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The Parliamentary debate was held in Westminster Hall on October 30<sup>th</sup> 2013

## **Release of Bodies from Hospital**

4.44 pm

**Caroline Nokes (Romsey and Southampton North) (Con):** As ever, Mr Hood, it is a pleasure to serve under your chairmanship. I particularly thank Mr Speaker for granting this important debate on a subject that, had it not been brought to my attention by a constituent, I would not have believed possible outside the scripts of comedy or perhaps, more appropriately on the day before Hallowe'en, a horror film. However, the occurrence is possibly far more widespread than is known about, and my constituent fears that it is the modern equivalent of body-snatching by unscrupulous undertakers who, keen to ensure that they are subsequently contracted by bereaved families to organise funerals, take unlawful control of a body.

This situation, which the funeral industry states is rare, and the hospital concerned states arose under unusual circumstances, is none the less one raised by my constituent amidst fears that it was in fact a deliberate attempt to exploit bereaved families in the immediate aftermath of a death, enabled to do so by a legal grey area and poorly drafted Department of Health guidelines. As a result of my constituent's case, and after acquainting myself with the guidelines on how bodies are dealt with, I decided to seek this debate to raise two issues. The matter is clearly of limited interest to colleagues, but I welcome the opportunity to make my points direct to the Minister, and I look forward to his response.

First, the existing legislation needs clarification. There is a definite need for guidelines for hospitals and hospice staff to be revised, so that they comply with the existing law, and prevent staff from being exposed to unwarranted prosecution based on the technicalities of existing legal grey areas. Secondly, and probably more importantly, I want to highlight a culture of complicity between undertakers and hospital staff, and potentially deliberate unscrupulous practices deployed by undertakers, who get away with them not in spite of Department of Health guidelines but, worryingly, because of them.

A further point worth raising is Bristol royal infirmary's failure in its duty of care towards the deceased and her family. On Saturday 23 March this year, Gladys Pugh, the mother-in-law of my constituent, Mr Peter Williams, sadly died in Bristol royal infirmary. Her body was taken to the hospital's mortuary to await the coroner's permission for it to be released. The following Tuesday, Mr Williams and his wife began the painful task of contacting undertakers to ask for quotes and to discuss possible funeral arrangements. Three funeral directors were contacted. Mr and Mrs Williams planned to travel to Bristol to register the death and to visit the funeral directors they had contacted, but with the long Easter weekend so close, they could not make the journey until 2 April. The family contacted all the

undertakers they had spoken to and informed them they would come back to them if they were interested in taking matters further after the Easter break.

On 2 or 3 of April, one of the undertakers, Thomas Davis, part of Bristol Funeral Directors group and a member of all the relevant trade organisations, including the National Association of Funeral Directors, contacted Mr Williams and asked what was happening about the arrangements. Mr Williams informed them clearly that

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they had decided to engage the services of another undertaker, thanked them for their interest, and left it at that.

It then transpired that without the permission of the Williams family and without any form of verbal or written contract, Thomas Davis had driven to the hospital's mortuary on 27 March, the day it was contacted by Mr Williams, and removed Mrs Pugh's body to one of its own facilities. The situation came to light 10 days after Mrs Pugh's body had been taken from the mortuary when the company subsequently appointed by my constituent contacted the mortuary to arrange collection of Mrs Pugh's body, only to be told that it had been taken away some 10 days previously.

There was an understandable feeling of horror, shock and disbelief that Mrs Pugh's body had been kidnapped by an undertaker whose sole instruction was to offer a quote, which incidentally was never forthcoming, and to inquire about available dates for cremation. I use the word "kidnapped" after considerable thought. First, I cannot use the word "stolen" as a dead body is not technically the property of anyone except the deceased. That is one of the grey areas that legal experts agree needs clarification. Secondly, as kidnapping is the removal of a person without their consent, and as a dead person is still considered a person in law but is unable to give such consent—and, as "stolen" would not be legally correct—"kidnapped" is the only suitable word that I can use to describe what happened.

