

J Farr
Correspondence Unit
Private Office

Ref: LB3/108/01

CORRESPONDENCE FROM MRS GILLIAN MACKENZIE

1. Thank you for your minute of 19 July with enclosures which were received in Casework Directorate on 22 July 2002.
2. I enclose a copy of my reply to Mrs MacKenzie as requested.
3. I also enclose, for information, copies of some recent correspondence with Roger Daw.

Code A

**Paul Close
Casework Directorate
31 July 2002**

Code A

C W P Newell
Director, Casework



Casework Directorate
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Switchboard: 020 7796 8000
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Mrs G M Mackenzie

Code A

Facsimile: 0 [Redacted]

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Our Reference:

Your Reference:

31 July 2002

Dear Madam

Thank you for your letter of 1 July 2002 to the Director of Public Prosecutions which has been passed to me to reply to you.

As you know from our telephone conversation on 17 June last all the papers submitted by the Hampshire Constabulary to the Crown Prosecution Service, relating to the tragic death of your late mother, were considered in great detail by this office and also by senior Treasury Counsel.

The only possible conclusion that could be drawn from all the evidence submitted by the police was that it was insufficient upon which to prosecute anyone.

As we have discussed, this decision is based on the requirements of the Code for Crown Prosecutors. The Code requires that there must be enough evidence to provide a 'realistic prospect of conviction' against the defendant. A realistic prospect of conviction is an objective test. It means, in this case, that a jury properly directed according to the law, is more likely than not to convict the defendant of the alleged charge. This is a separate test from the one that the criminal courts must apply. A jury should only convict the defendant if it is sure that he or she is guilty.

When deciding whether there is enough evidence to prosecute, it must be considered whether the evidence can be used in court and is reliable. This means that there must be an assessment of the quality of the evidence from all witnesses before reaching a decision. If there is not a realistic prospect of conviction, the case must not go ahead, no matter how important or serious it may be.

I should mention that the papers which the police submitted for consideration related only to your late mother. No papers have been received in respect of any ancillary or connected enquiry.

The Crown Prosecution Service will write to the Hampshire Constabulary, in the light of your letter, for their comments on the issues raised by you and to clarify whether further evidence is likely to be submitted by them.

Obviously if further evidence is forthcoming then this will be considered in detail. I should however mention that I cannot comment as to whether or not further evidence would be such as to overcome the insufficiency of the existing evidence.

I will write to you again when I have heard further from the police.

Yours faithfully

Code A

Paul Close
Casework Directorate

R K Daw
Chief Crown Prosecutor
CPS Hampshire & Isle of Wight

Code A

Our Ref: LB3/108/01

Your Ref: RKD/TS/526-14/1408

ENQUIRY INTO GOSPORT WAR MEMORIAL HOSPITAL

1. Your minute of 29 July 2002 to Code A together with the copy letter from Hampshire Constabulary to you have been passed to me.
2. I enclose for your information copy letter which I sent to the police on 7 August 2001 following the earlier submission of papers by the police for consideration in respect of the death of Gladys Mabel Richards.
3. As mentioned in the correspondence the police attended conferences with David Perry of Counsel. I have absolutely no hesitation in saying that the police totally agreed with the advice that there was insufficient evidence to provide a realistic prospect of a conviction. Indeed following a conference with Counsel, at which Professor Livesley attended the police were only too thankful that no proceedings had been commenced.
4. I met with the police, and Bill Wheeldon, at Ludgate Hill on 20 July 2001 when various aspects of the matter were discussed in detail. The police mentioned, in passing, that they would continue with other enquiries into other deaths at the hospital. In particular they were seeking other experts reports on those matters and possibly obtain evidence from Professor Ford and Doctor Monday. If anything came of those enquiries further papers would be submitted to the CPS for consideration. The police asked that no action be taken by the CPS until the police had determined what steps, if any, they were going to take in any further enquiries.
5. Suffice it to say there has been no correspondence from the police since my letter of 7 August 2001 and no further evidence in respect of the late Gladys Richards or any further additional investigations have been submitted by the police to me.
6. I enclose some copy correspondence with Mrs Mackenzie. It may be helpful if the police could comment on the issues raised in her letter of 1 July 2002 and to submit any further evidence for consideration. I have not written to the police.

7. Obviously if further enquiries have been undertaken by the police in respect of other cases, upon which advice is sought, then, assuming they are matters for Headquarters referral, the papers should be sent to Casework Directorate. It may be better if they are routed through your office.
8. I shall be on leave until mid August. If matters arise before then Rob Drybrough-Smith is aware of all the issues.

Code A

Paul Close
Casework Directorate
31 July 2002

Code A

C W P Newell Esq
Director, Casework
CPS Headquarters

Code A

LUDGATE EC4

Paul Close.

