

**RE THE INVESTIGATION INTO THE DEATHS OF ELDERLY
PATIENTS AT GOSPORT WAR MEMORIAL HOSPITAL**

Note of Conference on 15th December 2004

Present: DCI Nigel Niven, [Code A], and M. F.

- 1) At the end of the conference I was handed a file of papers which comprises documents, mainly correspondence and e-mails, in the following categories (1) Miscellaneous, (2) Alexander Harris, (3) Strategic Health Authority, (4) General Medical Council, and (5) Nursing and Midwifery Council.
- 2) In essence of the purpose of the conference was for Nigel Niven to brief me as to developments in the investigation into Deaths at Gosport War Memorial Hospital. He requested it that I should advise in due course in writing as to whether or not requests for disclosure and by the Strategic Health Authority and/or Alexandra Harris solicitors should be complied with.
- 3) The investigation has preceded her along the lines envisaged at the time of the last conference. It has broadened to encompass approximately 90 cases. Professor Forrest has been instructed.
- 4) The case has been managed so as to categorise cases with a view to ascertaining which were the worst in terms of treatment given so that the investigation can be properly focused.
- 5) Of the approximately 90 cases looked at, the following categories emerge:
 - ◆ Group 1: in about 19 cases the treatment was OK.
 - ◆ Group 2: sub-optimal treatment (and there are about 60 of these cases)

- ◆ Group 3: about 10 (possibly 11) cases where there is suspected to be grossly negligent treatment followed by the death of the patient.
- 6) There are similarities between the failings in the Group 2 & 3 cases, in terms of type, the difference being one of degree.
 - 7) A group of experts was instructed to examine the cases for the purposes of initial screening and categorisation so that the investigation can be focused. They worked as a team for purposes of categorisation of cases. The group three cases were then sent for independent analysis with a view to obtaining evidence for use in court. An "Angels" and "Gods" analogy was used. There is to be a complete firewall between the angels and gods for evidential reasons.
 - 8) There has been some feedback from "gods" which indicates that they also find gross negligence in the treatment of the deceased patients. They have not yet reported in all cases in which they have been instructed. The worst of the category three cases has not yet been sent for opinion.
 - 9) The police intend to send a file to the Crown Prosecution Service in London by Christmas.
 - 10) Dr Jane Barton is a link between all the category three cases. She has been interviewed by the police in relation to one of the category three cases. She provided a detailed statement. Whilst I was not provided with any details at all about the cases which might be subject to prosecution, I was told that there is evidence that (1) Dr Barton accepts that death was certified without examination of the body by her, presumably in reliance on a nurse, and (2) she administered diamorphine by the use of syringe drivers to patients on the basis of minimal, if any, examination. The patients were elderly and infirm, but merely in hospital to recuperate. They were not terminally ill. Dr Barton's practice was subsequently restricted by her governing body. She was not allowed to prescribe certain drugs. She is no longer practising as a doctor

and therefore there is no risk to the general public from her. What is more, CHI investigated the hospital and gave its current procedures a clean bill of health. Therefore, there is no continuing risk to the general public using Gosport at War Memorial Hospital .

- 11) There were other individuals involved with the maltreatment of patients who are also under investigation. The question of corporate liability is also receiving active consideration by the police.

Partial Disclosure to Date

- 12) Information in relation to the group 2 cases has been disclosed to the General Medical Council and the Nursing and midwifery Council.
- 13) The reason for this was the issue of public safety. The police considered that it was important to ensure that the governing bodies of the medical professionals concerned were informed so that they could take any action they deemed appropriate by way of disciplinary proceedings. Some of the individuals concerned are still practising. The General Medical Council had a hearing in relation to Dr Barton.
- 14) As the issues in the group 2 cases were very similar to those in the group 3 cases, though the latter are more likely to be at the centre of any criminal prosecution because they exhibit gross negligence, it was felt that disclosure only of the group 2 cases was appropriate. This was with a view to, as far as possible, preserving necessary confidentiality in the investigation to prevent contamination and prejudice to any defendant on the one hand, balanced against the need to protect the general public from malpractice on the other. Whilst the group 2 cases might be admissible in a trial re charges in respect of a group 3 case, they are not as evidentially important.

- 15) What has been disclosed is (1) a copy of the individual's medical records, (2) Key issues documents, and (3) A précis or synopsis prepared by Matthew Loan, in relation to the category 2 cases. (I have not been supplied with any of this Documentation).
- 16) A copy of the deceased's medical records has been sent to each family, and a letter sent to each family in the Group 1 and 2 cases has been sent (a pro-forma letter), stating that the result of the police investigation in those cases is that there is no evidence of criminal conduct (though in the category 2 cases there are found to be some areas of concern).
- 17) The material which has been disclosed to the professional bodies was disclosed subject to certain restrictions in relation to use of the material, and for example, requesting notification of an intention to approach or any witness. This is designed to safeguard, as far as possible, when balanced against the needs of public safety, any future prosecution. Whilst such prosecution is likely to centre around the group 3 cases, the group 2 cases may be relevant and admissible to show system. This may be particularly important at a corporate level.

