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Our Reference:

Your Reference:

9 February 2007

Dear Sir

### **Hampshire Police – Operation Rochester**

I am sorry for the short delay in writing to you but I wished to meet first with some of the families before responding.

I have now considered carefully your request for sight of Instructions to Counsel and Counsels' opinions obtained on behalf of the Director of Public Prosecutions in relation to the above matter.

I regret that I am not able to disclose these papers to you.

As I am sure you will appreciate these documents are privileged. I obtained advice from Counsel to assist me when considering all the issues and it is not the policy of the CPS to waive Counsel's advice.

However, I hope it will assist you to know the basis upon which I have proceeded when considering the evidence obtained by the police.

In reviewing the evidence I have acted in accordance with the Code for Crown Prosecutors. This requires me to consider whether there is evidence to provide a realistic prospect of conviction for a criminal offence (i.e. is a jury more likely than not to convict). I may only consider the public interest if I am satisfied that there is a realistic prospect of conviction.

I also hope it will help you if I set out the elements of the offence of gross negligence manslaughter as I applied them to the evidence.

In order to convict a defendant, the jury must be sure that:

- The defendant owed the deceased a duty of care;

- That the defendant breached that duty;
- Which causes the death;
- And that the conduct should be categorised as gross negligence and therefore be deemed to be a crime.

In trying to determine that final element, the Courts have stated:

*“Once it can be shown that there was ordinary common law negligence causative of death and a serious risk of death, what remains to be established is criminality or badness. In considering whether there is criminality or badness..... all the circumstances are to be taken into account.”*

Errors alone, no matter how catastrophic the consequences may be, do not of themselves amount to gross negligence.

The burden is on the prosecution to prove each of these elements beyond a reasonable doubt. This is a higher standard than the civil law where matters need only be proved on the balance of probabilities and where simple negligence is sufficient.

Having considered the evidence supplied by the police I concluded that it does not reveal the commission of the offence of gross negligence manslaughter.

It is my view that, having regard to the overall expert evidence it cannot be proved to the criminal standard that there was negligence in the administration of the drugs.

There is an additional problem and that is proving to the criminal standard that these drugs substantially contributed to the deaths. The medical evidence obtained by the police is very detailed and complex but does not prove this essential element.

I should add that in my view even if there was evidence of negligence and causation could be proved there is not sufficient evidence to persuade a jury that any alleged conduct was so bad as to be a crime as required by the law.

The alleged conduct falls short of that culpability and I am certain that there is no realistic prospect of conviction in respect of that charge.

I hope this is of assistance to you.

Yours faithfully

**Code A**

**Paul Close**  
**Special Crime Division**