

## Special Crime and Counter Terrorism Division



The CPS incorporates RCPO

Private and Confidential

Mr C Stewart-Farthing

Code A

16<sup>th</sup> October 2013

Dear Mr Stewart-Farthing,

Thank you for your email dated 18<sup>th</sup> September 2013 relating to the tragic death of your step-father at the Gosport War Memorial Hospital in 1998.

You have requested that we reconsider the allegations against Ms Barton. In 2010, the CPS undertook a detailed review of the issues and I attach a copy of the letter that your solicitors were sent as a result of that review. I have independently considered whether the findings of the Baker report would cause the CPS to reconsider Mr. Close's conclusions.

It may be helpful to summarise Mr. Close's conclusions regarding Mr. Cunningham's death. He noted the inquest jury's conclusion that whilst the drugs Mr. Cunningham was given did contribute to his death, the drugs were nevertheless appropriate for Mr. Cunningham's condition. If it was right to administer the drugs, Dr. Barton could not be said to have acted negligently in prescribing them. Thus she could not be guilty of gross negligence manslaughter. The question to be considered therefore is whether or not the Baker review has any impact on this decision.

I firstly considered whether Mr. Close took the Baker report into account when he reached his conclusions.

Having reviewed the available material, I have been unable to find firm evidence that he considered the detailed content and conclusions of the Baker Report during his review in 2010. Although the police appear to have used the Baker Report with other information to identify potential victims there is no evidence that Mr. Close had access to the detail of the report or relied on its conclusions when making decisions about the cases.

Therefore, I have carefully considered the content of the full report, which is described as an independent clinical audit, to decide if the content contributes any new evidence which could alter or affect the CPS conclusions in 2010.

Having reviewed the Baker Report I note that:



- The report is based on historic statistical and documentary records only and contains no evidence about the treatment of specific patients – for example it makes no reference to Mr. Cunningham as an individual - and
- The author makes very clear that the intention of the report was not to investigate individual allegations, which was the role of the police, but instead highlights questions and areas for further investigation and practical improvement in the NHS and
- The judgements are general not specific to individual deceased so would carry very limited weight even if allowed to be used at a criminal trial and
- There are some acknowledged limitations in the audit, some data was missing and, in some instances, the sample size is small which can lead to distortion in the results. .

The report concludes that there was a “liberal use of opiates” and that “determined rehabilitation could have led to a different outcome”. Without reaching any conclusion in any particular case, the report speculates that “in some cases resort to opiates will be found to have shortened life [and] in a smaller number of cases [this] will have shortened the lives of people who would have had a good chance of surviving to be discharged from hospital”. The report goes on to recommend a more detailed examination of specific cases which was the focus of the Police and other investigations.

I have concluded that the Baker Report provides contextual information and was of assistance in identifying investigation priorities and potential victims, but that it does not have sufficient evidential certainty for conclusions to be drawn based on its findings. Indeed, its conclusions reflect this concern in that they are that, “*the finding of a statistical excess of deaths among patients admitted to Gosport is unlikely*” and that “*there were no clear clusters of deaths*” .

It is my view that due to the purely statistical nature of the Baker report, it would not have had an impact on the CPS decision taken in 2010 which was the result of a very substantial review of the detailed evidence in the case. As the Baker Report does not provide any further evidence there is no justification to revisit the decision made in 2010.

I appreciate that you may be unhappy with this decision, but I hope that I have explained my reasoning. If you wish to make a complaint about this decision, you are welcome to contact the Special Crime complaints unit the email address is [SCandCTVRRandcomplaints@cps.gsi.gov.uk](mailto:SCandCTVRRandcomplaints@cps.gsi.gov.uk)

Yours Sincerely

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**Code A**