

A Legal Perspective on the Health Committee's Report about Out-Of-Hours Care

February's inquest into death of Mr David Gray, killed by an overdose of diamorphine given by an EU doctor during an out-of-hours visit, raised grave concerns about out-of-hours care in the UK and triggered an inquiry by the House of Commons Health Committee. Clinical negligence experts, Anthony Collins Solicitors, who represent Mr Gray's family, comment on the Committee's report, issued this week, and review the legal complexities which surround the issues.

Associate Solicitor, Inez Brown begins; "This case has highlighted concerns about the use of EU doctors to deliver out-of-hours medical care in the UK; in particular the vetting and monitoring EU doctors.

"David Gray died because of a catalogue of failings within the out-of-hours system and sadly it is not an isolated incident, we are seeing an increasing number of similar cases. Had more robust procedures been put in place and followed, Mr Gray's death could have been avoided.

The Committee's report focuses heavily on the assessment of doctors' capabilities and considers what checks, if any, are being carried out currently to ensure that doctors from the European Economic Area (EEA) have the appropriate qualifications and the language and competency skills needed to do the job. The report also considers whether Strategic Health Authorities (SHAs) are undertaking the required monitoring to ensure that the Primary Care Trusts (PCTs) are conducting these checks effectively.

But why aren't more checks being carried out? The European Directive (2005/36/EC) which establishes the system for recognising professional qualifications across the EU makes it easier for professionals to practice their profession in other European countries. However that also means that under current legislation the General Medical Council (GMC) has to accept the qualifications of EEA doctors at face value and cannot check further to determine their capability or even if they have the language skills needed.

All of Europe is bound by this same Directive, preventing systematic language testing, but in the UK the situation has been compounded by the Medical Act 1983, which stops any medical professional working in the UK from having to undertake any form of language test. It effectively gold plates the European Directive and makes it more difficult in terms of language.

New arrangements for out-of-hours general practice were introduced in 2004 which shifted this responsibility for such checks onto the PCT, requiring them by law to review the language skills of applicants. A failure on their part to carry out these checks is illegal, yet sadly it is still happening.

The Health Committee's report acknowledges that the current provision of out-of-hours care is simply "not good enough" and must be improved. All are agreed that patient safety should take priority.

Amongst its recommendations it stressed how vital it is that, going forward PCTs carry out thorough checks on the clinical and language skills of EEA doctors and it reinforced the Strategic Health Authorities requirement to manage the performance of PCTs, ensuring that they are doing their jobs properly, carrying out the language tests on EEA doctors and assessing their fitness to practise.

Inez continued, "Sadly, through our representation of David Gray's family and other cases, we are well aware of the tragic incidents that have been caused by failings in out-of-hours care. A review of the current system is overdue and we welcome the changes proposed by the report and hope that the next government will put them into effect.

"However for there to be a fundamental change to the current out-of-hours system in the UK, the legal landscape which has shaped this matter needs to change. There needs to be a change to the 1983 Medical Act and to the European Directive, allowing the GMC to check the competency of doctors coming from the European Union.

"But changing the law takes time, so it is our hope that in the meantime, and without delay, PCTs put in place the proper procedures for language and competency tests to ensure that patients receiving out-of-hours care are safeguarded. This should be the paramount consideration for the Department of Health, not the freedom of movement of doctors across the EU."

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Please see accompanying briefing notes for more information.

Editor's Notes

Anthony Collins Solicitors

Anthony Collins Solicitors is a full service law firm with a national reputation for advising individuals, businesses, not-for-profit organisations, local authorities, and public sector bodies throughout the UK. For nearly four decades, it has been successfully combining market-leading legal expertise with a commitment to excellence and long-term relationships underpinned by a strong ethical position.

Chambers UK, the leading guide to the legal industry, recently praised the firm across its broad range of practice areas, singling out an outstanding 20 leaders in their fields.

Its Clinical Negligence team has also been recognised by members of the legal profession. In particular, the Legal 500 and Chambers UK guides recommend Anthony Collins Solicitors as one of the leading law firms in clinical negligence in the West Midlands.

Inez Brown, Associate Solicitor, is the lead solicitor acting on behalf of the Gray family working alongside the team's two partners, Tony Hall and Rankeshwar Batta. Profiles for each of these individuals are available at <http://www.anthonycollins.com/who-we-are/our-people.aspx>.