I argue that Thomas Davis acted unlawfully, because all that had been requested by the Williams family was for a quote to be provided for the services, and for provisional inquiries to be made with a local crematorium. There was no contract, no formal quote, and at no time were the family informed that the body had been collected. Furthermore, at no time was any of the paperwork required under Department of Health hospital guidelines for the release of Mrs Pugh's body handed over by the family to Thomas Davis.

It is that point—the lack of consent given by the Williams family—that makes the removal of the body unlawful. That is where the first issue arises. Ignoring the motivation for a moment, how can an undertaker take possession of a body from a hospital lawfully? The answer—for it to be lawful, the person in control of the body must be enabled by law, by dint of their status in the life of the deceased or through being appointed the agent of such a person. In the case of Mr Williams' mother-in-law, the undertakers had not been given the legal right to take control of the body by the family and were therefore not in legal possession of it.

What checks were made by the mortuary staff to ascertain the lawful right of the undertakers to take responsibility for the body? None, it would appear. It seems that the law is at the same time both very clear and utterly confusing on that point, and furthermore, contradicts the

Government's own guidelines. I hope that my hon. Friend the Minister will bear with me while I try to explain that.

Although NHS trusts have very strict guidelines on releasing bodies, largely based on the Department of Health's publication, "Care and Respect in Death: Good Practice Guidance for NHS Mortuary Staff", and usually stipulate that the person collecting the body must be in possession of the relevant paperwork, often including "the green form"—an interim death certificate releasing

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the body for disposal—those guidelines are, I am told, probably of no legal effect. In the case of Bristol royal infirmary, its own release note, which Mr Williams was told would be essential for the release of the body, is also possibly not worth the paper it is printed on.

That is because case law dating back to 1841 states that once a person has died, unless the medical staff or the coroner order an autopsy, the deceased person's body becomes the responsibility of—but not the property of—in the following order: the executor of the will; the next of kin; or, in the absence of the above two, a person or persons intending to pay for and arrange the funeral. Failing that, the local authority must take control. There are, therefore, a limited group of people to whom lawful control of a body can be given, which can also include their appointed representatives. That is the bit of the law that is absolutely crystal clear.

However, what follows is much more confusing. Even where guidelines stipulate which forms must be presented before a body can be released—such as Bristol royal infirmary's own release form—in fact, once someone who can lawfully take responsibility for a body demands to be allowed to do so, the hospital is apparently powerless to prevent the release of the body, irrespective of trust or Department guidelines, and irrespective of what paperwork the person or persons may or, in this case, may not have.

That is a very important, albeit technical, point, which I wish the Minister to take note of, because if a hospital employee, following the appropriate guidelines, refuses to release the body to someone who can lawfully take control of it, honestly believing that he or she is doing the right thing, that employee can technically open themselves up to prosecution for preventing a burial or cremation—even if that was never the intention and even if they were simply seeking to establish whether the person taking responsibility was legally entitled to do so.

**Jim Shannon (Strangford) (DUP):** I spoke to the hon. Lady beforehand about this issue. She has outlined technical issues about how the body should have been released and where the process has fallen down. Is she also concerned at the impact that such a situation has on the families at a time of grief and sorrow? No matter what, that cannot be overlooked.

**Caroline Nokes:** I thank the hon. Gentleman for that intervention. He is, of course, exactly correct on that point. It is a time of great grief and distress to families, and they are often not in a position either to know what the legal technicalities are or to ensure that they are properly implemented. I will come on to his specific points very shortly.

According to some legal experts, this grey area has arisen from a number of test cases—including one in 1974—that have apparently established that a person claiming lawful control does not need to provide any paperwork at all to justify their claim over a body. Furthermore, and of great concern, not only are there no stipulations in law regarding what paperwork must be presented, or what conditions met, irrespective of guidelines, it is apparently illegal to demand that anyone seeking lawful control of a body do anything to justify their claim. In other words, unless my understanding is incorrect, not only are trust guidelines of no legal effect,

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but they can actually put the staff seeking to implement them at a technical risk of prosecution—something that I know will be of concern to my hon. Friend the Minister.

