

14/7/05

OPERATION ROCHESTER**Re Elsie Devine**

**SUPPLEMENTARY
NOTE**

1. On 21 March 2005, we advised in relation to this case. Our essential conclusion was that the evidence did not reveal the commission of the offence of gross negligence manslaughter, and in particular:
 - (1) It was unlikely that Dr Barton's conclusion that Mrs Devine was dying of chronic renal failure could be characterised as grossly negligent; and
 - (2) It was unlikely that causation could be established as a matter of law.
2. We have now received a bundle of further witness statements, and the report of Dr Black, a consultant in geriatric medicine, dated 4 January 2004, and the report of Dr Dudley, a consultant in renal medicine, dated 20 March 2005.
3. Dr Black's conclusions may be summarised as follows:
 - (1) By 19 November, Mrs Devine was terminally ill and it was reasonable for a clinician to come to that conclusion [para.6.15];
 - (2) It is possible, or perhaps even probable, that without any treatment, Mrs Devine would have died on 21 November [para.6.23];

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- (3) It is possible that the medication prescribed by Dr Barton did shorten Mrs Devine's life by a short period, but it also had the effect of relieving Mrs Devine's distress for the last 58 hours of her life [para.6.24];
 - (4) The care provided to Mrs Devine was sub-optimal, but it could not be proved negligent or criminal [para.7.3].
4. Dr Dudley's conclusions may be summarised as follows:
- (1) Beyond all reasonable doubt, Mrs Devine was dying from a combination of amyloidosis, progressive renal failure and dementia [para.8.1];
 - (2) Although it may have been possible to have stabilised Mrs Devine's condition for a few days, a further deterioration culminating in death was inevitable [para.8.2].
5. It is our view that these reports reinforce the conclusion that the evidence in this case does not reveal the commission of the offence of gross negligence manslaughter.

If we can be of further assistance, please do not hesitate to contact us in Chambers.

David Perry

Louis Mably

14 July 2005