



Claims for older people and other vulnerable patients

- abuse and neglect

Daniel Bennett

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What type of patients ?

- The elderly – often those with dementia
- Mentally disabled – often autism spectrum disorder or Down syndrome
- Any patient who might have difficulty resisting abuse or reporting it, or in feeding or toileting themselves

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Abuse and Neglect

- Winterbourne View – physical abuse of mentally disabled
- Whipps Cross Hospital – physical abuse of elderly
- Worcestershire Acute NHS Hospital Trust – malnutrition and dehydration of elderly
- Stafford Hospital – general neglect of patients
- Northumberland, Tyne and Wear NHS Foundation Trust – face down restraint

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Abuse / Neglect

- *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*'. Definition of Elder Abuse - World Health Organisation
- Abuse/Neglect can include:
 - Assault / rough handling
 - Malnutrition / Dehydration
 - Left naked / in faeces / in cold bath / on floor
 - Over prescription of drugs
 - Unlawful restraint (equipment or physical)

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What type of claims

- Fatalities due to:
 - Dehydration
 - Malnutrition
 - Sepsis (from bedsores, pneumonia, bacterial infection)
 - Unlawful restraint
 - Unlawful Liverpool Care pathway
- Harm due to:
 - Assault
 - Neglect
 - Over prescription
 - Falls

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Fatalities

England & Wales 2015

- *C. difficile* 1,646 down from over 6,000
- MRSA 292 down from almost 2,000
- Malnutrition 391
- Dehydration 429 (an est/ave over 5 years)
- Pressure Sores 771 (ons 2012)
- Falls 3,662 (RoSPA 2016)
- Over prescription 1,800

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Comparison with other litigated causes of death in 2015

- Mesothelioma 2,515
- All transport 1,732
- Assaults 369
- Workplace deaths 144
- Fire & Smoke 279
- Pregnancy & Childbirth 63

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Abuse /Neglect - Elderly

- Alzheimer's society claim:
 - 150,000 overprescribed anti-dementia drugs
 - 1,800 deaths per year contributed to
- Kings College London research claim 227,000 victims of elder abuse in private homes
- CSCI/Action of Elder Abuse claim same again for care homes and hospitals, bringing total figure per year to 500,000

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Abuse/Neglect – mentally disabled

- Care Quality Commission now receive 500 calls a month
- Department of Health set up a review to establish any systemic issues in the provision of inpatient care for people with learning disabilities
- Unknown levels of assault, unlawful restraint and bullying

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Abuse/Neglect

- Few lawyers bring claims for the elderly and mentally disabled
- Few specialise in it as an area of practice
- Despite the obscenely high levels of death and abuse
- Obsession with high value claims

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Abuse/Neglect

Problems:

- Patients often not able to give evidence or there are complications with evidence
- Patients families often absent from area of care homes and hospitals

Advantages

- Many cases are "*res ipsa loquitur*"

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Breach of Duty - Assault

- *A v Hoare* [2008] UKHL 6
- *Fennelly v Connex* [Court of Appeal 11th December 2000]
- *Lister v Hesley Hall* [2001] 2 AER 769
- *Pollock t/a Flamingos Nightclub* [2003] EWCA Civ 887
- *Hawley v Luminar* [2006] EWCA Civ 18
- Strict liability of hospital/care home for intentional torts of staff

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Breach of Duty - Restraint

- The Human Rights Commission's investigation into the use of restraint on the elderly :
 - Blanket' restraint policies should be avoided: the assessment of risk and the decision to use restraint should be based on an individual's situation
 - If decisions to use restraint are taken, it must be the least restrictive option and undertaken for the shortest viable length of time.
 - Human rights can be infringed when public authorities are excessively risk averse as well as when they fail to act to prevent risk.

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Breach of Duty – Pressure Sores

- European Pressure Ulcer (EUPAP) Grading System:
 - Grade one - affected area of skin red in white people, and purple or blue in people with darker coloured skin.
 - Grade two -ulcer looks like an open wound or a blister.
 - Grade three - ulcer appears as a deep cavity-like wound.
 - Grade four - tissue necrosis. High risk of developing a life-threatening infection (sepsis).

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Breach of Duty – Pressure sores

- Waterlow system of scoring for risk
- Frequent moving of the patient is key to avoiding sores as well as the avoidance of lying in faeces and urine
- No tissue viability nurse will defend a case where a patient or resident has developed a grade 3 or 4 bed sore case
- Only defence to argue that patient could not be moved at all for medical reasons.

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Breach of Duty – Anti-psychotic medication

- Dementia often causes behavioural and psychological symptoms such as restlessness and shouting
- Over stretched care homes frequently use antipsychotic drugs as a first resort
- D of H research estimated that around two thirds of these prescriptions were inappropriate in the first place
- Once prescribed, prolonged continued use is almost always negligent, except in the most extreme of cases.

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Breach of Duty – Malnutrition & Dehydration

- No expert will defend death from malnutrition or dehydration
- Feeding weak and confused elderly patients is time consuming. Too often food is laid out and then collected without being eaten.
- Fluid and nutrition charts should be amongst the notes
- Patient's condition often evidence of breach of duty

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Breach of Duty - Falls

- All elderly patients should be considered at risk of falling
- Risk assessment required to cover cognitive impairment, balance difficulties, visual impairment, medication and prior history of falling
- Consider use of height adjustable beds, bed rails, observation, assistance for toileting etc
- Often difficult on causation

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Elderly claims - Fatalities

- General damages for death by sepsis, dehydration, starvation, falls or misprescription
- Funeral costs
- Statutory bereavement
- Dependency etc

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General Damages for a fatality

- Mesothelioma – 6 to 18 months severe pain and suffering
 - JC 6(C)(a) - £51,500 to £92,500
- Burn injuries then death:
 - *Fallon* [Kemp J3-013] awarded £18,900 where the claimant died 30 days after total thickness burns covering 50% of his body.
 - *Hawkins* [Kemp J3-017] awarded £8,150 for death 14 days after similar injury.

