

LOTHIAN and BORDERS POLICE

MEMORANDUM

To: Mr David Harvie
Area Procurator Fiscal
Chambers Street
Edinburgh

From: DS 3320 J.Kavanagh
South & East CID
St Leonards P.S.

Ext/Team:

Ref: N/A

Date: 16TH October, 2009

Your Ref: N/A

GRO-A and GRO-A – Complaint regarding AIDs/HIV Infection

The complainers in this report are GRO-A and GRO-C and GRO-A GRO-C Edinburgh. Their complaint is related to a longstanding, high profile campaign led by the Scottish Haemophiliac Groups Forum who have been seeking a Public Inquiry. GRO-A has been a member of this group since it's inception and has been a vigorous campaigner for 'justice'.

In 2000, ACPO(S) received correspondence from representatives of the Scottish Haemophiliac Groups Forum. This correspondence made allegations regarding haemophiliacs being administered possibly contaminated Factor VIII. Strathclyde police (Detective Superintendent Heath), acting on their behalf, carried out a preliminary investigation and referred their findings to the Crown Office in 2003. At this time GRO-A was alleging that along with other haemophiliacs, he was intentionally infected with HIV through the administration of Factor VIII, as part of a study group by the then Dr Christopher Ludlam

In his report, Detective Superintendent Heath contended that there were two areas where criminality may have occurred:

- The continued supply of blood products to haemophiliacs when awareness existed that such supply was likely to lead to the recipient sustaining life threatening or seriously debilitating infection
- The blood testing of haemophiliacs for such infections without their knowledge or permission and subsequent failure to notify those who tested positive

Consideration was given to the complex issues raised and the Crown Office instructed further enquiries were made by COPFS. In February 2004, Crown Counsel declared "further investigation would not be justified, as there is insufficient evidence that any criminal offence has been committed."

In December 2007, GRO-A and a second member of the Scottish Haemophiliac Groups Forum, GRO-A wrote to their local MSP Mike Pringle contending that Professor Ludlum had knowingly infected them with the AIDS virus in order to further his studies. Mr Pringle in turn passed this information to the Chief Constable requesting that

the allegations be investigated and in January 2008, the matter was referred to the Crown Office for further consideration. Nadya Stewart of the operational Policy Unit replied :

“ D.S. Heath’s report relates to the transmission of hepatitis C through contaminated blood and the state of knowledge of health professionals at the time whereas the current enquiry from Mike Pringle MSP and his constituents relates to a specific allegation that Professor Ludlam deliberately infecting them with AIDS. Mr Pringle is asking for the allegation to be investigated. I appreciate that Mr GRO-A’s case was considered in D.S. Heath’s report but it does not appear that Mr GRO-A case was. If you consider that the allegations have already been fully investigated and don’t raise anything new, then it would appear that there is no need to investigate further and you could advise Mr Pringle of this. However, if that is not the case and I can’t tell from the report and the letter, then it may be that further investigation is required”

The then Detective Chief Superintendent Livingston instructed that further enquiry be made in to the matter. This request initially went to Amethyst and in March 2008 was passed to Detective Chief Inspector Wayth for allocation to an enquiry officer. He passed it to DI Gordon who subsequently passed the enquiry to DS Kavanagh at Craigmillar CID.

DS Kavanagh made contact with the complainers and MSP Mike Pringle. DS Kavanagh thereafter commenced research in to the previous, very complex and comprehensive enquiry conducted by Detective Superintendent Heath. In June 2008 DS Kavanagh commenced obtaining comprehensive statements from both complainers, a process which took some months to complete.

In the main, Mr GRO-A’s complaint is that Professor Ludlam, head of the Haematology Unit at the Royal Infirmary of Edinburgh, “knowingly infected us with the AIDS virus in 1984 – by not informing us of the known risks from Factor VIII when he knew full well that haemophiliacs were contracting AIDS and dying” Mr GRO-A specifically alleged that;

- From March 1983, before the complainers became infected, Professor Ludlam carried out non consensual research into the AIDS virus using a specific ‘study group’ which included Mr GRO-A and Mr GRO-A, all of whom became infected with AIDS as a result of the study.
- Medical records, which Mr GRO-A produced, demonstrated that Professor Ludlam used a specific infected batch of Factor VIII for him and the other members of his ‘scientific study’, all of whom later contracted AIDS. He added that the batch number that was usually noted in an abbreviated form, was written out in full, only in relation to that specific batch on the date it was given in 1984, after which Mr GRO-A succumbed to the virus.
- The above research was extended to family members to ascertain sexual transmission without their knowledge or consent and under the guise of ‘genetic studies’
- Professor Ludlam has consistently refused to discuss or acknowledge concerns raised over the years regarding the possibility of contracting AIDS from Factor VIII
- Professor Ludlam admitted to him some years later that the donor of the infected blood was known and that the donor was HIV positive

