

# Hampshire and Isle of Wight

Strategic Health Authority

- Report to:** Hampshire and Isle of Wight Strategic Health Authority, 11 February 2003
- Title:** Report on Investigations into the Care and Treatment of Inpatients at Gosport War Memorial Hospital
- Lead Director:** Gareth Cruddace
- Purpose:** This paper summarises the events that took place between September 2002 and 11 February 2003 investigating events into the care and treatment of inpatients at Gosport War Memorial Hospital between 1989 and 1998. The report has been prepared to provide the members of the Hampshire and the Isle of Wight Strategic Health Authority with a full understanding of the actions and proposals of the range of agencies involved in the investigation into events at the Hospital in the 1990s.
- Decision Sought:** The Strategic Health Authority is asked to:
- note the content of the briefing paper;
  - approve the proposal to suspend the NHS management investigation in the light of the Police's advice;
  - ratify the Primary Care Trusts' decision to reinstate the two redeployed PCT Chief Executives;
  - approve the content of the draft letter to the Chief Medical Officer.

**IN STRICTEST CONFIDENCE**

**HAMPSHIRE AND THE ISLE OF WIGHT STRATEGIC HEALTH AUTHORITY  
REPORT ON INVESTIGATIONS INTO THE CARE AND TREATMENT OF INPATIENTS  
AT GOSPORT WAR MEMORIAL HOSPITAL**

**1. INTRODUCTION**

- 1.1. This paper summarises the events that took place between September 2002 and 11 February 2003 investigating events into the care and treatment of inpatients at Gosport War Memorial Hospital between 1989 and 1998. The report has been prepared to provide the members of the Hampshire and the Isle of Wight Strategic Health Authority with a full understanding of the actions and proposals of the range of agencies involved in the investigation into events at the Hospital in the 1990s.

**2. BACKGROUND**

- 2.1. The catalyst for the launch of the most recent set of investigations into Gosport War Memorial Hospital was the receipt of a dossier from nursing staff working at the hospital, which indicated that concerns had been expressed about prescribing practices as far back as 1989. This paper provides background and a position statement on the range of investigations that were initiated, following the receipt of the dossier, by the following agencies or groups:

- Hampshire Constabulary;
- Chief Medical Officer's Clinical Audit;
- Local NHS Management Investigation;
- Commission for Health Improvement.

**3. HAMPSHIRE CONSTABULARY**

- 3.1. On 28 November 2002 the Crown Prosecution Service Lawyers concluded that the five cases submitted to them by Superintendent Stickler as part of an initial investigation into Gosport War Memorial Hospital did not present, in themselves, sufficient basis for any criminal prosecution. Moreover, this position remained unchanged with the introduction of the 1991 papers. However, additional information generated by the investigation into the 1991 papers, and from resulting publicity, identified others lines of enquiry which, the Police believe, may reveal evidence of criminal matters. Specifically, the Police have details of 64 deaths within Gosport War Memorial Hospital that they need to investigate.

- 3.2. The investigation into events at Gosport War Memorial Hospital, codenamed Operation Rochester, consists of three elements:

- the first element of the investigation, undertaken between October and December 2002, considered whether any individuals withheld information from the Police during their initial investigation into five deaths at Gosport War Memorial Hospital. This element has now been placed on hold until the conclusion of the second element;

- the second and most significant element of the investigation will consider whether there has been an unlawful killing(s) at the Hospital. If there has, then charges against individuals could range from gross negligent manslaughter to murder. To progress this element of the investigation, the Police have established a multi-disciplinary clinical investigatory team, led by Professor Forrest of the Royal Hallamshire Hospital, and comprising a geriatrician, a pathologist, an epidemiologist, a toxicologist and a palliative care clinician. The team will be charged with the following actions:
  - to establish whether causation can be established between the additional 64 cases;
  - to identify any factors that will allow the mass (i.e. all deaths) in Gosport War Memorial Hospital to be considered effectively;
  - to consider the matter of exhumation and the scientific benefit of the process.
- the third element of the investigation may take place at the conclusion of the second element, and will consider charges of corporate manslaughter against any "controlling mind" behind the corporate organisation responsible at the time of any acts or omissions that may have resulted in an unlawful killing at Gosport War Memorial Hospital.

