The Adequacy of Protecting Older People from Abuse and Neglect: legal provisions, forensic & medico-legal investigation and reporting.

Denis A. Cusack,
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Seminar Programme,
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Considerations

- Elder abuse
- EU 27 population statistics
- Forms of abuse
- Reporting mechanisms internationally
- Forensic and medico-legal investigation in the living and dead internationally
- Criminal investigations, medical examiners, coroners
- Articles 2 and 8 of the European Convention on Human Rights
- Potential indicators of abuse
- Deaths of vulnerable groups
- Nursing home residents
- Nursing home deaths, Kildare 2005 -2008
- Case study 2006 - 2009

Elder Abuse

- “A single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person or violates their human and civil rights”

Report of the Working Group on Elder Abuse (Ireland, 2002) :

‘Protecting Our Future’
EU Population Statistics

> 65s as % of Population (Eurostat)

- EU 27: 16.9
- Cyprus: 12.3
- Estonia: 17.1
- Greece: 18.6
- Ireland: 10.9
- Netherlands: 14.5
- Sweden: 17.4
- UK: 16.0

Life Expectancy at 65 Years (Eurostat)

- EU 27: 16.8 (male) 20.5 (female)
- Cyprus: 17.8 19.8
- Estonia: 13.1 18.1
- Greece: 17.5 19.5
- Ireland: 16.8 20.3
- Netherlands: 17.2 20.8
- Sweden: 17.8 21.0
- UK: 17.7 20.3
Old Age Dependency (Eurostat)

- EU 27: 25.2
- Cyprus: 17.6
- Estonia: 25.1
- Greece: 27.6
- Ireland: 15.8
- Netherlands: 21.5
- Sweden: 26.4
- UK: 24.1

Potential Indicators of Elder Abuse

- Psychological
  - Depression
  - Tearfulness
  - Agitation
  - Confusion
  - Unexplained paranoia

- Neglect
  - Malnutrition
  - Poor hygiene
  - Unkempt appearance
  - Absence of required aids
  - Pressure sores
Potential Indicators of Elder Abuse

- Physical
  - Abrasions
  - Bruises
  - Lacerations
  - Burns
  - Fractures
  - Eye injuries

Potential Indicators of Elder Abuse

- Sexual
  - Trauma to genitals, breasts, rectum, mouth
  - Injuries to face, abdomen, thighs, buttocks
  - Sexually transmitted diseases
  - Human bite marks

National Centre for the Protection of Older People Launch

“Elder Mistreatment: recent research current controversies”
Prof. Simon Biggs, Professor of Gerontology and Director of the Institute of Gerontology King’s College London (11th November 2009)
Relevant Laws

- Fundamental and human rights
- Mental capacity
- Powers of Attorney
- Domestic Violence
- Reporting of Abuse
- Criminal assault
- Criminal sexual assault

Relevant Laws in Ireland

National Centre for the Protection of Older People:
Elder Abuse and Legislation in Ireland
(Review 3, November 2009)

Physicians and Nurses

- Recognition of symptoms
- Recognition of signs
- Forensic training
- Forensic reports
Death Investigation Systems

- Criminal investigations and judicial inquiry
  - Civil law systems of continental Europe
- Medical examiners
  - some States of the USA
- Coronial system
  - England & Wales, N. Ireland, Ireland, Commonwealth

Coroners – Reportable Deaths

- Sudden, unexpected, unexplained
- Due to unnatural causes or violence
- Persons in care or custody of the State

Coroner’s Process

- Inquiry into circumstances
- Post mortem examination
- Public hearing (inquest)
Ireland - Mortality 2008

- 28,192 deaths (6.4 per 1,000 population)
- 10,449 > 65 years (37% of deaths)
- 12,860 reported to coroner (46%)
- 5,693 post mortem examinations (20% / 46%)
- 2,274 inquest hearings (8% / 18%)

Human Rights Dimensions

- European Convention on Human Rights 1950
  - Article 2 – right to life
  - Article 8 – respect for private and family life
  - Obligation on State to investigate deaths
    - Substantial violation
    - State’s obligation
    - Organ / agent of the State
Article 2 ECHR 1950