Mr GRO-A did not make a separate complaint. He was contacted by Mr GRO-A a few years ago and informed of his allegations. Since communicating with Mr GRO-A, Mr GRO-A agrees with the allegations made by him. He stated he did have concerns that as a young man with numerous sexual partners, he was not made aware of his status with regards to HIV, which put him, his partners and subsequent family members at risk.

The complainers are of the belief that the nature of the above study was to give the study group Factor VIII without informing them of the known serious and fatal risks, wait for their sero conversion (contact the virus), allowing Professor Ludlam to study the antigen and antibody responses to HIV infection acquired at a known time from a single source.

They state that this belief is supported by a letter written by Professor Ludlam and published in the Lancet Medical Journal in May 1983 in response to a letter published the month previously by a Dr Robert Gordon of the US (Chairman of NIH AIDS working group), where he appears to be offering those under his care at the Royal Infirmary of Edinburgh, as a candidate group for research.

Mr **GRO-A**'s claims have been the subject of previous media attention. A 'Frontline Scotland' documentary was made and shown on the BBC in June, 2005 and Mr **GRO-A** intimated to the enquiry officer that the producer, namely Mags Gavin, who previously worked for 'Newsnight', had made in depth investigations into his claims and that as a result, she had interviewed some medics, (a Dr Tucker and others), who had worked with haemophiliacs in the early 1980's.

According to Mr **GRO-A**, Dr Tucker and others had inferred that they were only doing 'what they were told' implying that such a study had indeed taken place.

Enquiries established that Mags Gavin is apparently working as a freelance producer/journalist travelling abroad extensively. Numerous efforts have been made to trace her as to establish what evidence she may have as a priority line of enquiry. Contact was first made with her in November 2008 when she responded to an email stating she was in India but due back in London between Christmas and New Year. She agreed to meet with the enquiry officers but refused to provide her mobile number and did not respond to a request to contact the enquiry officers mobile no's. Her mobile number was eventually obtained via Mr **GRO-A** but again she failed to answer to the enquiry officers. DCI Little has attempted to set up a meeting, offering to fly down to London on a date that suited but did not receive a response.

DS Kavanagh has since contacted Mags Gavin, however she informed him that she is predominantly based in Amsterdam and only returns to London periodically. She agreed to contact DS Kavanagh when making one of these visits, but to date she has failed to respond. Efforts are still ongoing to speak with her.

As a result of being unable to speak with Mags Gavin, Mr John Tucker, who is currently employed as a Consultant Haematologist at the Borders General Hospital, was interviewed there in November 2008 regarding his knowledge of the allegations. Mr Tucker, who has worked in this arena since 1980, has an in depth knowledge of Health's response to haemophilia since this time. He stated he worked under Professor Ludlam at the Edinburgh Royal Infirmary between 1980 and 1985.

He completely refuted any suggestion that there was a separate 'study group' at this time stating that the usage of the phrase was unfortunate and misleading and not meant in the context that Mr **GRO-A** understood it. He stated that in the early 1980's whilst the medical profession was aware of hepatitis A and B, they had not identified hepatitis C and were only becoming aware of the HIV virus and the fact that haemophiliacs were becoming infected through apparent use of blood products.

Mr Tucker stated that given the fact that the medical profession was very aware of concerns regarding blood borne infections, **all** haemophiliacs receiving blood transfusions were monitored on an ongoing basis with particular emphasis on their immune reactions

as it was believed from research that heavy users of Factor VIII could have lowered immunity making them more susceptible to infection.

Mr Tucker described this as responsible behaviour given potential risks, as opposed to specific research on a group who had been isolated and were being treated differently in any way (eg a placebo given to one group and not another for research purposes) in the manner that a scientific research study would normally be carried out.