### **Progress**

- 3.3. To date, the police have conducted interviews with Mr Tony Horne and Mr Ian Piper with regard to their inquiries under the first element of their investigation. The Police have secured the notes of the 64 patients identified by relatives and are now preparing to interview clinical staff involved in the inpatient care and treatment of patients at Gosport War Memorial Hospital between 1991 and 1998.
- 3.4. The emerging view of Hampshire Constabulary is that Operation Rochester could be a long running investigation of over eighteen months in duration. If a crime is identified, referral to the Crown Prosecution Service and the prosecution itself would add an additional six to nine months to the length of the operation.

## **4. CHIEF MEDICAL OFFICER**

- 4.1. In September 2002, the Chief Medical Officer (CMO), Sir Liam Donaldson, charged Professor Richard Baker, a Leicester University Professor who worked on the Shipman case, to undertake an audit of deaths at Gosport War Memorial Hospital in the 1990s. It is not clear when the audit will conclude nor how and with whom the CMO will share the outcome.

## **5. HAMPSHIRE AND THE ISLE OF WIGHT NHS INVESTIGATIONS**

- 5.1. In November 2002 the internal NHS management investigation into events at Gosport War Memorial Hospital commenced. The investigation was commissioned by the Hampshire and Isle of Wight Strategic Health Authority, East Hampshire Primary Care Trust and Fareham and Gosport Primary Care Trust. The aim of the investigation was to establish what NHS managers and clinical managers knew about the matter of diamorphine prescribing at Gosport War Memorial Hospital and what action (if any) they took. The terms of reference of the investigation are attached at Appendix A.

## Progress

- 5.2. Between November 2002 and January 2003 the investigating team carried out the following work:
- reviewed a substantial number of documents from Portsmouth Health Care Trust and the former health authority. (These documents include board minutes, executive management team minutes, various policy documents as well as a substantial number of adverse incident forms.) Among this material are a number of papers that are relevant to the investigation;
  - set in train a literature search at the Department of Health library so as to be able to understand the policy and operational context of the NHS in the late 1980s;
  - conducted a small number of informal scene-setting discussions with individuals who have knowledge of the Hospital but whom are not associated directly with the matters under investigation at GWMH;
  - identified a list of potential witnesses that the investigating team would wish to interview.
- 5.3. At a meeting on 18 December 2002 attended by the Strategic Health Authority, Hampshire Constabulary, the Commission for Health Improvement and the Department of Health Inquiries and Investigations Unit, it became clear that the Police had some concerns that the line of investigation being pursued by the local NHS and the Commission for Health Improvement Investigation may interfere with the Police's own investigation. It was agreed at that meeting, therefore, that the Police would seek advice from the Crown Prosecution Service (CPS) as to whether it was appropriate for either or both NHS investigation to continue without prejudicing Operation Rochester.
- 5.4. The CPS advice was considered by the Police to be inconclusive, hence the Police sought additional legal advice. The Police shared this legal advice at a meeting involving the Chief Medical Officer, the Chief Executive and Medical Director of the Strategic Health Authority, the Head of the Department of Health Inquiries and Investigation Unit and the Head of CID for Hampshire Constabulary on 13 January 2003. The advice given by the Police at this meeting was that to ensure the Police investigation was not prejudiced in any way, the NHS Management Investigation and the second Commission for Health Improvement investigation into Gosport War Memorial Hospital, should be suspended. On 7 February 2003 this verbal advice was confirmed in writing: "I am able to confirm that we have received the written advice awaited from the independent Barrister. I am further able to tell you that it fully addresses the concerns raised by the police and endorses the position articulated by Mr Watts to the Chief Medical Officer on the 13<sup>th</sup> January 2003".
- 5.5. On 17 January 2003, the Chief Executive of the Strategic Health Authority met with the Chairs of East Hampshire and Fareham and Gosport Primary Care Trusts to consider the most appropriate action to be taken in the light of the advice given by the Police. In consultation with a legal advisor, and mindful of the advice of the Chief Medical Officer to comply with the Police's request, it was agreed that the NHS Management Investigation should be suspended until the conclusion of Operation Rochester. The decision to suspend the investigation was supported by the Director of the DHSC (South) and the Regional Director of Public Health.

