

Gosport War Memorial Hospital –

FOI request and correspondence from Mr David Reeves 26/5/15

1. The purpose of this briefing note is to enable senior managers to feel confident that a draft reply to a letter from Mr David Reeves to Sue Hemming is an appropriate response. There has been no attempt to review the paperwork retained in this case in drafting the reply. It is submitted for the reasons below that this extremely time-consuming exercise is not necessary. The draft reply is a fair answer to Mr Reeves in all the circumstances, which include an exceptionally complex history of careful decision-making supported at the highest level of expertise from the Bar; and the fact there is shortly to be a public inquiry which presumably will look at every detail of what has happened.
2. Nevertheless, the author is ready to undertake a review of the retained papers if asked.
3. The case known as Gosport War Memorial Hospital (GWMH) concerns allegations that in the period 1987-2000 a large number of elderly patients were given doses of morphine that were intended to hasten death more than to alleviate suffering. The case resonates with the case of Dr Harold Shipman. A detailed explanation of the prosecution decisions in this case has already been provided to the bereaved in writing and face to face. Reasons why no prosecution was brought against a doctor, Jane Barton, who prescribed the drugs in the majority of cases and certified the vast majority of deaths, were set out in a 32 page letter dated 16th August 2010 which the then reviewing lawyer, Paul Close, sent to the solicitor acting on behalf of bereaved relatives. Among those represented by that solicitor was Ann Reeves, believed to be the mother of David Reeves, this correspondent, and next of kin to the deceased Elsie Devine (who I believe was her mother).
4. There was a review of deaths at GWMH undertaken in 2003 (Baker Review). A CPS decision not to prosecute was taken in 2006, following advice from David Perry QC. A coroner's inquest took place into 12 deaths in 2009 and the General Medical Council subsequently found a disciplinary case to answer against Dr Barton. These events led to a further CPS review and to Paul Close's letter. A public inquiry into the matter has now been announced.
5. There apparently is no-one currently in the Service who has reviewed the papers. Paul Close has retired as has Rob Dryborough-Smith, who had the case before him. Hilary Reeve drafted a reply to a letter from the bereaved of another victim in 2013. In that instance the question was whether the CPS had seen and taken into account the Baker Review when making its charging decision. Hilary did not review the case-file itself which had been destroyed, however, she did produce

an analysis of the Baker Review showing that its content was not such as could be relied upon in criminal proceedings (it contained an analysis of the pattern of deaths based on demographic and statistical models, but nothing that could be relied upon to prove a case of homicide to the criminal standard). Karen Harrold is presently the custodian of the remaining papers and will be collating all paper and electronic records for submission to the panel of the public inquiry. She has not read any of the retained file.

6. The letter from Mr Reeves dated 10th April 2015 is attached. It is couched in terms of a request for an internal review of a rejected FOI request, but perhaps is not properly to be seen as such. Mr Reeves might have chosen to write initially to the FOI Unit because he had done so before.
7. The so-called FOI request made by Mr Reeves on 10th April 2015 seeks answers to a suite of detailed questions apparently arising out of the letter written by Paul Close on 16th August 2010. This FOI request was rejected on the same grounds as Mr Reeves's previous request. Those grounds are set out in paragraph 10 c below.
8. As far as I can tell, previous communications with the bereaved family of Elsie Devine are as follows. Paul Close wrote to Ann Reeves in December 2006 stating that Dr Barton could not be prosecuted for gross negligence manslaughter because there was insufficient evidence that the drugs prescribed to Elsie caused her death, rather than her underlying, advanced illness; and that even if they did, there was insufficient evidence of criminality in prescribing them. (In the present correspondence Mr Reeves seems to refer to the 2010 letter but not the 2006 one, which he might not have seen). I am told that there was a meeting with bereaved relatives at which David Perry QC was present and where the reasons for not prosecuting Dr Barton were discussed. I am presently confused about whether that meeting was in 2006, when David Perry initially advised, or in 2010, after Paul Close's second letter was sent. I do not think we need to be sure about that before we can answer Mr Reeves. The only relevance of the point is whether Mr Reeves was himself at the meeting, which, if he was, weakens his case for requesting a further explanation now. In my view there is no need to mention the meeting in our reply to Mr Reeves.
9. The letter Paul Close wrote in 2010 dealt with the law, and made particular reference to new evidence emerging from the inquest and the GMC hearing. There are two passages in the letter that set out the new evidence specifically relating to Elsie Devine arising from those two hearings. The conclusion of the 32 page letter is that nothing emerged from the inquest or the GMC hearing to alter his initial position upon full review, which was that there was insufficient evidence to prosecute Dr Jane Barton for the murder or for the gross negligence manslaughter of any of twelve named individuals.