The first issue, therefore, that I would like my hon. Friend the Minister to consider is clearing up the discrepancy between the guidelines that NHS, hospice and care home staff are given and the technical exposure to prosecution that they face if they seek to abide by them. Furthermore, perhaps the law can also, at the same time, be clarified to state what rights the next of kin have over a body, which is something that it does not clearly do at the moment, because, as I said earlier, the body is not technically considered to be the property of anyone.

I turn to the second point that has been highlighted by my constituents. The right of lawful control does not pass to undertakers unless they have been properly contracted and bestowed with the right to take the body. Furthermore, departmental guidelines clearly state that that right must be demonstrated by the production of the relevant paperwork. What we have to ask, therefore, is how did this situation arise and how widespread is the practice?

In accordance with Department of Health guidelines, Bristol royal infirmary operates a system where a body will not be released without staff being presented with one of its own release notes—something that my constituent was very clearly told. However, in this case, no such release note was presented, because the undertaker was never given it. How, then, did the body come to be given to the undertaker? In answer to that, I again draw the attention of my hon. Friend the Minister to his Department's guidelines, which, like the law, can at best be described as vague.

For example, while the guidelines state that a body must be released to “the correct recipient”, they do not say who that is. The guidelines also say that “standard operating procedures” should be known by all staff through training, and be robustly audited. They clearly state:

“Before a deceased person's body is released, mortuary staff should check that all necessary documentation is complete”.

Even if that was a legal requirement, which it seems it may not be, in this case there were clearly no checks of the paperwork because none can have been presented. The guidelines go on to state:

“The body of a person who has died may be collected from the mortuary by the family, but is usually released to a representative, most often a funeral director. Mortuaries should therefore

ensure that they have good lines of communication and working relationships with local funeral directors.”

Here, the advice is that hospitals need good working relationships with local undertakers. It seems that that advice has been taken far too literally in this case at least, and I fear elsewhere, with the establishment of a very cosy relationship between undertaker and hospital—a relationship where it is deemed that things can be taken on trust, and contrary to guidelines, no checks are required as to the legal right of the undertaker to take control of the body. That is not a good working relationship with clear lines of communication; it is an abuse of trust.

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Certainly, what is clear in this case is that Bristol royal infirmary and the undertakers did not act in accordance with the Department’s guidelines and were, in fact, acting like some modern-day Burke and Hare operation. What is abundantly clear is that Bristol royal infirmary’s response to Mr Williams is inadequate. Although some changes to policy have been implemented, those are changes that my constituent calls “minimal”, and there is no guarantee that it will not happen again. As my constituent noted in a letter to the hospital’s chief executive, Mr Woolley:

“The Post Office would appear to take more care in the release of a parcel than the BRI did in the release of a body”.

To say that my constituent is unhappy with the response that he has received from the hospital would be an understatement. He is desperate to see the changes required to prevent other families experiencing the kidnapping of bodies belonging to their loved ones, but feels that the points he has raised with the hospital have simply been ignored, with the hospital blaming a member of staff for not following procedures.

Mr Williams asks two perfectly reasonable questions in his complaint to the hospital. Those questions are, as yet, unanswered. First, why did Thomas Davis arrive at the hospital without the paperwork that the hospital itself says is essential for a body to be released? Secondly, why was the body released without that paperwork? Mr Williams is worried that the answer to both those questions is this: because the undertaker assumed that he would not need the paperwork—an assumption based on past experience of acting in a similar manner. That begs the obvious question: how many other bodies have been taken in that way? It appears that the hospital will not accept responsibility for its failure in its duty of care towards the Williams family, seeming to want to blame individual hospital employees and the funeral industry.

That is another area of concern to Mr Williams, because all that has been received from the funeral industry is a response that is, to say the least, disappointing, stating only that “these mistakes sometimes happen” and offering nothing beyond that. My constituent has rightly complained to the health service ombudsman, and we await with interest the decision on that complaint, but there is no redress against the undertakers who took the body of my constituent’s mother-in-law, held it unlawfully and refused to take responsibility for doing so, knowing that they are virtually free of any legal consequences for their unlawful behaviour.