## 6. REDEPLOYED CHIEF EXECUTIVES

- 6.1. In September 2002, Ian Piper (Chief Executive of Fareham and Gosport PCT) and Tony Horne (Chief Executive of East Hampshire PCT) were temporarily redeployed so that the any investigation into events at Gosport War Memorial Hospital were, and were seen to be, open and transparent.
- 6.2. One of the primary aims of the NHS management investigation was to resolve the question of what Ian Piper and Tony Horne knew, in order to enable their employers to make a decision about their re-deployment and whether there was a need for any disciplinary action. One of the consequences of suspending the NHS management investigation, on the advice of the Police, was that the position of the two Chief Executives could have remained unresolved – potentially for up to two years.
- 6.3. At the meeting of 17 January 2003 between the Chairs of the affected PCTs and the Strategic Health Authority Chief Executive, a considerable amount of thought was given to the position of the two redeployed Chief Executives. During the course of the meeting, which was supported by a legal advisor, it became clear that there was a substantial risk of litigation against the Primary Care Trusts as employers if they continued to re-deploy the two Chief Executives. Moreover, the delivery of health services for the population of East Hampshire, Fareham and particularly Gosport would become increasingly challenging unless the existing situation was resolved. Conversely, it was recognised that any proposal to reinstate the Chief Executives would need to be considered in the light of the need to maintain public confidence in the NHS. It was agreed, therefore, that if a decision were taken to reinstate the two individuals, the matter would require very careful handling from a public relations perspective.
- 6.4. At the conclusion of the meeting, the two PCT Chairs decided that, in the light of the risks associated with continuing the redeployments and the fact that there was no information currently available to indicate that either of the Chief Executives had done anything wrong, they would present their Primary Care Trust Remuneration and Terms of Service Committees with a proposal to end the redeployment of the two Chief Executives and to ask them to return to work. In the light of the Chief Medical Officer's involvement in the case to date, it was agreed that the Chief Executive of the Strategic Health Authority would seek an assurance from both the Chief Medical Officer and Ministers that they were content with this course of action.
- 6.5. In the absence of any concerns expressed in response to the Strategic Health Authority's briefing to Ministers, both Remuneration and Terms of Service Committees met on 29 January 2003 to consider whether to continue the redeployment of the two Chief Executives or to bring their redeployment to an end and ask them to return to work. The Committees considered the options put before them very carefully. The risks of both options were debated at some length, particularly the possible impact upon public confidence in health services if the Chief Executives were returned to work whilst the police investigation was still ongoing. The PCTs also considered the possibility that at some stage in the future a case for wrongdoing might be established and the impact this might have upon the credibility of the local NHS.

- 6.6. The Committees were mindful that Hampshire Constabulary did not object to the return of the two individuals, provided safeguards were in place, and so on balance took the view that the preferred option was to re-instate. This approval was made subject to the receipt of written confirmation from the Police of their view. A summary of the discussions of the two Committees is attached at Appendix B and C.
- 6.7. Written confirmation from the Police was duly received on 7 February 2003 (attached at Appendix D). Steve Watts Head of CID at Hampshire Constabulary wrote to the Strategic Health Authority to confirm the opinion they gave at the meeting with the Chief Medical Officer on 13 January 2003, namely:

*"In respect of Mr Horne and Mr Piper, whilst we are grateful to have our opinion sought, we would emphasise that the decision to allow both men to return to their former duties is entirely a matter for yourselves, as was the decision to re-deploy them in the first instance.*

*Should you choose to allow Mr Horne and Mr Piper to resume their former roles, it seems to us that the suggested measures proposed within your letter provide adequate safeguards. Therefore we are able to confirm that we, the police, have no objection to both men being allowed to return to their former duties – but again, would emphasise that the decision to do so must remain with yourselves."*

- 6.8. On 30 January 2003, the Chief Medical Officer wrote to the Strategic Health Authority Chief Executive concerning the proposal to reinstate the two Chief Executives. The Chief Medical Officer confirmed his opinion that the NHS investigations can not continue. He did, however, also state that:

*"Your decision to reinstate them (the Chief Executives) to their previous posts acknowledges the inevitability of the delay and your view that it is unfair (and possibly a breach of employment law) to continue to deny them reinstatement in the absence of information.*

*I have discussed the matter with Lord Hunt. Clearly this is a decision for you Authority and the Primary care Trust as the statutory NHS bodies.*

*We do have concerns, however, about the course of action to be taken and would ask you to assure yourselves that this is the most appropriate action bearing in mind all the circumstances.*

*We would ask you particularly to consider the question of public confidence in local services and especially reflect on whether your decision would be seen publicly to have had integrity in the event that at the end of the police investigation a prima facie case for wrongdoing were established."*

- 6.9. The draft letter attached at Appendix E seeks to assure the Chief Medical Officer that due consideration has taken place on this matter.

