gosport War Memorial Hospital commenced under the leadership of Detective Chief Superintendent WATTS. A total of 90 deaths were reviewed following complaints from family members of deceased, and information received on behalf of the Chief Medical officer.

These cases were reviewed by a panel of medical experts (key clinical team) in toxicology, palliative care, geriatrics, nursing and general medicine.

Category 1. 17 cases were assessed as having received optimal care, death being by natural causes.

Category 2. 60 cases were assessed as having received sub-optimal care, but not extending to negligent care.

Category 3. 13 cases were assessed as having received negligent care (that is to say outside the bounds of acceptable clinical practice. (In four of these cases death was by natural causes).

Of the 13 cases, 9 were assessed as 'negligent care cause of death unclear'. These cases are being actively investigated. 4 of those cases assessed as 'most negligent' are being subject to a fast-track investigation with a view to placing papers before the Crown Prosecution Service by the end of September 2004.

The findings of the key clinical team have been independently reviewed by a legal-medico lawyer Mathew LOHN. On 20<sup>th</sup> July 2004 Mr LOHN reported concern in respect of the categorisation of 7 of the category 2 cases. He is available to discuss those concerns from 2<sup>nd</sup> August 2004.

### General Medical Council Disclosure.

Following the Crown Prosecution service decision not to prosecute, Detective Superintendent JAMES raised issues of Dr BARTONS professional conduct with the GMC Fitness to practice Directorate on 6<sup>th</sup> February 2002.

In his immediate reply Michael HUDSPITH wrote that as the statutory body responsible for regulating the medical profession, the GMC was concerned to learn of any doctor who had been the subject of a criminal investigation. Whilst acknowledging the decision not to prosecute Dr BARTON the GMC needed to satisfy themselves that there were no matters relating to the professional conduct of performance of Dr BARTON which warranted formal action under the GMC 's fitness to practice procedures.

Mr HUDSPITH requested a case summary, witness statements, copies of expert reports and copies of relevant medical records.

Mr HUDSPITH made mention of section 35A of the Medical Act 1983 (Amendment) Order 2000 which in broad terms gave the GMC the right to demand disclosure of information when considered necessary for the purpose of assisting the GMC to carry out a statutory regulatory role.

Mention was made of Woolgar v Chief Constable of Sussex Police 2000 where it was stated "Obviously in each case a balance has to be struck between competing public interests and at least arguably in some cases the reasonableness of the police view may be open to challenge. If they refuse to disclose the regulatory body may, if aware of the existence of information make an appropriate application to the court".

On the 14<sup>th</sup> February 2002 the Hampshire Constabulary through Detective Superintendent JAMES handed to the GMC statements of Professors LIVESAY, FORD, and MUNDY, patient notes in respect of patients RICHARDS, CUNNINGHAM, WILKIE, WILSON, and PAGE, and supporting documentation. An offer was made to make any other material available if so required.

On 21<sup>st</sup> March 2002 the GMC's Interim Orders Committee considered the case of Dr BARTON including submissions from counsel instructed by the GMC and from Dr BARTONS legal representatives. The IOC considered that it was not necessary for the protection of members of the public and in the public interests or in Dr BARTONS own interests to make an order affecting her registration.

On the 12<sup>th</sup> September 2002 the GMC's preliminary Proceedings Committee decided that upon the basis of the full disclosure of information provided about Dr BARTON that a charge should be formulated against Dr BARTON and that an enquiry into the charge should be heard by the Councils Professional Conduct Committee.

Following the decision of 12<sup>th</sup> September 2002 the president of the GMC referred Dr BARTONS case back to the Interim Orders Committee.

On the 19<sup>th</sup> September 2002 the IOC considered Dr BARTONS case and decided not to make an order affecting her registration.

On the 23<sup>rd</sup> September 2002 the Investigation under Detective Chief Superintendent WATTS commenced.

On 30<sup>th</sup> September 2003 DCS WATTS met with Linda QUINN of the GMC presenting an overview of the Police Investigation.

On 2<sup>nd</sup> October 2003 Mrs QUINN requested a detailed written summary of the evidence of the case, including reports compiled by experts in order that a decision could be made whether or not to further refer to the IOC.

On the 3<sup>rd</sup> October 2003 DCS WATTS responded that further work was required to validate the findings of the clinical team in respect of the deaths of 62 patients, but that in a significant number of those cases the experts had taken the view that there was negligent care and that the causation of death was unclear.

DCS WATTS added that his primary concern was the safety of the public, and that a balance needed to be struck between conducting the investigation in the appropriate fashion and realistically assessing the risk to the public.

DCS WATTS pointed out that information disclosed to the GMC would also be revealed in totality to DR BARTON and that this could prejudice the police investigation particularly interviews with Dr BARTON.

On the 7<sup>th</sup> January 2004 Mrs QUINN responded that as there was no new evidence, the matter would not be referred back to the IOC.

On the 27<sup>th</sup> February 2004 a further meeting was held between Hampshire Police and the GMC.

During a detailed exchange in respect of the Police Investigation under agreed confidentiality DCS WATTS explained that it was unlikely that the investigation would be concluded by the end of 2004, but that he would be happy to explain the investigation to anybody, and wondered whether the GMC could utilise this information.

On 2<sup>nd</sup> July 2004 DCS's WATTS offer to appear before a GMC IOC hearing was communicated by Chief Constable KERNAGHAN to the Chief Executive of the GMC Mr FINDLAY SCOTT, along with a further summary of the police investigation and proposed timescales.

The investigation was further summarised to Louise POVEY of the GMC Fitness to Practice Directorate during a meeting of 6<sup>th</sup> July 2004.

During that meeting it was agreed that consideration would be given regarding disclosure of the Category 2 cases (sub-optimal care) to the GMC once the validation work had been completed by Mathew LOHN, and following consultation with the CPS. It may also be possible to use the key clinical team to give evidence to the GMC in respect of the category 2 cases.

DCS WATTS again offered to appear as a witness before any GMC hearing.

During a meeting with the Crown Prosecution Service the same day Mr Robert DRYBOROUGH –SMITH and Paul CLOSE, it was agreed that a written proposal in respect of disclosure to the GMC would be made for CPS consideration, but that ultimately it was a decision for the police investigation having regard to the competing interests.

CPS advised that in respect of the ongoing category 3 cases that release of such information before being heard in a criminal arena could amount to an abuse of process.

Disclosure Options for discussion Friday 23<sup>rd</sup> July 2004.

1. Do not disclose any information to the GMC prior to a decision being taken in respect of a criminal prosecution upon the basis that such disclosure could be taken as an abuse of process and could prejudice police investigations (particularly interviews with Dr BARTON) and the course of justice.
2. Consider partial/incremental disclosure of information to the GMC including category 2 cases that will not/unlikely to form part of any prosecution case, but will be treated as unused material. This disclosure will enable the GMC to place fresh evidence of sub optimal treatment of patients to the IOC. Consideration needs to be made of the likely impact of a high profile GMC hearing upon the right of Dr BARTON to receive a fair trial should there be a criminal prosecution.

NB.

Dr BARTON since October 2002 has been voluntary subject to the following conditions :-

Not to prescribe Benzodiazepines or opiate analgesics from 1.10.2002. All patients requiring ongoing therapy with such drugs are being transferred to other partners within the practice so that their care would not be compromised.

Dr BARTON will not accept any house visits if there is a possible need for such drugs to be prescribed.

Since April 2003 Dr BARTON has written 20 prescriptions for Diazepam to relatives of deceased, and has not prescribed any Diamorphine, Morphine or other controlled drug.

DW.D/SIO.  
23.7.2004.