I hope that, in his response, the Minister will touch on both aspects of this sorry tale: the lack of legal clarity, rights and protection that both relatives and NHS staff have; and measures

designed to prevent undertakers from seeing distressed and grieving families as representing a lucrative opportunity provided that they can first kidnap the body by relying on the cosy relationship that they might enjoy with the local hospital, which the Department's own guidelines encourage.

From grave robbery to daylight robbery, the funeral industry has questions to answer, as, having spoken to campaigners in preparation for this debate, I can tell the Minister that, despite the comments of the industry, this practice is said to be far more widespread than is believed or acknowledged. Sadly, I am told that people rarely complain, because they simply want to grieve and move on, and the funeral industry is rarely held to account.

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I suspect that neither the Department nor the funeral industry keeps figures on how often this practice happens. It would be interesting to know whether the Department has some figures. However, my constituent fears that his experience is merely the tip of the iceberg—a view shared by campaigners in this area. I hope that now that this issue has been highlighted, the Department will seriously consider bringing clarity to what the legislation says and will offer protection to NHS, hospice and care home employees and to grieving families, protecting them from undertakers who should be there to offer a service at the time of greatest need and ensuring that bereavement and grief are not exploited.

5.1 pm

**The Minister of State, Department of Health (Norman Lamb):** I congratulate my hon. Friend the Member for Romsey and Southampton North (Caroline Nokes) on securing the debate and raising an issue of extreme sensitivity. I can imagine the enormous distress for the family involved. As the intervention suggested, at a moment of grieving, no family would want to have to cope with this situation. Let me be very clear that the practice that my hon. Friend describes, whether it is a one-off or more widespread, is completely unacceptable. That message has to be disseminated to the entire system, because respect for families who have suffered a bereavement and respect for the deceased person are of paramount importance. I am therefore very grateful to my hon. Friend for raising this subject and enabling me to respond. I am grateful also to her constituent, Mr Williams, for raising the issue with her so that it could be exposed in Parliament.

Each year, more than 500,000 people die in England and Wales, with local mortuary and bereavement services working hard to ensure that during the period of grief, the bereaved are supported and due regard is given to their individual needs. I think that in the vast majority of cases, that happens and people are treated with the respect that they deserve.

The current guidance, entitled “When a Patient Dies: Advice on Developing Bereavement Services in the NHS”, which was published by the Department in 2005, highlights the importance of involving relatives in decisions about care after death, but does not set out specific guidelines on the release of bodies. In addition, the document entitled “Care and Respect in Death: Good Practice Guidance for NHS Mortuary Staff”, which was issued in 2006 and to which my hon. Friend referred, states:

“Where families have individual, cultural or religious preferences concerning the storage, handling, transportation or presentation of the deceased person, these need to be carefully documented and accommodated wherever possible.”

Let me now deal with the legal context. A dead body is a possible source of infection, so society requires that the law balances the need to give regard to the respectful disposal of the dead with the need to ensure the protection of public health. Hospitals have put in place procedures to try to manage a number of competing demands and legal requirements in a way that causes the least difficulty for the vast majority of people and that allows coronial, health-and-safety and other requirements to be met.

The law does not recognise—my hon. Friend made this point—a dead body as someone’s property, but it has been held in case law that the executors, administrators or other persons charged by law with the duty to dispose

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of the body have a right to its custody and possession until it is disposed of. In straightforward cases, in which the coroner is not involved, the duty to dispose of the body can rest with a range of individuals or organisations, with an established order of precedence. The executor of a will, not the next of kin, has the primary claim to possession.

Generally, when a person dies, an early priority for the family is to arrange the final disposal of the person’s body. Lawful disposal may occur once a registrar has received a satisfactory medical certificate of cause of death and subsequently issued a certificate of disposal, commonly known as the green form, or the coroner issues a certificate of disposal where a death has been referred for a coroner’s investigation. My hon. Friend has clearly done an enormous amount of research on this subject. I am very impressed by the amount of knowledge that she has acquired.

