

Bahujan Shibani LSPG SOL C4

From: Phillips Colin DOH GSI
 Sent: 26 February 2007 13:02
 To: Code A
 Subject: Re: CMO Case PO62/2007 - Author: Charles Stewart-Farthing - Re: Gosport War memorial hospital (Demise of Mr ADB Cunningham)

  
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Code A

----- Forwarded by Colin Phillips/Colin Phillips Code A

Colin Phillips

26/02/2007 11:50

Code A
Code A

To: Code A
 cc: Code A

bcc:
 Subject: Re: CMO Case PO62/2007 - War memorial hospital (Demise of Mr ADB Phillips)

Author: Charles Stewart-Farthing - Re: Gosport Cunningham) (Document link: Colin

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 RESTRICTED - Investigation

Code A

This letter touches on a subject upon which I need to give the CMO a wider brief. I attach a draft reply plus the brief.

Colin
 (See attached file: gosport submission CP to CMO.doc)
 (See attached file: Code A doc)

Lorraine Smith

20/02/2007 16:24

Code A

To: Colin Phillips/CQEG-
 cc: Code A

Charles Stewart-Farthing - Re: Gosport War memorial hospital (Demise of Mr ADB Cunningham)

bcc:
 Subject: CMO Case PO62/2007 - Author: memorial hospital (Demise of Mr ADB

Dear Colin

This correspondence has been designated by the Chief Medical Officer as a Private Office case and has a deadline of 10 working days to provide a draft reply and any necessary advice.

The scanned correspondence is attached herewith:

Please could you send the draft reply electronically to me by the 06/03/07.

Please follow the guidelines set out on the attached instruction sheet:

Many thanks.

Lorraine Smith
Correspondence Manager
CMO's Private Office

Code A

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<http://www.dh.gov.uk/terms>

Charles Stewart-Farthing

Code A

Thank you for your letter of 16 February about your late stepfather Mr A D B Cunningham. I fully appreciate that the time it has taken to look into the circumstances surrounding Mr Cunningham's death must have added considerably to the natural distress that you, friends, and family would have suffered. Please accept my condolences for what must have been and continue to be a very unhappy state of affairs.

As you say, the Police, in consultation with the Crown Prosecution Service have recently concluded that they will not bring prosecutions against anyone at Gosport War Memorial Hospital following their investigations. I realise that after so long, this will be frustrating for you, but I have no say in that matter and the issue of any flaw you feel that took place in coming to that decision should be taken up with the Police and Crown Prosecution Service.

Professor Baker has reported on the clinical management of the Hospital at the time and is not a continuing investigation. However, the General Medical Council are now looking at the issues and they will be deciding what action to take as regards the behaviour of the relevant medical staff. I intend to await the outcome of their deliberations before deciding if there are any issues not covered by either the Police or the GMC.

CMO

From: Colin Phillips
IIU

Date: 26 January 2007

Copy: Martin Marshall
Jane Moore
Wendy Harris
Code A
Jonathan Gardiner
Lorraine Smith**GOSPORT WAR MEMORIAL HOSPITAL**

I attach a draft reply to the correspondence you have received from a relative of one of the deceased. Mr Cunningham's case was indeed one of the ten submitted to the CPS by the Police.

This note- and I apologise for its length- sets out the position regarding Gosport War Memorial Hospital following the decision of the police and CPS not to pursue prosecutions. Generally speaking the result of the incredibly long deliberations involved in those decisions is that most other actions have been in abeyance pending the outcome of the protracted decision making procedures of the police and CPS. I outline below those that seem to require some attention.

The Police

The Police have closed their file and will not be conducting further enquiries. They are passing papers from their investigation to "interested parties", including the GMC, at the latter's request; this is a matter for them and I advise that you have no role to play with those decisions. The only relevant issue is that they have a copy from us of Professor Baker's report, held "in confidence"; as the GMC were given it to hold on the same basis. I have asked the Police to ensure that they do not inadvertently release the report to the GMC on any other basis.

