

Carmen Dowd
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Mr A. Lavender

Code A

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Our Reference:

Your Reference:

15 December 2006

Dear Mr Lavender,

Elsie Lavender

We have not previously corresponded and I should therefore like first to take this opportunity to express to you my deepest sympathy for your bereavement and for the great distress that you must have suffered since your mother's death on 6 March 1996.

My role has been to determine if any crime has been committed and in order to do that I have read all the evidence which Hampshire Constabulary have produced during their very lengthy investigation. I have had the benefit of a number of discussions with the police both in meetings at this office and also in conferences with Counsel.

I have considered the conduct of Dr. Barton and whether she should be prosecuted for the offence of gross negligence manslaughter.

In reviewing the evidence I have acted in accordance with the Code for Crown Prosecutors. This requires me to consider whether there is evidence to provide a realistic prospect of conviction for a criminal offence (i.e. is a jury more likely than not to convict). I may only consider the public interest if I am satisfied that there is a realistic prospect of conviction.

I hope it will help you if I set out the elements of the offence of gross negligence manslaughter.

In order to convict a defendant, the jury must be sure that:

- The defendant owed the deceased a duty of care;
- That the defendant breached that duty;
- Which causes the death;

- And whether that conduct should be categorised as gross negligence and therefore be deemed to be a crime.

In trying to determine that final element, the Courts have stated:

"Once it can be shown that there was ordinary common law negligence causative of death and a serious risk of death, what remains to be established is criminality or badness. In considering whether there is criminality or badness..... all the circumstances are to be taken into account."

Errors alone, no matter how catastrophic the consequences may be, do not of themselves amount to gross negligence.

The burden is on the prosecution to prove each of these elements beyond a reasonable doubt. This is a higher standard than the civil law where matters need only be proved on the balance of probabilities and where simple negligence is sufficient.

Having considered the evidence supplied by the police I have concluded that it does not reveal the commission of the offence of gross negligence manslaughter.

It is my view that, having regard to the overall expert evidence it cannot be proved to the criminal standard that Dr. Barton was negligent in the administration of the diamorphine.

There is an additional problem and that is proving to the criminal standard that the diamorphine substantially contributed to your mother's death. The medical evidence obtained by the police is very detailed and complex but does not prove this essential element.

I should add that in my view even if causation could be proved there is not sufficient evidence to persuade a jury that any alleged conduct was so bad as to be a crime as required by the law.

The alleged conduct falls short of that culpability and I am certain that there is no realistic prospect of conviction in respect of that charge.

I have written to the police to advise that Dr. Barton will not be prosecuted for manslaughter but I wanted to write to you personally to confirm my views.

If you wish to discuss the basis and reasoning for my conclusions I should be only too pleased to meet with you in London and I can arrange for Counsel to attend at the meeting. In that event please contact Detective Superintendent Williams or his colleagues who will liaise with me regarding any arrangements.

Yours sincerely

Code A

Paul Close
Special Crime Division