

OPERATION ROCHESTER

BACKGROUND

NOTE

Overview

1. This note accompanies our ten individual advices in respect of an investigation conducted by the Hampshire Constabulary known as Operation Rochester.
2. The investigation concerned the deaths of a number of elderly patients at the Gosport War Memorial Hospital ('GWMH'), in Hampshire. All of the deaths occurred in the 1990s.
3. The ten cases on which we have been asked to advise are as follows (in the order in which we were provided with papers):
 - (1) Elsie Devine ✓
 - (2) Code A
 - (3) Elsie Lavender
 - (4) Ruby Lake
 - (5) Arthur Cunningham
 - (6) Enid Spurgin
 - (7) Robert Wilson ✓
 - (8) Geoffrey Packman
 - (9) Helena Service
 - (10) Sheila Gregory.

4. In particular, we have been asked to consider whether, in respect of the above mentioned cases, the evidence which has been gathered by the Hampshire Constabulary discloses any offences of gross negligence manslaughter.
5. The principal subject of the police investigation was Dr Jane Barton, now aged 57, a local General Practitioner, who worked on a part time basis at GWMH as a Clinical Assistant. In respect of all of the above cases, Dr Barton was the doctor who cared for the patient on a day to day basis. In that capacity, she was responsible for conducting clinical assessments and prescribing medication.
6. The investigation also examined the conduct of Dr Barton's colleagues, in particular Dr Richard Reid, now aged 55, a Consultant Geriatrician, who was involved in the cases of Mr Packman and Mrs Spurgin.

The Police Investigation

7. The investigation conducted by Hampshire Constabulary into events at GWMH has been extremely thorough. We have been provided with an extensive volume of material in respect of each case. This material has included medical records, reports from medical experts, interviews with Dr Barton and Dr Reid, and witness statements taken from the families of the deceased and the medical staff at GWMH and other hospitals.
8. We should say that the investigation, which has been carried out over a number of years, has been exemplary. We are satisfied that all the relevant material relating to events at GWMH has been identified, obtained and, where necessary, subjected to the scrutiny of independent medical experts.
9. We have been greatly assisted by the way in which the investigation has been conducted. In coming to our conclusions, we have, of course, had regard to all of the material which the police have obtained.

The Experts

10. The evidence in respect of each of the ten cases has been reviewed by two independent medical experts: Dr Andrew Wilcock, a Reader in Palliative Medicine and Medical Oncology at the University of Nottingham and an Honorary Consultant Physician of the Nottingham City Hospital NHS Trust, and Dr Robert Black, a Consultant Physician in Geriatric Medicine at Queen Mary's Hospital in Kent, and an Associate Member of the General Medical Council.
11. In summary, two principal issues of concern have been identified. The first involves the inappropriate and excessive administration of medication, most notably diamorphine by the medical staff at GWMH. The second involves the failure of the medical staff to carry out adequate clinical assessments of patients.
12. Where it has been necessary to obtain further specialist opinions, additional medical reports have been provided by practitioners with the relevant expertise.
13. It is important to note that, as is evident from the content of our advices, there have been a number of significant differences of opinion between Dr Wilcock and Dr Black, and in fact the other experts who have prepared reports, in respect of the central issues identified by the investigation.

Legal Analysis

14. In considering each of the above cases, we have set out a summary of the relevant events, the significant conclusions of the various experts, and a legal analysis. Having regard to those matters, we have then analysed whether the evidence reveals the commission of the offence of gross negligence manslaughter.
15. In conducting this analysis, we have of course had regard to the evidential test in the Code for Crown Prosecutors, and in particular paragraphs 5.2 and 5.3:

'5.2 Crown Prosecutors must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.'

- 5.3 *A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.'*

David Perry QC

Louis Mably

27 October 2006

6 King's Bench Walk

London

EC4Y 7DR