- “Everyone’s right to life shall be protected by law”
- “The European Court of Human Rights has repeatedly interpreted Article 2 …… as imposing on member states substantive obligations to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life.” R (Middleton) v HM Coroner for the Western District of Somerset [2004] UKHL 10

Article 2 Investigations

- Coroner only obliged to hold an inquest to satisfy the procedural requirements of Article 2 in cases where the State’s obligation to initiate an appropriate investigation into the death has not already been satisfied by other means .
- Violation of substantive obligations owed to deceased
- Where “agents of the State” implicated

Article 2 Investigation Essentials

- Independent
- Effective
- Reasonably prompt
- Sufficiently open to public scrutiny
- Involve the next of kin

Jordan v United Kingdom [2003] 37 EHRR 97
Shipman Inquiry

- Dr. Shipman killed > 300 patients
- Convicted of killing 15
- Inquiry with 6 Reports July 2002 – January 2005

Article 2 Procedural Obligations

- “The procedural obligation introduced by Article 2 has three interlocking aims: to minimize the risk of future like deaths; to give the beginnings of justice to the bereaved; and to assuage the anxieties of the public”

R (Khan) v Secretary of State for Health [2003] EWCA Civ 1129

Kildare Coroner 2005 -2008

- Total deaths reported 1326
  - No further inquiry 678
  - Post mortem examinations 466
  - Inquests 182
Nursing Home Deaths 2005 - 2008

- Ireland 468,000 persons > 65 years old
- Nursing Homes Regulations 1993
- Health Information and Quality Authority National Standards (2009)
- State Coroner, Victoria, Australia
  - Residential Aged Care – Coronial Communiqué
- Chief Coroner of Ontario
  - Domestic Violence Report 2008

Questions asked by Coroner (1)

- Circumstances of death
- Resident in NH since when
- Any previous medical conditions: e.g. IHD, Carcinoma, Alzheimers, COPD etc
- Any recent medical, surgical interventions?
- Any recent hospitalisation?
- Name of attending GP
- When last seen by GP or other doctor and diagnosis, treatment etc.
- Any accidents or falls which may have contributed to the death?
- Any pressure sores or care issues?
- Any concerns raised by the family or healthcare staff?
Questions asked by Coroner (2)

- Name, address and contact telephone number of GP
- Is the GP in a position to sign the certificate as to medical cause of death?
- If so, what is the cause (s)he will write?
  - e.g. (broncho)pneumonia, acute myocardial infarction, CVA (cerebrovascular accident), cancer/carcinoma (lung, stomach, prostate etc), metastatic cancer etc.
- Any other relevant information?

Notification of death to the Coroner (standard 16.13)
- Certified cause of death (16.8)
- Retain medications in event of post mortem examination (14.13)

Nursing Home Deaths Kildare 2005-2008

- Reports from 22 Nursing Homes
- ~ 25 Family doctors
- ~ 15 Hospital based doctors
- 2 hospital-based pathologists
- No suicide deaths
- No deaths from violence (1 case under investigation from 2009)
- One death during study period requiring inquest (two cases prior to 2005 and two from 2009 pending inquest)
Demographics

- Numbers of deaths and post mortem examinations 2005 - 2008
- Gender distribution
- Age distribution
- Medical cause of death
- Number of deaths in each nursing home
- Number of deaths reported by individual doctors
Case History

- 64 year old male
- Cerebrovascular events 2002, 2006
- Hospitalisations 2006
- Dependency September 2006
- Residential homes September 2006 – February 2007
- Hospitalisation February 2007
- Death February 2007
- Post mortem examination
- Coroner’s investigation
- Inquest October 2009
Conclusions

- Demographic importance of protecting the elderly
- Role of laws to protect elderly
- Role of the State in setting standards for reporting of abuse and of residential homes
- Role of family and forensic physician in preventing and recording elder abuse
- Role of judicial forensic and medico-legal investigation of deaths in the elderly

Publications

- ~ 30 cited cases in Irish Superior Courts.
- ~ 150 cited cases in British Courts.

Website References

- www.coroners.ie
- www.kildare.ie/countycouncil/countycoroner
Question for Seminar

Are these adequate?

Acknowledgements

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