Mr Tucker confirmed that Factor VIII was used routinely by most haemophiliacs as opposed to the previous treatment, which meant they had to be hospitalised to enable cryoprecipitate to be fed through a drip, which impacted negatively on their ability to lead a normal life. The Factor VIII provided by SNBTS (Scottish National Blood Transfusion Service) came from Scottish donors and not a 'commercial' imported product. Given the limited knowledge that they had at this time and the fact that there were no known cases of HIV in Scotland, it was considered opinion within the medical profession that the benefits of Factor VIII to lifestyle, outweighed any risks to health.

Mr Tucker was fully conversant with Professor Ludlams papers regarding his findings with the Edinburgh group of haemophiliacs. He placed a completely different interpretation on Professor Ludlams papers and letter stating they referred to the findings in relation to immune reactions and adding that in 1984 they unfortunately became aware that some of the patients they had been treating and monitoring, had tested positive, in that they were showing signs of having produced the same antibodies as early HIV sufferers would in an attempt to fight the virus.

This test was not a clear indication that the patient had contracted HIV, merely an indicator that they may have and that the information they had gleaned from all their patients was useful to share. At this time, there was apparently no conclusive test for HIV.

With regard to the 'batch' number being written out in full, Mr Tucker examined the records provided and pointed out that it was all in the same handwriting and appeared to be a retrospective record drawn up after the positive results when they were trying to establish what batch numbers had been given to all the patients who had tested positive for the antibodies which were an indicator of HIV.

He explained the procedures when he worked in the Unit were that haemophiliac patients could and did attend voluntarily any time they required Factor VIII. They would be seen by the doctor on duty who would write up their notes with the batch number and quantity given and run routine 'screening tests' having cognisance of all the ongoing research and concerns. Factor VIII came from the SNBTS and was administered by whatever member of staff (nurse or doctor) was on duty and he and others regularly dealt with Mr GRO-A and other 'heavy users'.

Each Factor VIII unit was comprised from 500 different donors and there would be no way for the staff to have any knowledge of their origins and none of the patients were treated any differently. Mr Tucker appeared to be genuinely shocked by the allegation that Professor Ludlam may knowingly have given Factor VIII in the knowledge that a specific group would eventually contract the virus.

DCI Little and DS Kavanagh, then met with a number of senior health officials from the SNBTS, including a Professor Forbes, some of whom had worked in this field within the Edinburgh area since the early 1980's. They confirmed the above procedures and described the accepted practices regarding 'consent' during the early 1980's, which was less stringent than it would be now. In particular, Professor Forbes stated he had been

present at a meeting whereby Professor Ludlam had invited all patients under the ERI's care. He stated that the patients were advised that samples taken from some of them had tested positive and as a result they may have contracted the HIV virus and as such they should attend individually and privately to get the result of their test. He stated they were also given advice regarding safe sex and procedures to follow if they had open wounds/cuts, etc.

Professor Forbes was fully aware that a Public Enquiry was about to commence and stated he had a team identified who would assist with access to requisite papers, records etc. He gave permission for the enquiry officer to approach professor Ludlam for his full co-operation in respect of the specific allegations made by Mr GRO-A and Mr GRO-A

In May 2009, DS Kavanagh attended at the ERI's Haematology Unit, Little France, where he met with Professor Ludlam and was given access to the personal files of Mr GRO-A and Mr GRO-A. As can be imagined, these are very extensive and cover a period of 20-30 years.

Professor Ludlam explained, in detail, the procedures carried out by his unit from when patients were drip fed cryoprecipitate through to the inception of Factor VIII and the self-administration of this by patients.

He explained that Mr GRO-A and several other haemophiliac patients were not studies of his in relation to whether they had HIV, stating that in 1983 people known to have HIV in the USA had depressed immune deficiency, however this was also found to be prevalent in some haemophiliacs in that country that weren't, at the time, diagnosed with HIV, (At a later stage it was discovered this was in fact an indication of the HIV virus). Professor Ludlam became aware of a test available in Middlesex Hospital that gave results on whether persons had depressed immune deficiency. To enable his patients tests to be treated as priority Professor Ludlam informed the reporting officer he referred to each of them as an 'AIDS STUDY' when sending samples to Middlesex Hospital.

Professor Ludlam explained that in November 1984 he sent 10 samples to Professor Richard Tedder at Middlesex Hospital, to carry out the test mentioned above. 3 of these were returned positive. Due to this he sent samples taken from all haemophiliacs under his unit's care and in all 16 patients were returned as positive for developing the antibodies referred to above. At this time this was known to be merely an indicator and not a definite that the patient had contracted HIV.

