

18498408

Our Ref: PS/PCC/Barton
Your Ref: Op Rochester

2189

5 May 2004

Detective Chief Superintendent Steve Watts
Head of CID
Police Headquarters
West Hill
Romsey Road
Winchester
Hampshire SO22 5DB

Dear DCS Watts

Operation Rochester – Investigation into Deaths at Gosport War Memorial Hospital

I am a Solicitor and Principal Legal Advisor at the General Medical Council. I am writing in relation to the ongoing police investigation into possible criminal charges concerning deaths at Gosport War Memorial Hospital.

As you know from discussions with officers at the GMC, we are also investigating conduct issues concerning Dr Jane Barton arising out of the same facts as those which refer to your investigation.

GMC Involvement

The case against Dr Barton began in July 2000 when your force began an investigation into the circumstances surrounding the death of Gladys Richards, a geriatric patient at Gosport War Memorial Hospital ('the hospital'). The investigation was subsequently extended to four other deaths, Arthur "Brian" Cunningham, Alice Wilkie, Robert Wilson and Eva Page.

In February 2002, the Crown Prosecution Service decided against a criminal prosecution. At this point the relevant papers were disclosed to the GMC to decide on any issues of serious professional misconduct or seriously deficient performance. In August 2002, the case was referred by the GMC's Preliminary Proceedings Committee for hearing before the Professional Conduct Committee ('PCC').

The case has been referred on 3 occasions (June 2001, March 2002 and September 2002) for consideration of whether Dr Barton's registration should be restricted prior to hearing before the PCC.

On 28 May 2002, Mrs Mackenzie (daughter of the late Gladys Richards) wrote to the GMC. She copied the letter to David Blunkett MP, your force, Nigel Waterson MP, Peter Viggers MP, the Police Complaints Authority, the CPS and David Parry of Treasury Counsel. She was concerned about the failures of the police investigation. As a result, your investigation was reopened. In July 2002, the then Commission for Healthcare Improvement published a report entitled "Gosport War Memorial Hospital Investigation into the Portsmouth Healthcare NHS Trust". The report did not name Dr Barton specifically, but referred to the criminal investigations and criticised the systems in place at the time.

On 30 July 2002, Mrs Mackenzie informed the GMC that the police were seeking advice from the CPS about the investigations and as a result were reconsidering the 5 cases.

The GMC and the police investigation

On 20 November 2002 Detective Inspector Niven and Detective Sergeant Kenny met Judith Christie of the GMC's solicitors, Field Fisher Waterhouse ("FFW"). Ms Christie was informed that a meeting was arranged between your force and the CPS on 28 November 2002. The result of that meeting was that the investigation should be continued and expanded. By letter dated 2 December 2002, FFW were asked to consider postponing the PCC hearing (which at that point was anticipated to take place in April 2003).

Accordingly the case was removed from the GMC's lists.

On 30 September 2003, you and DI Niven met with Linda Quinn of the GMC to discuss progress in the investigation. You reported that the view of the all the deaths of patients under Dr Barton's care at the hospital had suggested that the treatment of some 15 or 16 fell into the category of "negligence, cause of death unclear". At that point, you anticipated interviewing Dr Barton, once a second team of experts had reviewed these cases, which you believed would be January 2004. You also indicated that you were unable to provide full details of your investigation, as this could jeopardise further investigations and your proposed interview of Dr Barton.

On 2 October 2003, Linda Quinn wrote to you indicating that the GMC was considering referring Dr Barton's case yet again to the Interim Orders Committee and requesting that you supply the GMC with a detailed written summary of the evidence you had obtained, including any report prepared by the team of experts. You replied on 6 October 2003, confirming the content of your discussions with Linda Quinn on 30 September 2003 and stating: "*... our primary concern always is the safety of the patients and public. That said, we are also expected to investigate serious allegations such as those involved here in a professional and ethical manner. We therefore have to strike a balance between conducting our investigation in the appropriate fashion whilst realistically assessing the risk to public. Put simply, our ability to disclose information would need to be based on an assessment of the risk that was presented now by Dr Barton.*"

A Medical Screener of the GMC again considered the case with a view to referring Dr Barton to the Interim Orders Committee in November 2003. However, the Screener felt that as a result of the lack of new evidence, the IOC would come to the same decision as previously.

On 7 January 2004, Linda Quinn wrote to you asking for an update on progress. DI Niven replied on 28 January 2004, indicating that Hampshire Constabulary were unable to provide any further information at that point.

Linda Quinn wrote again on 6 February 2004 saying that the GMC had no further information about the case and that the GMC's inquiries were on hold pending conclusion of the police investigations.

Your investigation into Dr Barton

Throughout your investigation you have kindly kept us informed of the actions being taken by you and your colleagues. However, it seems that some two years after the investigation was recommenced, no decision has yet been reached in relation to bringing any charges against Dr Barton.

It would seem that further investigation is still required in relation to a number of matters before you are able to either bring charges or disclose any further information to the GMC.

The GMC's position

The General Medical Council, as a public authority, has a duty to bring matters concerning the fitness to practise of registered practitioners to a hearing within a reasonable time. Undue delay can seriously prejudice our function and may result in successful abuse of process applications.

I am very concerned that Dr Barton's GMC case has now been open for almost four years without any substantive progress.

Conclusion

The GMC is required to progress complaints against doctors, regardless of the circumstances, as expeditiously as possible. Such information as the GMC has received would suggest grave concerns about Dr Barton's fitness to practise. The current situation, in which the GMC is awaiting developments in the police investigation, without any indication when this may be concluded, is deeply unsatisfactory.

I should be very grateful if you could take the following steps:

- a. indicate when you think it likely your investigations will be concluded and with what result; and
- b. consider again whether there is any further information which you may be able to release that would allow the GMC to progress its own investigation.

In this respect, I would remind you that there is no principle of law which would require any GMC case to await the conclusion of any criminal proceedings against Dr Barton, though the GMC appreciates that in certain circumstances this may be desirable.

The GMC remains concerned that in this very troubling case, it is unable to take the steps that may be required to protect the public, as it is required to do by statute. Whilst we recognise the issues involved from the perspective of the police investigation, our view must be that, should you have information available to you that suggests any reasonable risk to public safety is posed by Dr Barton continuing to practise as a doctor, the protection of the public must be both your own and the GMC's primary interest and, as such, it is imperative that this is disclosed to the GMC at the earliest juncture.

I look forward to your early reply.

Yours sincerely

Peter Steel
Solicitor

Code C