

SHERIFFDOM OF LoTHIAN AND BORDERS AT JEDBURGH

DETERMINATION

of

SHERIFF JAMES A FARRELL

In Fatal Accident Inquiry in terms of the Fatal Accidents and Sudden Deaths

Inquiry (Scotland) Act 1976

Into the circumstances of the Death of JAMES MCNEILL

Jedburgh 18 November 2010

The Sheriff, having resumed consideration, determines as follows:

Section 6(1)(a)

James McNeill (DOB 14th September 1935) died at 08:30 hours on the 22nd of October 2008 at Belhaven Hospital, Dunbar.

Section 6(1)(b)

The cause of death was:

- I (a) Bronchopneumonia
- II pressure sores on back (treated)
Ischaemic heart disease
Dementia

Section 6(1)(c) and (d)

There are no circumstances of the death to be set out in respect of these provisions.

Section 6(1)(e)

Findings in Fact

1. James McNeill was born on 14th September 1935. In 1989 Mr McNeill was diagnosed with Alzheimer's disease and retired from work. At that time the casual observer would not have noticed anything untoward in Mr McNeill's behaviour and this continued to be the case until about 2004. Even after this date Mr McNeill continued to be physically fit and continued with his pastime of cycling.
2. By 2007 Mr McNeill's condition had deteriorated significantly. He had become double incontinent, his mobility was hesitant and he was easily alarmed when encountering the unknown or unexpected. His wife, with whom he lived in their home at Dunbar, was his full time carer. She required to assist him with all aspects of self care including showering him three times per day on account of his incontinence.

3. Mr McNeill's general medical practitioner had raised the question with Mrs McNeill of Mr McNeill being admitted to some form of residential establishment prior to April of 2008. However, in April 2008 the central heating and hot water system in Mr McNeill's house broke down. Given his double incontinence, this event necessitated Mr McNeill's urgent admission to a nursing home. At this stage it was envisaged that his stay in a nursing home would be temporary.
4. On 18th April 2008 Mr McNeill was admitted to Lennel House Nursing Home, Coldstream. Lennel House is a nursing home owned and operated by Guardian Care Homes (UK) Ltd. In April 2008, Lennel House had only recently acquired nursing home status, having previously been a residential home, although it had been a nursing home for several years prior thereto. The event which led to the rather sudden reacquisition of nursing home status by Lennel House was the closure of Ayton Nursing Home and the urgent need to rehome its residents, some of whom required nursing care, which in terms of Care Commission Regulations could only be provided by qualified nurses on a 24 hour basis. Accordingly, at the time of Mr McNeill's admission to Lennel House, the nursing complement had been very recently recruited and was supplemented by the use of agency nurses. The manager of the nursing home at the time of these events was a qualified nurse. However, he was perceived by nursing staff at Lennel House to be ineffectual. On the 2nd April 2008 the manager was suspended and did not return to work. On 9th April 2008 the manager was dismissed by Guardian Care Homes. Accordingly, at the time of Mr McNeill's admission to Lennel House management performance and nursing staff morale were less than optimal.
5. On admission to Lennel House an Admission Assessment Form was completed by the duty staff nurse. The assessment covered, *inter alia*, the risk of pressure sores. The assessment technique used was the waterflowscale, and Mr McNeill was assessed as being at high risk of developing pressure sores.
6. The range of measures which are used to prevent pressure sores from developing include provision of suitable specialised mattresses and cushions, regular changes of position, which should be recorded, and in the case of residents with Alzheimer's disease and incontinence problems, such as Mr McNeill, full personal care including regular toileting and cleaning.

