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## Operation ROCHESTER

### Meeting with CPS Tuesday 6<sup>th</sup> July 2004

Present

CPS: Robert Dryborough – Smith (RDS)  
Paul Close (PC)

Police: Steve Watts (SW)  
David Williams (DW)  
Owen Kenny (OK)

SW – Opened the meeting with the introduction of DW as deputy SIO in replacement of Nigel Niven who is currently on sick leave. Brief mention was made of the last meeting with CPS when the involvement of Matthew Lohn was discussed and the future progress of the investigation was agreed. Since then the assessment of all cases has been completed and by 16<sup>th</sup> July Matthew Lohn will have completed his quality assurance. The purpose of today's meeting is to talk through where we go from now with the investigation and timescales.

DW - Discussed strategy. Key clinical team have assessed 90 cases in all including 16 Baker cases and a few extras from Ann Alexander. 17 cases in category 1, 57 in category 2 and 13 in category 3 of which 9 are 3B. A brief report has been prepared giving a summary of the KCT assessment. Dr BARTON is the common denominator.

RDS - Sought clarification in respect of the number of cases in category 3 and that 9 are in a sub category.

DW - Further explained the category 3 cases and stated that there is a possibility of 1 further case which may be raised to 3B.

The KCT were asked to provide a batting order of cases in the 3B category in order to enable us to prioritise the investigation and interview health care professionals. The top four cases are Elsie DEVINE, Elsie LAVENDER, Code A and Helena SERVICE, all of which were administered diamorphine by Dr BARTON. We are 2 weeks away from completing statements in respect of Elsie DEVINE.

The case of Code A was mentioned and a brief summary of his care at GWMH was given.

The size of the investigation team has been increased with a view to completing hospital enquiries by the end of September.

Dr Andrew WILCOCK is the Palliative care expert of the Clinical Review Team (CRT) and an approach has been made to Professor Rose Kenny, an expert in Geriatric care. Dr WILCOCK will commence work by 26<sup>th</sup> July and we should be in a position to interview Dr BARTON by early September.

- DW - Explained rationale behind fast tracking 4 cases.
- SW - DW and SW had a meeting with the GMC earlier today (6/7/04). Dr BARTON face an Interim Orders Commission (IOC) a couple of years ago and conditions of 2002 remain. The local PCT restriction are in place and the GMC are content that things are under control. Dr BARTON has not prescribed Diamorphine for 14 months.  
GMC are keen to receive material but we will resist if it is detrimental to the investigation because material is to be used for interviews of Dr BARTON and any others. An offer was made for SW of DW to give verbal evidence to IOC but this was not seen as sufficient.
- SW sought the views of the CPS in respect of disclosure to the GMC of KCT comments in respect of category 2 cases. Consideration to be given to the facts that these cases may contain evidence of similar fact and if we disclose this material it will be seen by Dr BARTON. We do not intend to interview in respect of this material and if we disclose we will be seen as cooperative. Also the GMC may require access to the KCT for evidence.
- DW - There is no prospect of Criminal proceedings on category 2 cases. We have been through a very detailed process of analysis in these cases.
- PC - Gut reaction is to tell them to go away until the final decision. Strictly speaking this outside our (CPS) remit. Initial reaction is there is a higher propensity for harm. Once you start disclosing they will want it to continue.
- RDS - It is not as if they intend to use the information to finalise a disciplinary. Their argument will be that they need to obtain the information to protect the public.
- DW - In March 2002 and September 2002 Dr BARTON appeared at IOC hearings and we disclosed papers in respect of the initial investigation of Gladys RICHARDS and 4 additional cases. They also had the statements of Livisley, Mundy and Ford, who comment on aver prescription. This morning the GMC were asked for a copy of the transcripts from the earlier hearings but they need Dr BARTONS consent.  
DW read paragraphs from Livisley and Ford statements and pointed out that CUNNINGHAM ad WILSON are current 3B cases.  
CHI made it clear the failure of the Trust. Had inadequate .....**level of.....for completion by DW.**
- PC - This is outside of our (CPS) remit, a civil matter. Can see immediate problems but can't put a finger on them. PC put forward a scenario of putting yourself in the eyes of the defence. They could play one off against the other, GMC and Police. If the GMC move quickly and suspend, could this be prejudicial to proceedings? The defence could say that the Police acted in a malicious way.
- SW - As a result of our request they (GMC) have put their investigations on hold.
- PC - My understanding is that they have threatened Judicial Review.