The person with the authority to administer the estate of the deceased person has the right to possess the body in order to arrange disposal of the body—the funeral. The green form is one of the pieces of documentation required to allow a funeral to proceed and is often passed from the family to the funeral director. However, it is not a legal requirement for an individual to produce a green form in order to collect the body from the hospital. In practice, many hospitals appear to treat the green form as the key documentation for body release. I understand that hospitals do that to confirm that the death is not a coroner’s case. Potentially, up until the green form is issued, a registrar could refer a death to the coroner because new information relating to the death has come to light and the registrar finds themselves under a duty to report the death to the coroner. The other reason for some hospitals insisting on seeing the green form is, understandably, for reassurance that the body is being released to the right person. That is key to the case that my hon. Friend has raised today.

In the context of about 500,000 deaths a year, my Department has had very little representation to suggest that local hospital procedures for the release of bodies are causing difficulties. I am interested in this. My understanding is that the Department has not had many representations, yet my hon. Friend’s assertion, which I take seriously, is that the practice could be more widespread. We need to understand whether that is the case. At the moment, there appears to be a lack of evidence, but if she or anyone else is aware of more evidence, we need to hear about it. This is a very important matter.

**Caroline Nokes:** On that specific point, which relates to the concern the hon. Member for Strangford (Jim Shannon) raised earlier, one issue my constituent raised was that the practice occurs at a time of bereavement and grieving, and consequently people are far less likely to complain, because they wish to move on and get on with their lives and the grieving process. That point is important, because we simply do not know the extent of the problem. My constituent is concerned because his mother-in-law's body was released with no paperwork whatsoever, so the practice could be far more widespread than we will ever know, because it is unreported.

**Norman Lamb:** I thank my hon. Friend for that intervention. I appreciate that if such practices have occurred, families will in many cases feel reluctant to

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raise a complaint. None the less, we need evidence, so if people are aware of such activities, I encourage them to come forward.

In some areas, funeral directors had experienced delays in collecting bodies from hospitals due to the documentation required by the hospital, which relates to the problem my hon. Friend raises. A national representative body of funeral directors reported its members' concerns to officials in my Department. Following the concerns being raised with us, my Department re-circulated advice on the release of bodies to the NHS in a 26 October 2012 edition of *The Week* bulletin, to highlight to NHS trusts that having sight of the green form was not a legal requirement for the release of bodies, that holding bodies can cause unnecessary delays, and informing them of proposals to consult on a draft body release form as part of the consultation on death certification reforms. I want to reinforce the point that a delay in the release of the body can also be distressing for loved ones, who are going through bereavement. Ensuring that the process works efficiently is incredibly important.

Some hospitals have been using their own body release forms, which is the impression I received from Bristol. The situation my hon. Friend describes would not have happened if the hospital had followed its own procedures. Such forms are used to facilitate release of the body,

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and that is potentially a way forward to resolve the problem. Officials have worked with key partners, such as mortuary technicians, bereavement services and funeral directors, to develop a draft body release form designed to provide the NHS with reassurance about the appropriateness of releasing a body, which they currently achieve via the green form. My Department will seek views on the merit of such a form, and the contribution of key groups, such as funeral directors associations, will be vital. The consultation will make further relevant proposals, and when it is published in due course, I will welcome my hon. Friend's participation.

My hon. Friend made detailed points about the legislation and raised concerns about the potential conflict between legislation and guidance and concerns about employees seeking to comply with the law while under pressure to release a body. It is important that we respond to all the points she made, and I will ensure that we do so. I end by again thanking her for raising this important, sensitive issue. Whether this practice is a one-off or more widespread



—whatever its prevalence—it is important that it is dealt with properly and that this sort of thing never happens again.

*Question put and agreed to.*

**5.12 pm**

*Sitting adjourned.*