Nonetheless on receiving the results of his patients tests, Professor Ludlam arranged a meeting to be held in December 1984 and invited all haemophiliacs under his care. He made them aware of the tests carried out over the preceding months and that some of these were positive. He urged everyone to make appointments at the hospital to be informed of their personal result. In addition, he informed everyone at the meeting of the necessity to practice safe sex and gave precautions on accidents occurring at the home resulting in loss of blood and open wounds.

Professor Ludlam stated that although urged to contact the hospital to be told of their results, both Mr GRO-A and Mr GRO-A never took the opportunity to find out the result of their tests. As there was no known treatment at this time, there was no requirement for the medical profession to inform those not wishing to know.

Some time later it was discovered that those with depressed immune deficiency did indeed have HIV and as treatment became available it was felt necessary to inform those in order that they know of this treatment. Due to this a letter was sent to both Mr GRO-A

and Mr GRO-A and although Mr GRO-A attended at the ERI and was informed of his status, Mr GRO-A did not and made it clear he did not want to know the results of his tests.

On 10th December, 1984 heat treating experiments on Factor VIII were successful and found to kill the HIV virus, as such all patients were advised to return the Factor VIII they had been given prior to this.

Professor Ludlam informed DS Kavanagh that although he was aware of Mr GRO-A's vociferous campaign he did not know the full extent of his allegations and found it incredible that Mr GRO-A could think that he would be responsible for such an act. He added that at no time over this period has Mr GRO-A complained directly to him and if he had requested an appointment to speak with Professor Ludlam, he would have answered any questions asked of him.

As stated, Professor Ludlam still retains the extensive files on both patients as well as contact made with Mrs GRO-A when she was requested to attend the ERI to be tested for Hepatitis, which he states she was aware of and agreed to.

DS Kavanagh has also attended at the SNBTS, Ellen's Glen Road, Edinburgh, where he was informed they retain all records of Factor VIII given to patients. It was explained that when patients attended for an amount of Factor VIII they were dealt with by a member of staff from the SNBTS, who gives them the amount required and logs this along with the batch number of the product. The staff at the ERI and in particular, Professor Ludlam has no knowledge of the batch or amount that patients receive, unless this is brought to their attention due to an excessive request or during a patients half yearly check up.

Conclusion and current position

The reporting officer is of the opinion that having cognisance of enquiries carried out to date, there is no evidence to suggest that a specific group was identified amongst all the haemophiliacs who were attending the Royal Infirmary of Edinburgh and deliberately given a particular batch number of Factor VIII in the knowledge that they would contract AIDS. Findings so far, appear to support the fact that all haemophiliacs were provided with supplies as and when required and as provided by the SNBTS. Enquiries have confirmed (and this is also confirmed by Mr GRO-A himself) that Professor Ludlam did not routinely treat Mr GRO-A who was seen by the on duty doctor or nurse as and when he attended to request Factor VIII. Mr GRO-A's interpretation of the papers and letters produced by Professor Ludlam is completely inconsistent with the views of the medical experts spoken to over the course of the enquiry. His interpretation is however, understandable given the use of the term 'study group'.

The reporting officer is not aware of any other member of the Scottish Haemophiliac Groups Forum making similar allegations, with the exception of Mr GRO-A who himself was contacted by Mr GRO-A and asked to assist in his campaign. Given the fact that Mr GRO-A has long been viewed as a vigorous campaigner who has alienated himself to many health professionals due to his approach and claims, it would be very unlikely that the Forum would be unaware of his claims.

The reporting officer has not accessed the records of, or interviewed any other patients who were treated at the same time as Mr GRO-A

Efforts are still being made to interview Mags Gavin and establish what information she has in relation to this enquiry and obtain the names of any other staff involved, however the reporting officer is of the view that she is being evasive which is surprising given her apparent interest in supporting Mr [GRO-A] and if she does in fact have information which would be useful to the enquiry. A Dr Savage named by Mr [GRO-A] as having given Mags Gavin information, has not been interviewed yet as the reporting officer had intended to speak with Mags Gavin first.

Although such information was forthcoming anecdotally from those spoken to, this enquiry has not examined in depth the practices, procedures and guidance in place in relation to the use of Factor VIII or issues regarding what information should have been provided to patients and relatives as this will undoubtedly be the remit of the Public Enquiry. The focus has solely been on the specific allegations that Professor Ludlam deliberately infecting Mr [GRO-A] and Mr [GRO-A] with the AIDS virus.

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