

Jenny Jones
London Assembly
City Hall
The Queen's Walk
London SE1 2AA

14 October 2010

Dear Ms Jones,

MR IAN TOMLINSON

In light of recent findings by the General Medical Council (GMC) on Dr Patel's fitness to practise, the Crown Prosecution Service (CPS) has reconsidered the decision not to prosecute PC Harwood for the manslaughter of Mr Tomlinson. The background to the case is set out in the detailed explanation of the original decision not to prosecute (available at:

http://www.cps.gov.uk/news/articles/the_death_of_ian_tomlinson_decision_on_prosecution/index.html) and I do not repeat it here. In brief, on 1 April 2009, PC Harwood struck Mr Tomlinson with a police baton and pushed him forcefully in the back. Mr Tomlinson fell heavily to the ground. He was then helped to his feet and walked a short distance before he tragically collapsed and died about ten minutes later.

There is a sharp disagreement about the cause of death. Dr Patel, who carried out the first post mortem on 3 April 2009, concluded that Mr Tomlinson's death was '*consistent with natural causes*' and he gave the cause of death as '*coronary artery disease*'. Dr Cary, who carried out a second post mortem six days later, on 9 April 2009, concluded that although Mr Tomlinson had a partial blockage of the artery, his death was the result of internal bleeding caused by the fall, in association with alcoholic cirrhosis of the liver. Dr Shorrocks, who carried out a further post mortem on 22 April 2009, agreed with Dr Cary.

This sharp disagreement about the cause of death caused obvious difficulties for any prosecution. However, it is important to appreciate that it was not the sharp disagreement alone that caused the CPS to conclude that no prosecution for manslaughter could be brought. There were other fundamental difficulties going beyond the conflict of evidence and it may help if I set out in some detail the nature of those other fundamental difficulties.

The first difficulty was that, in a crucial passage in his original report of his findings, Dr Patel noted: '*There was intraabdominal fluid blood about 3l with small blood clot*'. This was interpreted by the other medical experts to mean that he had found 3 litres of blood in the abdomen and this underpinned their conclusions that Mr Tomlinson died from internal bleeding.

However, in April 2010 (ie 12 months after the initial post-mortem), Dr Patel made a further statement in which he inserted the word 'with' between the words 'fluid' and 'blood' in his findings, maintaining that the majority of the three litres of fluid he found was in fact '*ascites*' (a liquid produced by a cirrhotic liver) and not blood. This clarification by Dr Patel to his finding undermined the conclusions of the other experts who, for understandable reasons, had based their conclusions on what they understood to be Dr Patel's findings before he made the clarification.

Unfortunately, Dr Patel discarded the entire 3 litres of fluid soon after the first post-mortem without analysing it and before any of the other experts conducted their examinations. For that reason, it is simply impossible now to prove with any degree of certainty what was actually found in Mr Tomlinson's abdomen and the only person who can give evidence on the matter is Dr Patel, who will give evidence that he did not find 3 litres of blood in Mr Tomlinson's abdomen.

The second difficulty concerned the source of the internal bleeding. Neither Dr Patel nor the other experts found an internal injury to Mr Tomlinson that could have accounted for a bleed of 3 litres of blood into the abdomen. With no obvious damage to a major organ and with Dr Patel clarifying his earlier findings, the CPS concluded that it was not possible to prove to the criminal standard (ie beyond reasonable doubt) that the fluid found in the abdomen by Dr Patel was blood, rather than blood-stained *ascites*, or that there was an internal injury which would have caused significant, fatal, blood loss.

Against that background, the CPS concluded that a charge of manslaughter could not properly be brought in this case. On Thursday, 22 July this year, I announced that decision.

Since that date, Dr Patel has appeared before the General Medical Council ('GMC') to face disciplinary charges relating to four previous post-mortems he had undertaken in the period 2002-5. On 31 August 2010, the GMC made findings on Dr Patel's fitness to practise. The CPS has now considered whether those findings affect the conclusion reached in July that there was no realistic prospect of a conviction for manslaughter in this case; in particular, the CPS has considered whether it might be possible to bring a prosecution relying only on the evidence of Dr Cary and Dr Shorrocks and not relying on the evidence of Dr Patel.

As you may be aware, the CPS took advice from independent counsel, Mr Tim Owen QC, before reaching the original decision not to bring proceedings for manslaughter. At that stage, Mr Owen QC addressed the evidential difficulties directly and concluded that: '*The Patel evidence cannot simply be air-brushed away*'.

The CPS has now asked Mr Owen QC to advise further in light of the GMC findings on Dr Patel's fitness to practise. His view remains unaltered: '*... either with or*


without Patel, the prosecution faces an insuperable difficulty namely that the evidence does not enable a jury safely to conclude that the push by PC Harwood caused an internal injury which in turn led to a rapid, massive internal bleed from the liver into the intra abdominal cavity.'

I have also asked Mr Stephen O'Doherty, a Deputy Director of the CPS Special Crime Division, who took the original decision not to prosecute PC Harwood in this case, to reconsider his conclusions. In summary, his view is that: *'If the prosecution did not call Dr Patel we would lose all the evidence of the state of Mr Tomlinson's body at the time of the first post mortem. Bearing in mind that the following pathologists and other experts said they were dependent on his findings, the basis for their own conclusions would therefore be removed.'* Against that background, Mr O'Doherty has concluded that there is no realistic prospect of a conviction in this case whether Dr Patel is called as a prosecution witness or not.

I hope that the detail I have set out in this letter reassures you that the CPS has considered the evidence in this case with the utmost care. It has long been the rule in this country that a criminal prosecution should not be commenced unless, on an objective and dispassionate analysis of the evidence, there is a realistic prospect of a conviction. That is a rule that applies in every case. It has never been the case, and I hope it never will be, that the prosecution is permitted to 'put before a jury' a case in which, on proper analysis, the evidence cannot rationally and safely entitle them to conclude beyond reasonable doubt that an individual is guilty of an offence.

There will now be an inquest at which all three pathologists will be important witnesses, and their evidence will, no doubt, be subject to extensive examination. At the end of that process, the CPS will reconsider its decision not to prosecute in the light of any evidence which may be presented at the inquest. This accords with our usual practice and the Attorney General's Review into deaths in custody published in 2003.

In the interests of transparency and accountability, I am intending to make this letter available to the media and to the public.

Yours 

KEIR STARMER QC
Director of Public Prosecutions