7. Following upon admission Mr McNeill's mobility steadily decreased albeit with occasional short-lived improvements. He was noted as being confused, consistent with his illness, and to be agitated and aggressive from time to time. These aspects of his behaviour made efforts to encourage him to mobilise and to move him and achieve changes of position, difficult.
8. On 4th May 2008 a Care Plan, number 7, was completed by a staff nurse. The plan ought to have been completed within 24 hours of admission since it informs all those staff dealing with a resident of his individual needs, information necessary to enable staff to perform their duties properly. On 19th May 2008 two blood blisters were noticed on Mr McNeill's sacral cleft. These were the first manifestations of the early stages of pressure sores. On the same day Lennel House nursing staff responded to this event by instituting a position change routine, including a positional change chart, productions numbers 9 and 15, and by completing an initial wound assessment form, production number 7. In the course of the following days the blisters were treated with creams and dressings. However, the area of the wound, which was measured and recorded daily, increased. As at 19th May 2008 the wound comprised two blisters measuring 3 x 1cm and 1 x 1cm respectively. On 21st May the blisters had broken. The preventative measures in finding 6 above, namely specialised mattress and cushion were introduced on 22nd and 4th May and also the use of a hoist. By 30th May 2008 the blisters measured 3 x 1.5cm and 1 x 1cm and were recorded as being necrotic and producing an odour, signs consistent with infection. The condition of the wound remained unchanged until the 4th June 2008. On that date it was noted that the two blisters had merged producing one wound, specifically a pressure sore, 11 x 3cm. Depth throughout this period was described as superficial.
9. By 9th June 2008 the measures put in place produced no improvement and the odour from the wound was now described as offensive. Lennel House nursing staff arranged for the district nurse to attend and examine Mr McNeill which she did on 9th June 2008. Having assessed the wound the district nurse arranged for antibiotics to be prescribed for Mr McNeill together with Acticoat Silver dressing and an Intrasite conformable dressing. The district nurse considered that with these measures now in place, the wound could be managed at this stage within Lennel House.

10. On 11th June 2008 the district nurse visited Lennel House by prior arrangement. The wound now measured 13 x 4.5cm and was discharging thick yellow puss. A hole had appeared in the sacral cleft from which fluid leaked. The district nurse arranged for Mr McNeill to be examined by a GP which examination was conducted on 12th June 2008. As a result of this examination the GP arranged for Mr McNeill to be admitted to the Borders General Hospital on 12th June 2008 in order to obtain a surgical opinion.
11. On 13th June 2008 surgical debridement of Mr McNeill's pressure sore wound was carried out. The operating surgeon considered the wound to be serious and described the operation as a "planned emergency". In his experience of having carried out 12 or so pressure sore debridements over the years, this was the worst which he had encountered. The surgeon arranged for the wound to be photographed before, during and after the surgery and these photographs are now production number 2.
12. Mr McNeill remained at Borders General Hospital until 24th September 2008 when he was transferred to Roodlands Hospital, Haddington. Whilst a patient at Borders General Hospital Mr McNeill's wound was colonised with MRSA and he also developed a chest infection as a result of immobility and accumulation of secretions in his lungs.
13. On 24th September 2008 Mr McNeill was admitted to Roodlands Hospital. Roodlands is a geriatric hospital where assessment and rehabilitation of patients are respectively carried out and attempted where possible. The physician in charge of Mr McNeill was concerned at admission regarding Mr McNeill's level of mobility. Whilst Mr McNeill was suffering from advanced dementia at this stage, that condition, in the physician's opinion, did not necessarily produce his level of immobility which by then had rendered him completely bed bound. On 20th October 2008 Mr McNeill was transferred to Belhaven Hospital in Dunbar.
14. Belhaven is a geriatric hospital which receives the most frail patients when, *inter alia*, rehabilitation, as in Mr McNeill's case has been unsuccessful. On admission the staff at Belhaven noticed that Mr McNeill was in a frail condition and thought him to be in pain, that he would require continuing care as he had a fragile skin condition and was bed bound. As a result of this he was required to be moved every two hours to prevent further pressure sores developing. His communication was described as poor. At about 06:00 hours

on Wednesday 22nd October 2008 nurses attended on Mr McNeill to administer medication, including morphine sulphate, and prepare him for a bed bath. After about 30 minutes, when in course of being bathed, Mr McNeill's condition deteriorated and he expired in the presence of nursing staff. At 08:30 hours that day, a doctor, Andrew Jamieson, officially pronounced life extinct.