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General Damages for a fatality

- *G v Bolton Hospitals NHS Trust* [Lawtel 11/2/08] records a general damages award of only £250 for death from sleep apnoea over 1 night
- *Hicks v South Yorkshire Police* (1992) 2 All ER 65 – nil award
- Will depend on facts of every case but important factors are – duration of suffering prior to death, extent of suffering and awareness of suffering

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General Damages for a fatality

- Judicial College Guidelines [13th Edition, 2015]
- 1(A) – Full awareness following severe burns and lung damage for 4-5 weeks - £17,550 to £19,910
- 1(B) – Awareness for 3 hours, death 2 weeks later - £8,800 to £11,720
- 1(C) – Immediate unconsciousness, death 6 weeks later - £7,040
- 1(d) - Immediate unconsciousness, death within a week - £1,160 - £2,340

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General Damages for a fatality

- *S v Rotherham PCT* - Lawtel 31/8/2011 – reported settlement.
- Bed-bound patient, had pressure areas which were not checked or managed and she suffered a necrotic right heel ulcer which developed sepsis in the heel and septic arthritis of the right knee, as well as skin tears and pressure sores on her buttocks. Died from sepsis. Negligence 8th March to 4th July. PSLA: £8,000 (£9,330 RPI)

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General Damages for a fatality

- *BM v Somerset Care Ltd* – Lawtel 7/7/2014 – reported settlement
- Deceased had stroke and was admitted to care home for respite care. Death from fall and broken femur (16 July 2011) and then infection and death (27 August 2011). Case based on inadequate risk assessment. PSLA £10,435

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General Damages for a fatality

- *SP v West Hertfordshire NHS* – Lawtel 19/7/2013 – reported settlement
- *C.diff* contracted January 2011, death 15 days later. PSLA £4,282 (rpi)
- *Estate of C (Deceased) v Maidstone Hospitals NHS Trust* – Lawtel 20/3/2009 – reported settlement
- Death from clostridium difficile and about 3 weeks pain and suffering and death from renal failure and dehydration. PSLA: £4,346 (rpi)

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Other compensation for fatality

- Stat bereavement award - £12,980 – if surviving spouse
- Funeral
- If surviving spouse – dependency on pension
- If paying privately for care home, breach of contract claim for fees

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Damages for Assault/Neglect

- In each case, dependent upon facts
- Key is to establish some recognisable injury (eg bed sores, bruising etc)
- Not easy if simply alleging under-nutrition or discomfort and loss of dignity , unless separate medical condition has arisen
- Consider contractual claim (as no need to show distinct injury)
- Consider human rights claim

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Cases of misprescription

- ***M (A Child) v. Mistry Dispensing Chemists*** ([2002] 2 Q.R. 18) (Kemp L5-010) Negligent dispensing of anti-depressants causing headaches, nausea, dizziness, loss of appetite, constipation and thirst - Full recovery within 3-4 weeks – PSLA: £1,000 (£1,540 updated)
- ***Ward v Boots*** Lawtel 4/5/2011 – settlement – Over prescription of Zopiclone - hallucinations, trembling and anxiety for approximately four week – PSLA: £1,500 (£1,774 updated)

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Cases of misprescription

- **C v N** – Lawtel 24/08/2011 – reported settlement. Over prescription of Sulpiride causing tremors, confusion and mobility problems for 6 weeks and adjustment disorder for max of 6 months – PSLA £5,000 (£5,832 updated)
- **Evans v NPA** – Lawtel 17/6/2005 – reported settlement. Over prescription of Phenytoin dizziness, confusion and involuntary tremors, incoherent and poor concentration. Fell twice. About 1 year of symptoms - PSLA: £7,000 (£9,815 RPI)

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Claims for bed sores

- **Reaney v North Staffs NHS** Lawtel 19/9/2014 - Curt award. Claimant only 67
- Suffering as a result of the development of severe pressure sores leading to severe consequences of being bed bound as opposed to being self propelled in wheelchair.
- PSLA: £115,000 (£119,241)
- **Total award £2,894,814 (£3,001,571 RPI)**

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Claims for bed sores

- ***Gallagher v Heart of England NHS*** – Lawtel 16/12/2009– reported settlement
- PSLA: £18,000 (£22,258 RPI) for pressure sores following a period in hospital. Resolved within approximately 12 months
- *Lots of similar cases in Lawtel – 70 reported settlements ranging from £5,000 for short term mild sores to £80,000 plus for secondary consequences. Most between £15,000 and £25,000*

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Can complicated low value claims be profitable ?

- Ask an industrial disease lawyer:
 - Noise induced hearing loss
 - Hand arm vibration syndrome
 - Most RSI claims
 - Aggravation of back pain
 - Aggravation of asthma

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Can complicated low value claims be profitable ?

- Ask a public liability lawyer
 - Toxic inhalation injury (eg carbon monoxide)
 - Anaphylactic shock claims
 - Food or water poisoning claims
 - Holiday claims

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