
From: Code A
Sent: 16 May 2013 15:07
To: Code A
Subject: RE: REVIEW OF DEATHS AT GOSPORT WAR MEMORIAL HOSPITAL

Professor Baker

Thank you for your e-mail of 18 March and please accept my apologies for the delay in replying.

You asked about events over the past few years. I will try to update you on developments. I should also like to confirm your understanding of the terms on which you undertook your inquiry as this an important consideration in the advice we now need to put to Ministers on responding to renewed requests for publication of the report.

Update

Following Sir Liam Donaldson's commissioning your inquiry, there were further police investigations into the deaths at GWMH, but proceedings were never taken against Dr Barton or anyone else. The Portsmouth coroner conducted inquests on ten patients who had died in the hospital. The verdicts, returned in April 2009, were that: all ten died of natural causes; in five cases prescribing did not contribute to death and was for therapeutic reasons; in two cases prescribing did contribute to the deaths but medication was appropriate for the condition and for therapeutic reasons; in three cases prescribing did contribute to the deaths but medication was not appropriate for the condition and for therapeutic reasons.

The Portsmouth coroner later held an inquest into the death of Mrs Gladys Richards, a patient at GWMH which inquest concluded on April 18 2013. The coroner gave the narrative verdict that pain-killers and sedatives given to a 91-year-old woman after a hip operation "more than insignificantly" contributed to her death. He added there were a number of contributing factors including her age.

Dr Barton's conduct was considered by a GMC Fitness to Practise panel which concluded in January 2010 that Dr Barton was guilty of serious professional misconduct but should be allowed to continue to practise subject to certain conditions. The GMC's handling of the case was considered by the Council for Health Regulatory Excellence which reported in March 2010. The CHRE's view was that the Fitness to Practise Panel's conclusion was "lenient but not so unreasonable that it could be appealed". The Crown Prosecution Service concluded in August 2010 that there was insufficient evidence to mount a prosecution. Dr Barton opted for voluntary erasure from the medical register in February 2011 and has since retired.

The Department of Health has received several requests under the Freedom of Information Act to see the Baker report, particularly following the inquests in April 2009. Ministers have so far consistently agreed that these requests should be rejected. Legal advice has been that releasing the report before the conclusion of all proceedings involving Dr Barton, including the GMC hearing and any appeal period, might be prejudicial to the administration of justice. The later inquest into Mrs Richards' death also fell under the "administration of justice" heading.

There have also been calls for a public inquiry including through an Early Day Motion in the House of Commons. Ministers have so far taken the view that they do not consider that a public inquiry would add anything to what is already known, but have said that they would wait for the conclusion of legal proceedings before what, if any, further action should be taken.

Now that the final inquest has been concluded we have received fresh requests for the Baker report to be published. We need to provide Ministers with updated advice on publication and on demands for a public inquiry.

Next steps

I have consulted the Department's legal team on publication of your report. I understand from the lawyers that a key consideration is whether those involved in the collection of information in the inquiry expected that the inquiry report would be published. You state very clearly in your e-mail to me of 18 March that Sir Liam Donaldson intended publication of the report, and also that the relatives had been interested in seeing it. You also said that you agreed that publication is appropriate.

May I infer from this that you did not give assurances of confidentiality to the people you interviewed when conducting your inquiry, and that you do not consider it necessary to consult the people you interviewed to gain their agreement to publication of the report?

I understand that, in addition to the issue of avoiding actions which might be "prejudicial to the administration of justice", we need to consider the rights of those involved under the provisions of the data protection legislation. I am advised by the lawyers that a key principle of the data protection legislation concerns the purpose for which information was collected. If it was understood that the evidence was being gathered for a report which was likely to be published (and assurances of confidentiality were not given) then data protection legislation should not present a barrier to publication.

The lawyers' advice is that it would be prudent to give Dr Barton an opportunity to review the report and you suggested in your e-mail to me that it would be reasonable to invite Dr Barton to comment prior to publication. While we would consider any comments Dr Barton might want to make, I understand that we would not be obliged to make changes in the report to reflect these comments.

Notwithstanding any comments Dr Barton may have on the report, the lawyers have said that as a matter of course they will consider whether the Department should seek to withhold any part of the report. We will obviously consult you about any proposals to withhold ("redact") any part of your report.

I would be grateful if you could consider the point about whether any assurances of confidentiality may have been given.

I would be very happy to speak to you by telephone or, if you would find it helpful, to come to Leicester to meet you.

Thank you for your continuing help.

Gerard

Gerard Hetherington
Department of Health
2E26 Quarry House
LEEDS
LS2 7UE

Tel: 0113 254 6032

Mob:

"Baker, Richard (Prof.)" Code A

18/03/2013 12:17



To Gerard Hetherington/HPIHSD/DOH/GB@DOH

cc

bcc

Subject RE: REVIEW OF DEATHS AT GOSPORT WAR MEMORIAL HOSPITAL

Dear Mr Hetherington

I've now had the chance to review the report, and have discussed its publication with an MDU advisor. I do know that Sir Liam Donaldson intended publication of the report, and also that the relatives had been interested in seeing it, and agree that publication is appropriate.

It would be reasonable to invite Dr Barton to comment prior to publication. I have no other issues to raise. It has been some time since I undertook the investigation at Gosport, and I have not followed the various inquests and actions that have been taken since then, and therefore it would be a good idea for me to become familiar with events in the past few years.

Richard Baker

From: Code A
Sent: 08 March 2013 13:51
To: Code A

Subject: REVIEW OF DEATHS AT GOSPORT WAR MEMORIAL HOSPITAL

Dear Professor Baker

I am e-mailing with reference to the review you carried out at the request of Sir Liam Donaldson of deaths of patients at Gosport War Memorial Hospital.

You will be aware that it was always Sir Liam's intention that the report should be made public. However, as I am sure you are also aware the police were concerned that the publication of your review might potentially prejudice their investigation into the deaths and any possible prosecutions which might arise. In the light of these concerns the Department of Health agreed not to publish the report. The Department has received several requests under the Freedom of Information Act 2000 for the review to be published. The Department's response has been to invoke the exemption under FoI legislation that publication would be "prejudicial to the administration of justice".

We understand that the last outstanding inquest into the deaths at Gosport Hospital into the death of Gladys Richards is likely to be held and concluded next month. If the inquest concludes that no further investigations are necessary the FoI exemption would lapse and the Department would move forward to exploring publication of your report.

My purpose in making contact is to ask whether there are any issues you would like to raise.

I understand that your report also contains information which is protected from disclosure by the Data Protection Act 1998. The Department will therefore also need to consider whether publication of the report would be prejudicial to Dr Barton and whether despite her having accepted voluntary erasure from the medical register and retired, she would wish to have the opportunity to comment prior to publication.

Please contact me if there is anything you would like to discuss.

Gerard

Gerard Hetherington
Director of Clinical Policy and Strategy
Department of Health
5W41 Quarry House
LEEDS
LS2 7UE

Tel: 0113 254 6032 (Thu & Fri only)

Sec: 0113 254 6388

Mob: Code A

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) On leaving the GSi this email was certified virus free.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless in partnership with MessageLabs. (CCTM Certificate Number 2006/04/0007.)

DH users see Computer virus guidance on Delphi under Security in DH, for further details. In case of

problems, please call the IT support helpdesk.

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) On leaving the GSi this email was certified virus free.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.