15. On 24th October 2008, Dr BouHaidar, forensic pathologist, carried out an autopsy on the deceased and found the cause of death to be:

- I (a) Bronchopneumonia
- II pressure sores on back (treated)
- Ischaemic heart disease
- Dementia

Note

This inquiry was conducted over eight days in October and November, concluding on 8th November 2010. The Crown was represented by Fiona Caldwell, procurator fiscal depute, Guardian Care Homes (UK) Ltd by Laura-Ann van der Westhuizen, Advocate and staff nurses Brenda Dry and Margaret Douglas by Ms Watt, Solicitor. Progress with the inquiry was greatly assisted and expedited by parties' representatives entering into a minute of admissions, statement of agreed facts and furnishing me with written submissions prior to the last day of the hearing.

Before explaining how I arrived at the determination in this case I wish to preface what I have to say by reference to two matters.

First, Ms Watt in the course of her submission, referred me to a passage in the determination of Sheriff Principal Bowen, Sheriff Principal of this Sheriffdom, delivered at the conclusion of a Fatal Accident Inquiry in December 2007. In that inquiry the development of pressure sores whilst the deceased was resident in a nursing home was a subject of evidence before the Sheriff Principal. The passage cited is in the following terms "the... death... was primarily due to suppurative

bronchopneumonia and cerebral atrophy, both common causes of death in the elderly. She was, however suffering from extensive pressure sores which precipitated her admission to hospital on the day before her death, and the presence of these sores, and the nature and extent of them, was rightly a matter for concern. Whether it was a matter of such concern as to justify a fatal accident inquiry is, however, debatable for a number of reasons. Firstly, and most significantly, the matter was the subject of a full investigation by the Care Commission for Scotland. In consequence the Commission placed a number of requirements on the home... all recommendations made were acting on by the Home with much greater expedition than the findings of an FAI could ever have been. It is questionable whether anything is served in the wider interest by the public scrutiny of the standard of care given by any residential home some three years after the events in question, by which stage key staff have changed and procedures have been improved radically. Secondly, the scope of an inquiry under of the 1976 Act is limited by the terms of the statute to consideration of any reasonable precautions which might have avoided the death or defects in a system of working which contributed to it. In the case of the death of an elderly person through natural causes, there are no findings which can be made under either of those heads. Whilst the court is entitled to make findings as to any other fact, that power is confined to facts “which are relevant to the circumstances of the death.” It follows that this inquiry was not in the nature of a wide ranging examination of the standard of care provided at Ashley Court in 2004; even less is it an inquiry into relationships between care homes and other health care professionals and services.” Whilst there are inevitably some differences between the facts of that inquiry and the present case, it is obvious that there are substantial and material similarities between them.

The second matter by way of preface relates to the evidence of Dr BouHaidar. The cause of death, as already stated, is as set out in the autopsy report, production number 1, and set out again in finding in fact 17. In addition to his report, Dr BouHaidar gave evidence. He explained the sequential listing of the causes of death in his report. Roman numeral number one, the bronchopneumonia, is the direct cause. It is sublisted as (a), but in fact there were no other direct causes. Roman numeral number two relates to the three contributory causes, and as between them there is no causal or chronological significance in their order. Dr BouHaidar had questioned whether the infection present in the pressure sore was directly linked qua an infection to the infection in Mr McNeill’s lungs, namely the bronchopneumonia which was the direct

cause of death. Further examination carried out by Dr BouHaidar disclosed no link of that kind. In the result Dr BouHaidar has included the pressure sore as a contributory cause insofar as it would have served to debilitate Mr McNeill and was therefore likely to diminish the efficacy of his immune response to other infections, such as the bronchopneumonia. Whether the pressure sore actually did diminish the efficacy of Mr McNeill's immune system, and if so to what extent, it is impossible to say. In cross-examination Dr BouHaidar confirmed that the pressure sore "did not materially, or directly, contribute to the cause of Mr McNeill's death".