The Two Bodies Which Have Requested Information

- 18) The Strategic Health Authority, and a firm of solicitors (Alexander Harris) who represent some families of the deceased, requested disclosure of material.

The Strategic Health Authority

- 19) The Strategic Health Authority has made a written request for the material in Group 2. The police are concerned, that whilst the Strategic Health Authority could properly have access to the basic documentation, ie medical notes etc, they should not have access to the material produced by investigation, namely that produced by the "Angels" in the initial analysis/screening process. This is because, on the face of it,

there is no immediate public safety aspect because the Strategic Health Authority is not concerned with individuals but merely the managerial aspect ie clinical governance. This aspect, so far as Gosport War Memorial Hospital has concerned, has already been considered by the CHI who has given the hospital a clean bill of health. Therefore there is no immediate risk to public safety he which might be met by disclosure to this body. Secondly, the Strategic Health Authority is part of the National Health Service which (or part of which) is under investigation/consideration with regard to the question of corporate manslaughter. Thirdly, the Strategic Health Authority has individual employees who may be subject to investigation or alternatively witnesses. There is therefore the risk of prejudice to the investigation and/or contamination.

Alexander Harris solicitors

20) Alexander Harris solicitors is a firm based in Altrincham in Cheshire. They represent about 40 families of mainly deceased patients. They represented many of the Shipman families. They represent a patient called Ripley who survived, almost certainly because he was removed from Gosport War Memorial hospital at the insistence of his wife.

21) They are seeking a copy of an expert's report in relation to Mr Ripley. Mr Ripley would have been a group 2 case had he died . Their express purpose is to save expense and duplication. They are investigating a merits of a civil action. Firstly, they seem to be under a misapprehension as to the nature of the expert evidence which the police have obtained. The police are of the view that this would not be suitable from evidential point of view. Its purpose is merely to categorise the cases (I have not had access to any of the material sought).

22) The police are concerned that it is not appropriate to put what maybe evidence in a criminal trial into the public domain in advance of any such proceedings, in particular

if the only purpose is to save their client expense. There are possible risks of prejudice to the investigation, contamination of witnesses evidence and prejudice to any defendant. Secondly, the police do not think that the expert evidence which they have obtained is suitable for the solicitors' purpose. Thirdly, there is no aspect of public safety concerned here. Fourthly, whilst the police would have wished to be as helpful to the general public as possible, this should not be at the risk of a very large investigation. The medical records have been supplied and therefore the solicitors would be in a position to obtain independent medical expert advice in relation to the case. Fifthly, whilst Mr Ripley's case would have been within group 2 and is therefore unlikely to be central to a prosecution, it may well constitute admissible evidence to prove system (see above in relation to the Strategic Health Authority). Therefore, his case may well be part of the prosecution evidence in the event that charges are preferred.

Dissemination to "Stakeholders" and others

23) The Chief Medical Officer, the Strategic Health Authority, and other interested parties, including up family group members, have been notified from time to time as to the progress of the investigation by the circulation of relatively anodyne bulletins which are intended to keep them up to date with general developments. Specific developments in relation to particular cases are notified to the family. (once again I have not had access to this material). There is therefore some dissemination of limited information, which is how Alexander Harris know in broad terms of the existence of the medical investigation by the "Angels".

Preliminary view

24) I mentioned the case of Green, R -v- The Crown Prosecution Service [2002] EWCA Civ 389 (26th March 2002) (Court of Appeal). This tends to support the possibility of

contamination of witnesses evidence as a ground for non-disclosure on a public interest basis (see paragraph 55) as per my previous Opinion.

25) My preliminary view of is that a the disclosure sought should not be given though I will require time to consider that paperwork supplied and for further research, in particular in relation to the question of a pre-action third party disclosure in relation to civil proceedings.

Instructions

26) The police have responded to the Strategic Health Authority saying that they will obtain advice from counsel and consult the Crown Prosecution Service.

27) The Documentation in the lever arch file supplied in conference, contains e-mails which set out the reasons why the material is requested.

28) M. F. Is to advise whether the requests for disclosure from the strategic health authority and/or Alexander Harris should be complied with.

29) The deadline is early January 2005.

MICHAEL FORSTER

16 December 2004