DW - It has been muted.

PC - Who is acting for them?

SW - They are dealing with it in house.

The issue of Field Fisher Waterhouse representing the GMC and any conflict of interest involving Matthew Lohn was discussed and clarified.

SW - We will get back to the GMC and tell them that having discussed the issue with CPS we will resist at this stage. I would find it comfortable to have it in writing from the CPS.

The principal reason that we will not disclose at this stage is they will disclose to Dr BARTON. When we interview Dr BARTON that reason will evaporate.

RDS - Agreed to provide written advice not to disclose.

The issue of timings was discussed. PC enquired as to what the GMC can do in the next 4 months. DW stated an IOC hearing.

PC - If Judicial Review proceedings are taken I think they would fail. This is outside my remit but a gut feeling. Much would depend on the nature of enquiries. We (CPS) would not be party to these proceedings and we will not represent you (Police).

SW - We would mention that we sought advice from the CPS.

DW - If we set out in letter form GMC .....proposals....ask for advice...*DW to complete*

PC - On an issue of confidentiality – there would be a need to go through all papers to obtain family consent.

SW - This has already been done. We went through all papers with the families.

PC - It may be that the GMC have more powers, I don't know it's outside of our remit. Would the GMC want to interview Dr BARTON sooner than the Police.

DW - My understanding is she is served papers and can respond and give oral evidence. She would not be interviewed.

RDS - Suspension is commonplace when someone is charged.

PC - IOC made, Dr suspended, Police interview, yet further x number of cases, proceedings likely – Defence will make an issue. GMC action will draw a formal response from her. If she has to give an explanation the Police will be very interested in her response.

DW - She has at previous 2 hearings.

Admissibility of evidence obtained from IOC hearings discussed.

Case of Gladys RICHARDS discussed. PC suggested doing a 'ring fenced file on RICHARDS case'.

DW - Referred to letter of advice from PC in August 2001 which gave a catalogue of reasons. All of those points made have been satisfied by the KCT.

PC - Enquired as to defendant numbers.

DW - It is too early to say at present.

Issue of Gross Negligence Manslaughter discussed.

SW - In respect of causation – on occasions saw Ian BARKER of the MDU who is representing Dr BARTON. Will be seeing him again next week. Our experts may say that the only explanation for death is diamorphine.

PC - It only has to be significant to cause death. In order to prove causation the experts need to give dogmatic evidence.

DW - Stated that there is a firewall between the KCT and the new team.

The issue of possible exhumations and likely evidence from them was discussed.

SW - 4 of the 3B cases are possible for exhumation, experts will advise.

The issue of arrest/interview of Dr BARTON was discussed.

SW - Dr BARTON will be arrested and bailed for a period of time.

DW - Explained the interview strategy. Interviews over a period of time, compartmentalise cases. Elsie DEVINE case first with that case to CPS as a pre read. Then complete work on all 3 and submit all 4.

SW - CPS may then want to see the next 5.

Interview strategy discussed.

PC - Suggested doing the interviews on 4 cases and putting a file in on all 4. Counsel will be involved at that stage, David PERRY and possibly a junior. The interviews will be done in September and file in October. Counsel will need 4 weeks in October.

DW - We will confirm the timescales.

OK - When briefing the CRT consideration should be given to input from CPS re causation and law in respect of gross negligence manslaughter.

This issue was discussed and it was decided that CPS would review the briefing file and provide a briefing note.

The issue Corporate liability was discussed.

SW - Mentioned CHI report and issues in early stages of the enquiry, the 1991 documents.

This issue was discussed with no firm conclusion.

Owen Kenny  
Detective Sergeant.