10. Previous responses to FOI requests by Mr Reeves have included the following information:

- a. On 17th December 2012 this request FOI request was made by Mr Reeves:

Please give a detailed account of the reasons why in December 2006 Mr David Perry QC refused to take the case against Dr Jane Barton's alleged murder of Mrs Elsie Devine at the Gosport War Memorial Hospital into court.

We replied with the following:

"The CPS does not hold any information pursuant to this request. The case file associated with this request has now been destroyed in line with our retention schedule".

- b. On 9th January 2013 Mr Reeves requested an internal review.

- c. On 31st May 2013, after the intervention of the Information Commissioner because of our the delay in replying to Mr Reeves, we told Mr Reeves:

"[Our 17/12/15] reply stated that the CPS holds no information falling within scope of your request and referred you to our retention schedule. I have now made further enquiries and I can confirm that information regarding the decision not to charge Dr Barton in connection with the death of Ms Elsie Devine is held by the CPS; I apologise for the confusion caused by the previous response."

We went on to decline to release the information on 3 grounds: because the public interest is best served on balance if the "safe pace" for communications about decision-making in criminal cases is preserved; and because disclosure would involve the release of data personal to the suspect; and because communications with Counsel attract legal professional privilege.

- d. The Information Commissioner made further enquiries into our handling of the case and expressed some disquiet about our mistaken claim not to have material.

- e. It seems our original case file was destroyed but there is some electronic material and a reasonably large volume of paperwork in our possession. Apart from the documents referred to in this briefing note, I have not looked at any of the material. This is because if the reply I have drafted is acceptable, there is no need to.

11. Mr Reeves refers in his most recent letter to the visit of an outside doctor to Elsie Devine on the morning of the 18th November 1999 and he asks what consideration was given to that possible strand of evidence. Although Paul Close's 2010 letter mentions the 18th November in his summary of new evidence

given at the GMC hearing, there is no mention of the visiting doctor. Mr Reeves's letter suggests that the visiting doctor had come and gone before Elsie Devine was given the drugs which he complains killed her. Perhaps Mr Reeves thinks that the visiting doctor could have said how well Elsie Devine was when he saw her, leading to the implication that the drug that was prescribed was not necessary. If so, that point has apparently already been accepted as part of the case. It is already clear from Paul Close's letter that he considered the following finding of the inquest jury:

"By its verdict the jury accepted on a balance of probabilities that the medication administered was a cause of death, and found that, although the medicine was administered for therapeutic purposes, it was not appropriate for the condition or symptoms from which the deceased was suffering." (Paragraph 57)

12. It seems that evidence about or from the visiting doctor would not therefore alter the premise upon which the case was considered, or at least re-considered in 2010.
13. The strength of Mr Reeves's position is that he says that what he asking for is already in the public domain. The weakness of his position is that if it is, then he need not ask for it. The safeguard against his being prejudiced in any way is that we will be revealing everything we have to the public inquiry.
14. I commend the attached draft reply to your consideration and await your instructions as to how to proceed.

Elizabeth Joslin
Senior Specialist Crown Prosecutor
Special Crime and Counter Terrorism Division

Code A

17th June 2015