## **7. COMMISSION FOR HEALTH IMPROVEMENT INVESTIGATION**

- 7.1. In late December 2002 the Commission for Health Improvement (CHI) was instructed by the Secretary of State for Health to produce a report in respect of the Gosport War Memorial Hospital. The investigation fell within CHI's statutory function to investigate serious potential systems failures in the NHS. Under the Commission for Health Improvement (Functions) Regulations 2000, Section 11, CHI is required to carry out

an investigation when required to do so by the Secretary of State. The investigation was not, therefore, a matter for discretion on the part of CHI.

- 7.2. The investigation was established to examine whether from 1989 to 1998 there had been a failure of local NHS systems to properly act upon concerns raised by patients, relatives and staff about prescribing practices or unexpected deaths at the Gosport War Memorial Hospital. CHI's role in undertaking such an investigation was to understand whether there was a failure of systems. In so doing, CHI would not make any judgements regarding the outcome of any individual complaint or the conduct or ability of any former or present member of NHS staff.

### **Progress**

- 7.3. Before CHI was in a position to publicly launch its second investigation into Gosport War Memorial Hospital, it received notification through the Inquiries and Investigations Unit of the Department of Health that Hampshire Constabulary had advised that the investigation be suspended until the conclusion of Operation Rochester. On 13 January 2003, the Chief Medical Officer listened to the advice of the Police and decided to recommend to the Secretary of State for Health that the CHI investigation be placed on hold until the Police had concluded their work.

## **8. CONCLUSIONS AND RECOMMENDATIONS**

- 8.1. The establishment, commencement and potential suspension of investigations into the care and treatment of inpatients at Gosport War Memorial Hospital between 1989 and 1998 has been a challenging and, at times, confusing process. Attempting to align all of the aims and agendas of the partners in this issue has not been straightforward. However, throughout the process, there has been close collaboration between all of the parties involved.
- 8.2. The Strategic Health Authority is asked to:
- note the content of the briefing paper;
  - approve the proposal to suspend the NHS management investigation in the light of the Police's advice;
  - ratify the Primary Care Trusts' decision to reinstate the two redeployed PCT Chief Executives;
  - approve the content of the draft letter to the Chief Medical Officer.

## APPENDIX A

## GOSPORT WAR MEMORIAL HOSPITAL MANAGEMENT INVESTIGATION

### TERMS OF REFERENCE

**To seek to establish:**

- whether or not any concerns were raised about any of the following:
  - the use of diamorphine [or any other opiate substance] ; or
  - prescribing regimes; or
  - the use of syringe drivers to administer medication;
 in relation to the treatment of patients at Gosport War Memorial Hospital ("the Hospital") at any time between 1988 and 1998;
- If so, the way in which any such concerns were raised, by whom, to whom and when;
- What action (if any) was taken (and by whom) as a result of any such concerns and when;
- The effect (if any) that any action taken had, on any of:
  - the use of diamorphine [or any other opiate substance]; or
  - prescribing regimes; or
  - the use of syringe drivers to administer medication;
 within the Hospital in that period.
- Whether any action taken **at the time** was justified, in all the relevant circumstances;
- Whether any failure or omission to act **at the time** was justified in all the relevant circumstances;
- Whether any events at the Hospital (such as but not limited to patient deaths, untoward incident reports or complaints) during the period in question should have prompted those with management and/or clinical management responsibility for the Hospital at the time to take any steps, and if so, what steps and whether such steps were in fact taken;
- Whether any individual working at the Hospital or working in a post which involved responsibility for either clinical or administrative matters at the Hospital during the period in question either :
  - acted; or
  - failed to act; or
  - omitted to act; or
  - neglected to act
 in an appropriate manner in response to any such concerns or events, given their level of knowledge, seniority, experience and responsibilities at the relevant time.