Northern Ireland Assembly

Research and Information Service Briefing Paper

Paper 000/00 28 October 2015 NIAR xxx-15

Tim Moore

Mental Capacity Bill

Death of Kerrie Wooltorton

1. Introduction

This Briefing Paper has been prepared for the Ad-Hoc Joint Committee to Consider the Mental Capacity Bill, as the death of Kerrie Wooltorton has been spoken of during evidence sessions and the DHSSPS has drawn specific attention to the case when setting out its policy position regarding 'Advance Directives'. It is a tragic case around which much misleading commentary has been made, particularly in the press.

A short description of the key facts relating to the death of Kerrie Wooltorton is contained in Box 1 below.

Box 1

Kerrie Wooltorton was a 26 year old woman with a long history of psychiatric intervention and admissions to hospital, including detention under the MHA during the last year of her life[15], both for assessment (under s.2) and treatment (under s.3). From the age of 15 she had engaged in self-harming activities and was described as having an 'untreatable' emotionally unstable personality disorder. On 19 September 2007, Kerrie died as a result of deliberately consuming anti-freeze. On a number of previous occasions she has consumed anti-freeze but had (eventually) accepted treatment. However, on this occasion she refused treatment that, more likely than not, would have saved her life. Medical practitioners considered that she had capacity to refuse treatment and that there were no grounds upon which to treat her under section 3 of the Mental Health Act 1983. The coroner's verdict was that Kerrie did have capacity, and he apparently accepted evidence that there were no grounds for detaining and treating her under the MHA.

Source: The Coroner's Report[16]

[15] On 29 January 2007 and 2 February under s.2 and on 11 March 2007 under s.3.

[16] Summary of Evidence' presented by Mr W. Armstrong (HM Coroner Greater Norfolk District) at the Inquest into the death of Kerrie Wooltorton held on 28 September 2009.

Source: The Essex Autonomy Project
Briefing Document - Mental Capacity Act 2005 & Mental Health Act 1983 (Version 2)
Lead Author: Vivienne Ashley
http://autonomy.essex.ac.uk/wp-content/uploads/2011/08/EAP-Briefing-Document-MCA-MHA-v-2.pdf (accessed 23/10/2015)

2. Commentary

The Coroner's inquest into Kerrie Wooltorton's death, carried out in late September 2009, received significant press coverage. The BMA has noted[1] that this coverage was inaccurate and confusing. It was, perhaps, a continuation of the type of reporting which Baroness Ashton of Upholland[2] noted, during passage of the Mental Capacity Bill in 2005, had 'maligned an incredibly important piece of legislation'.[3]

The focus of the misleading press coverage was a letter which Kerrie Wooltorton brought with her when she was admitted to hospital on 17 September 2007. The letter

[1] BMA (2012) Medical Ethics Today: The BMA's Handbook of Ethics and Law (3rd Edition)
[2] The then Parliamentary Under-Secretary of State, Department for Constitutional Affairs
[3] House of Lords Hansard 25 Jan 2005 : Column 1171
http://www.publications.parliament.uk/pa/ld200405/ldhansrd/vo050125/text/50125-10.htm

stated that she wanted no life-saving treatment to be given if she *'…came into hospital regarding taking an overdose or any attempt on my life'*.[4]

The press cutting which has been provided to the Committee by the DHSSPS is an example of such coverage. The headline states:

> *Doctors allowed a young woman, Kerrie Wooltorton, to kill herself because she had signed a "living will" that meant they could have been prosecuted if they intervened to save her life.*

And the cutting goes on to note that:

> *It is thought to be the first time someone has used a living will to commit suicide.*[5]

The 3rd edition of 'Medical Ethics Today: The BMA's Handbook of Ethics and Law' notes, however, that:

> *Media coverage of the case was inaccurate and confusing, with several commentators suggesting that this was the first time that a 'living will' – an advance decision to refuse treatment – had been used by an individual wanting to commit suicide. There were even suggestions that the Mental Capacity Act 2005, which placed advanced decisions on a statutory footing, should be amended as a result.*
>
> *In fact neither the advance decision refusing treatment, nor mental capacity legislation, other than in assessing Ms Wooltorton's capacity to refuse treatment was applicable in this case.*[6]

The Coroner himself took steps to avoid such misunderstanding, by adding to the comments he had made at the inquest. He explained that:

> *The letter which Kerrie brought into hospital with her was not of itself binding. It was not an 'Advance Decision' under the Mental Capacity Act. It is wholly wrong for the impression to be given that I treated the document as determinative of the issue of capacity. Although it provided powerful evidence of Kerrie's wishes and intentions all the evidence had to be considered and that evidence was unequivocal.*[7]

[4] Kerrie Wooltorton Inquest Held 28 September 2009 – Notes of Extracts From Summing Up By Coroner William Armstrong – HM Coroner – Norforlk District (page 1)

[5] The Telegraph 'Suicide woman allowed to die because doctors feared saving her would be assault' (By Rebecca Smith, Aislinn Laing and Kate Devlin 10:33PM BST 30 Sep 2009) http://www.telegraph.co.uk/news/health/6248646/Suicide-woman-allowed-to-die-because-doctors-feared-saving-her-would-be-assault.html (accessed 22/10/15)

[6] BMA (2012) Medical Ethics Today: The BMA's Handbook of Ethics and Law (3rd Edition)

[7] Kerrie Wooltorton Inquest Held 28 September 2009 – Notes of Extracts From Summing Up By Coroner William Armstrong – HM Coroner – Norforlk District (page 6)

In other words, the doctors' hands were tied, metaphorically speaking, not because Kerrie Wooltorton had written an 'Advance Decision' but because she had the decision making capacity to refuse treatment.

It has been noted[8] that 'life-saving treatment could, however, have been permitted and administered if the conditions for compulsory treatment under the Mental Health Act (1983) had been satisfied, i.e.

(a) Kerrie was deemed to be suffering from a mental disorder of a nature and degree that merited detention;

(b) detention was necessary to prevent harm to self or others; and

(c) the treatment qualified under s.63 of the MHA, as treatment for the mental disorder.'

Doctors decided, however, that the first condition above was not satisfied and the Coronor's clarifying remarks[9] underlined that, in his view, there was no evidence that Kerrie was suffering from a mental disorder. These conclusions have been described as perplexing,[10] given the evidence presented at the inquest into her death.

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[8] The Essex Autonomy Project Briefing Document Mental Capacity Act 2005 & Mental Health Act 1983(Version 2) Lead Author: Vivienne Ashley (page 19)
http://autonomy.essex.ac.uk/wp-content/uploads/2011/08/EAP-Briefing-Document-MCA-MHA-v-2.pdf (accessed 26/10/15)
[9] Kerrie Wooltorton Inquest Held 28 September 2009 – Notes of Extracts From Summing Up By Coroner William Armstrong – HM Coroner – Norforlk District (page 6)
[10] The Essex Autonomy Project Briefing Document Mental Capacity Act 2005 & Mental Health Act 1983(Version 2) Lead Author: Vivienne Ashley (page 19)