The final police report describes in detail all three police investigations and analysis of the 92 cases they reviewed. 78 failed to meet the threshold of negligence required to conduct a full criminal investigation and were referred to the GMC and NMC for information and attention. Four of the remaining 14 cases failed a further "causation" test and were not subject to further investigation. The remaining 10 were subject to a full criminal investigation. Although areas of concern were found in these cases, the Report stated that Treasury Counsel and CPS concluded "having regard to overall expert evidence it could not be proved that Doctors were negligent to criminal standard".

The Healthcare Commission

CHI conducted and concluded one investigation and issued a report without adverse comment covering matters from 1997 to 2001. They were embarking on a second report on matters subsequently raised relating to activities in the early 1990s. This

investigation was suspended pending the outcome of the police investigation to avoid compromising the police investigation. I have spoken in confidence to Nigel Ellis head of Investigations at HCC. Their view is that at present, unless new or different information is brought to their attention, they would not want to revisit an old CHI investigation.

The internal management review

Hampshire PCT are taking these considerations forward at present. The CE and another senior manager of South Central SHA are reviewing their files and will consult on whether an SHA led investigation should now be undertaken. It is doubtful now whether reviving the old internal review serves much real purpose and one of the key issues they will need to consider is whether Article 2 ECHR will require an investigation to be carried out in any event, in which case the investigation will need to meet the various requirements of Article 2.

The Coroner

He has ten inquests to conduct and is currently reviewing papers in respect of three cases; all three were in the set subject to the full criminal investigation. In one of these cases, the family have already asked for a meeting with the CPS to discuss the case.

The GMC

The GMC have a copy of Professor Baker's report in confidence and as background information. The police are sending more material to them soon. Given also that the NMC have looked in to the activities of their professionals, it is likely that the GMC will want to do the same and that they will ask for a formal release of the report so that they could then take its contents into account and seek comments on it. As above, they already have it "in confidence". They could, probably, exercise their powers under the Medicines Act to require us to pass it over. If we pass it over formally, we should get Dr Barton's comments on it before doing so. Absent malice, any action for defamation is unlikely to succeed especially if Dr Barton's comments are sought on factual matters prior to release to the GMC.

I have discussed with colleagues in the Department better placed than I am whether to advise you to write to the MC and what the effect of that involvement might be on their process. They advise that it would be best not to communicate with them at present, essentially to avoid any misinterpretation that you were seeking to intervene one way or the other in their deliberations.

Publication of the Report by DH

I would advise that we do not consider publishing the Report wider at least until the GMC have completed their processes and Dr Barton has had a chance to comment. There will be further issues to consider regarding form, nature and process of publication, but I suggest we can come back to these if necessary once the GMC have conducted their investigations. Should anyone ask for sight of the document before the GMC reports on Dr Barton, we will advise you further.

NMC

So far as I am aware, the NMC have taken no action against any members of their profession after consideration of the material presented to them. Again I advise that at this stage we have no need to get involved in those separate considerations.

The relatives of the deceased

Apart from Mr Stewart-Farthing, only two of the families have so far shown any interest in pursuing the issue. I understand that two have asked for a meeting with the CPS to seek clarification on the decision not to prosecute. The SHA have received no word from them asking for further action. Their impression is that the families, who were invited by the police to attend a meeting immediately before the announcement of no prosecutions, have taken the decision reasonably well. Should any of them- or possibly their legal representatives (Ann Alexander was in the past acting for some of them) approach us, we will come back to you with further advice.

Action to take

. A draft reply to Mr Charles Stewart-Farthing is attached for you to consider. I suggest that at the moment that should be the extent of your actions. I will let the various parties know and come back to you with further advice should any of them change their view. I may of course need to advise further once the GMC have decided on a course of action.

Colin Phillips
Investigations and Inquiries Unit