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Dear Sir,

Gosport War Memorial Hospital

Following our meeting on 20 December 2002 I have now had a chance to consider further the potential problems which could arise from the separate enquiries which the relevant agencies will undertake.

I should stress at the outset that the CPS can only advise the police. It cannot advise other agencies. It cannot instruct anyone to take, or not to take, any particular course of action.

I cannot see that any enquiry based upon a review of the contents of the documents prepared by the hospital trusts and the CHI will in itself cause any obvious difficulty to the police enquiry provided the integrity and contents of those documents is not affected. In any event, the police cannot dictate to the other agencies how they conduct their own investigations.

It seems quite clear from our recent discussion that the agencies involved are very conscious of the potential problems, will work with the police and will take a common sense approach to overcome any difficulties.

I note the police enquiries are unlikely to be concluded until 2004 and the other agencies propose to complete their work by the spring of 2003.

I envisage that the police would find it useful to discuss with the other agencies the potential areas of conflict and difficulty which they could avoid or ameliorate when undertaking their enquiries.

The most obvious difficulty is the impact of various investigators talking to the same medical personnel, be they witnesses or potential defendants, and covering the same facts, albeit from different perspectives.

Whilst it may be impracticable to expect the other agencies to refrain from contacting any personnel, they may be encouraged to take steps to reduce the impact of their enquiry.

It would be prudent for those undertaking the non-police enquiries to ensure that the personnel to whom they talk, whether in a formal interview or not, are told of the precise nature of the particular enquiry and that it is wholly separate to the police enquiry. Obviously it is essential that no immunity from prosecution or suggestion of one, is given to the personnel in exchange for information.

A further potential difficulty could arise from the content of any report prepared by other agencies, particularly if it is made public. This is certainly the intention of the CHI Investigation. Care will be needed to ensure that such a report does not seek to apportion blame to identified individuals nor, conversely seek to specifically exonerate them. Similar principals would also apply to possible conclusions reached on 'management systems' (last term of reference in documents A to the CHI note) insofar as it could impact on any potential 'corporate liability.'

It may of course be that both agencies involved would happily agree to let the police see a draft of their respective reports in a few months time prior to publication. This may enable the police to consider more accurately whether anything in the reports is likely to impact adversely on the police investigation. Any decision to delay publication will be for the agencies concerned, but it may be possible to influence the decision, depending on the progress of the police enquiries.

I do not consider, unfortunately, that the potential problems arising in this matter can be resolved by any dogmatic legal advice. I will of course be only too pleased to advise further on any specific issues that arise. I envisage however there will be no simple or set answers. Difficulties inevitably arise where there are multi-agency enquiries into the same matter. This usually arises in 'disaster cases.' The inherent problems in those matters are worse, and often insoluble as various agencies are looking to obtain evidence to prosecute. That is not so in this case and the other agencies are seemingly willing to assist the police in any way in which they can or at least to do nothing which would hamper the police enquiry.

I hope I have addressed the issues which you have raised. I am conscious that the police would like a 'clear steer.' However we are probably in uncharted waters and navigation will be by instinct.

Yours faithfully

Code A

Paul Close
Casework Directorate