*Please contact cps Hawks
and Hawks Police and get
the papers sent here for
review.*

Thanks

Code A

30/7

Our ref: RKD/TS/526-14/1408

RECEIVED

30 JUL 2002

DIRECTOR
CASWORK

Code A

RE: ENQUIRY INTO GOSPORT WAR MEMORIAL HOSPITAL

- 1 Please find enclosed a copy of a letter from Deputy Chief Constable Ian Readhead who mentioned the matters that he has set out in his letter to me, earlier this week.
- 2 Having made enquiries in the Area, it seems as though the original investigation into what occurred at Gosport War Memorial Hospital was considered in the Casework Directorate because of the allegation that a doctor in the course of his professional duties unlawfully killed some of his patients. This, of course, is a matter for Headquarters referral.
- 3 In the light of that and in the light of the fact that four further enquiries have now been undertaken by Hampshire Constabulary in respect of the same or similar allegations, I think that it is probably appropriate that these matters are also referred into the Casework Directorate.
- 4 You will note from Mr Readhead's letter that there is one further sensitivity in this matter, namely that the supervisory officer has given the impression to his senior officers and to regulatory bodies that the advice of the CPS has already been obtained in respect of these four additional investigations. That is clearly not the case in so far as Hampshire and the Isle of Wight CPS has not provided advice to the police but it is just possible that advice was given in respect of these four matters by Casework Directorate.
- 5 If you are content, I shall advise Ian Readhead to forward the papers that he has asked Superintendent Stickler to prepare directly to your nominated officer. On the last occasion it would appear as though this was Paul Close.

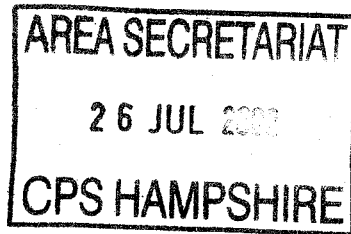
- 6 I hope that you are content with this; I look forward to hearing from you about how you wish this matter to be taken forward.

Code A

ROGER K DAW
CHIEF CROWN PROSECUTOR
CPS HAMPSHIRE AND THE ISLE OF WIGHT
29 July 2002
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Code A

Enc



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I R Readhead LL.B
Deputy Chief Constable

Your ref:

Our ref: IR/DCC/hjs

23rd July, 2002.

Mr. R. Daw
Chief Crown Prosecutor
Crown Prosecution Service
3rd Floor
Blak Horse House
8-10 Leigh Road
EASTLEIGH
SO50 9FH

Dear Roger,

Report by Chief Superintendent D. Clacher into Complaints against Detective Superintendent John James following an enquiry into events at Gosport War Memorial Hospital

Following our discussions you are aware of this high profile case and the fact that historically the Crown Prosecution Service sought Treasury Counsel's advice regarding the death of Mrs. Richards at the above hospital. The key issue was whether the use of a syringe driver to deliver Diamorphine to Mrs. Richards was carried out in such a way as to cause her unlawful death.

A critical meeting took place on 19th June, 2001 between Detective Superintendent John James, Detective Chief Inspector Paul Clarke, the Crown Prosecution Case Worker, Mr. Paul Close, Treasury Counsel, and Professor Livesley. It would appear that during that meeting Treasury Counsel came to the view that Professor Livesley's report on the medical aspects of this case and his assertions that Mrs. Richards had been unlawfully killed, were flawed in respect of his analysis of the law. The best summary of the meeting is contained in a letter from Mr. Close which is dated 7th August, 2001. In it, he asserts, "The decision that there is no reliable evidence that Mrs. Richards was unlawfully killed, was the only conclusion that could be reached following the further conference with Counsel on 19th June." The letter goes on to list the reasons behind the CPS and Counsel thinking, as follows:

1. Although Professor Livesley had concluded in his initial medical report that Mrs. Richards had been unlawfully killed, he was not entirely clear of the legal ingredients of gross negligence/manslaughter.
2. That Dr. Barton's decisions were entitled to be afforded some respect as she was involved in Mrs. Richards' care as the frontline clinician.

.../Cont.

Mr. R. Daw

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July 2002.

3. Dr. Barton's decision could find support among a responsible body of medical opinion.
4. Bronchopneumonia as a cause of death could not be contradicted.

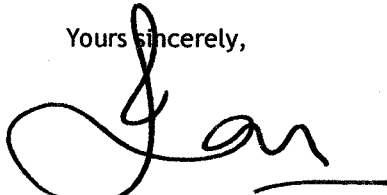
It is not possible in the absence of any post mortem finding to exclude a heart attack as a possible cause of death. Nonetheless, it was decided by the police to examine four similar cases to discover if there were any other evidence which would indicate criminal activity at this hospital. Investigations were carried out but it would appear that the results of those enquires were never formally given to the Crown Prosecution Service. The rationale behind the decision was that they were all of a similar nature to the Richards' case and would therefore attract a similar comment from your office.

I am currently reviewing how senior officers and regulatory bodies were given the impression that this referral had taken place.

Nevertheless, I now take the view, having looked at the report from Chief Superintendent Dan Clacher, that these cases should have been submitted to you for appropriate review. I have now directed that Superintendent Paul Stickler, the Divisional Commander at Havant who has previous CID experience, should be given the task of collating all of this additional evidence and delivering it to your office, if appropriate, along with a copy of the report from Chief Superintendent Clacher. You indicated that you would have to undertake a review of this case to see if it would be a local matter or one that had to be conducted from the outset with the Director of Public Prosecutions.

I go on annual leave this evening but think it may be prudent for us to meet on my return so that we can discuss the matter further when you have obtained a more formal position on behalf of the CPS.

Yours sincerely,



I.R. Readhead
Deputy Chief Constable