Mr McNeill's widow attended every day at the fatal accident hearing. Mrs McNeill had, amongst other employments, worked in the past as an auxiliary nurse. She had formed an unfavourable impression of her husband's care at Lennel House. This is perhaps unsurprising when one considers the views of the Care Commission who carried out an inspection of Lennel House in June 2008. That inspection was triggered by concerns about Mr McNeill's care at Lennel House, but was not an investigation of his individual case. The Care Commission when inspecting nursing homes routinely assess them against four criteria, and grade them on a six level scale ranging from "unsatisfactory" to "excellent". Had Lennel House been graded in June 2008 it would have scored II, i.e. "weak". Following upon its most recent routine inspection, Lennel House is now graded IV, that is to say "good".

From the evidence before me there can be little doubt that Mr McNeill's care at Lennel House would have benefited from better, and more promptly, implemented care plans and risk assessments, general and specialised; from being cared for by nursing staff who had the advantage of better managerial support, better induction procedures, better training especially in prevention of pressure sores and care of the elderly; better dissemination of information regarding policies and procedures, and better access to special equipment; and from allocated time for communication as between different shifts. Focusing on Mr McNeill's development of pressure sores, the risk of these developing would almost certainly have been reduced with earlier provision of special mattresses, cushions and organised and recorded positional changing. All of that said, the district nurse, and surgeon involved with Mr McNeill's case, gave evidence that in some cases pressure sores would develop with even the best and most timeous of care. As regards treatment, as opposed to prevention of Mr McNeill's pressure sore, then according to the Tissue Viability Nurse Specialist who

gave evidence, the latest date when Lennel house nursing staff ought to have contacted the district nurse, or general practitioner, regarding Mr McNeill's pressure sore would have been 4th June 2008. Of course it is correct, as appears from the findings in fact, that when the district nurse did attend on 9th June 2008 when requested, she considered it to be appropriate at that date that treatment of the pressure sore should continue within Lennel House. Nonetheless, it must be true that had the district nurse attended on 4th June 2008, and had Mr McNeill been in receipt of the antibiotics and non-surgical debridement medication as from that date rather than from 9th June 2008, then the prospect for amelioration of this unusually rapidly developing pressure sore could only have been enhanced. All of these circumstances, in the words of Sheriff Principal Bowen in the inquiry mentioned above, were "rightly a matter of concern.". But thereafter having regard to the pathologist's evidence as to the rather tenuous nature of the pressure sore as a contributory cause of Mr McNeill's death and the significant time lapse, just over four months, between admission to Borders General Hospital and the date of Mr McNeill's death, then it seems to me that this case fits exactly the observation of the Sheriff Principal regarding the death of an elderly person through natural causes in the context of the determination in a fatal accident inquiry.

Ms Caldwell invited me to make a number of recommendations in terms of section 6(1)(c) and (d). All of these related to the matters which I have adverted to in the previous paragraph. On the last day of the inquiry an affidavit of Janis Grace McFarlane, together with supporting documentation, was received and is now part of the evidence in this case. Ms McFarlane, Registered General Nurse and Registered Midwife is the Guardian Care Regional General Manager for Scotland with responsibility for, *inter alia*, Lennel House. She has held that post since January 2010. Ms McFarlane has specialist training and qualifications in the care of the elderly. The contents of paragraphs 6 to 18 inclusive of her affidavit, in my opinion, meet, and indeed exceed, the recommendations suggested by Ms Caldwell. Again, as was the case in the Sheriff Principal's inquiry referred to above, key staff have changed and procedures have been improved radically. Accordingly, it is for these reasons, that I consider it inappropriate to make any findings in respect of section 6(c) and (d).