

DAY 6

GENERAL MEDICAL COUNCIL**FITNESS TO PRACTISE PANEL (SERIOUS PROFESSIONAL MISCONDUCT)**Monday 15 June 2009Regent's Place, 350 Euston Road, London NW1 3JNChairman: Mr Andrew Reid, LLB JPPanel Members: Ms Joy Julien
Mrs Pamela Mansell
Mr William Payne
Dr Roger SmithLegal Assessor: Mr Francis Chamberlain

CASE OF:

BARTON, Jane Ann(DAY SIX)

MR TOM KARK of counsel and MR BEN FITZGERALD of counsel, instructed by Field Fisher Waterhouse, Solicitors, appeared on behalf of the General Medical Council.

MR TIMOTHY LANGDALE QC and MR ALAN JENKINS of counsel, instructed by the Medical Defence Union, appeared on behalf of Dr Barton, who was present.

(Transcript of the shorthand notes of T A Reed & Co Ltd.
Tel No: 01992 465900)

A THE CHAIRMAN: Good morning everybody. First of all there are a couple of quick things. Our Panel Secretary, Christine Challis, is required elsewhere today so, very kindly, we have a replacement in the form of Ms Vasani – thank you very much for coming in to help us today.

B We have, as a Panel, both on Friday and this morning, acquainted ourselves with the notes on Patient G and re-read your opening on that. A small point: could I ask you to turn in the Patient G bundle to page 645? In my copy, at least, page 645 appears to be identical to page 646, although they are marked differently in terms of numbers. In addition you will note that page 645 and page 646 end with what appears to be an entry from Dr Barton dated 24 September and yet page 647 opens with what at first sight appeared to be an entry dated 21 May 1998 but which may very well be, and probably is, 21 September 1998. Thus somehow we seem to have got out of order.

C MR KARK: I am going to ask for the originals to be brought in so we can have a look at this. Pages 645 and 646, I think – I have actually taken my 646 out.

THE CHAIRMAN: So that is clearly just a clerical error but there is also some difficulty with the chronology of the entries.

D MR KARK: We will get the originals, but it looks as if for some reason Dr Barton had to swap onto another page, or did swap onto another page in error, so she starts on 21 September and then goes to another document for 24 September and then we are off and running, as it were, back on 647. We will get the originals and see if we can understand what has happened.

THE LEGAL ASSESSOR: You are intending to call Mr Stewart-Farthing and then read the witnesses – is that right?

E MR KARK: Yes. I have the original. It is, in fact, a single piece of paper, double-sided and I think I had better exhibit it. That is the best thing to do. I will exhibit it, if I may. I am going to suggest Exhibit C8a if that makes any sense, so that we know it relates to Patient G.

THE LEGAL ASSESSOR: Yes, it does. We will mark that, ladies and gentlemen, Exhibit C8a.

F MR KARK: In relation to documents like this which we exhibit, would you prefer us to retain them in a separate folder? I see the Panel Secretary nodding. Or would you like to take control of it as a Panel?

THE LEGAL ASSESSOR: I think neither of those, if I may opt for a third. I think it would be most appropriate if the Panel Secretary maintained a bundle of all such documents.

G MR KARK: Very well. Can I pass the document round?

MR LANGDALE: Sir, may I say something which may assist?

THE CHAIRMAN: Please do, Mr Langdale.

H MR LANGDALE: It is what we have just been dealing with. The date is indeed 21 September. I realise it looks as though it is a “5” but it is clearly the date of admission to

A Dryad and it may be – obviously it is a matter to be resolved in evidence – that if you look back at page 645 where the entry by Dr Barton is on the 24th, the preceding entry is, of course, a record made by Dr Lord which starts on the previous page, page 644 on the 21st – in other words, the same day as the admission date. It may be that Dr Lord would have kept her note at that time in order to write the necessary letter to the GP, or whoever, but this particular bit of paper would not have been in the hands of Dr Barton at the time the patient was admitted. That, I think, may be the answer but we need to resolve that.

B THE CHAIRMAN: Thank you, Mr Langdale.

MR LANGDALE: Sir, it may be that that is not right because it is the same sheet of paper that one can see photographs had to be put on, which may explain the gap, and so on. We can resolve it in evidence.

C MR KARK: What I will do is this. I think we had better exhibit both sheets. We will exhibit also with that the previous record, as the same exhibit number if we may, by Dr Lord of 21 September. That is also a double-sided sheet of paper, going back to 14 September. That is 643. We now have the originals – 643, 644, 645 and 646.

THE LEGAL ASSESSOR: And 647.

D MR KARK: Yes, and 647.

MR KARK: We will mark it C8a, originals of pages 643 to 647. (Documents marked)

MR KARK: If the Panel are ready, I will now call, please, Charles Stewart-Farthing.

CHARLES RODNEY STEWART-FARTHING, Sworn

E (Following introductions by the Chairman)

Examined by MR KARK

F Q Is it Charles Rodney Stewart-Farthing?

A It is, correct.

Q And Stewart-Farthing is hyphenated, so your name is actually Mr Stewart-Farthing?

A Yes.

Q I think you yourself are a retired naval officer?

A I am.

G Q I want to ask you, please, about your stepfather, Arthur Dennis Brian Cunningham, whom I think you knew as Brian?

A Yes.

Q Brian, we know, was born on Code A and I think he married your mother, was it, around 1977?

H A Yes, round then.

- A
- Q Thus he became your stepfather. Your mother, I think, died in 1989?
A Correct.
- Q And there is just one matter of relevance so far as your evidence may be concerned. That is that she unfortunately died of cancer and you were aware that towards the very end of her life she was on a syringe driver?
- B
- A That is correct.
- Q She was being delivered analgesia, particularly diamorphine. Is that right?
A Yes, it is.
- Q So you had come across syringe drivers in those unfortunate circumstances back in 1989?
- C
- A Yes, that is correct.
- Q I want to ask you a little bit about your stepfather whom I think you yourself have described as being a person who could be a difficult man?
A Oh yes, no doubt about that.
- Q Just to deal with his background a little bit, I think he had worked abroad prior to the Second World War, and then during the Second World War did he serve in the Royal Air Force. I think he crash-landed in France?
A Yes. In fact he worked abroad after the war.
- Q I am sorry – thank you. But during the course of the war – and this may also be relevant – he crash-landed in France and had a spinal injury. Did he have to have spinal fusion?
- E
- A Yes, he did. I think he was only the second such victim in the country, so it was rather experimental, but it worked pretty well for him.
- Q Then, in due course, he came back obviously to live in this country and where did your mother and stepfather live?
A Initially in Scarborough and then later they came to Gosport.
- F
- Q Did you yourself know the Gosport area?
A Yes. I was already living at Fareham nearby.
- Q Following your mother's death, we know that your stepfather, I think, stayed in various rest home.
A Uh-hum.
- G
- Q I want to move on to the late nineties. In July of 1998 we know that he was admitted to Mulberry Ward which is one of the wards at the Gosport War Memorial Hospital?
A Yes.
- Q And after that he was discharged to a home called the Thalassa, is it, nursing home?
A Yes, it is. Correct.
- H
- Q Did you used to go and see him when he was at the Thalassa?

- A A Yes, we did. We used to take him out when we could.
- Q And "we" is who?
- A My wife and I.
- Q How did you get on with your stepfather?
- B A Very tolerably well. I think I have to say, to be honest, he was not in favour of the rest of the family – my brothers and sisters – but I managed to cope with him quite well.
- Q Is it fair to say he was a fairly difficult man to deal with?
- A He could be. Not always, but he could be.
- Q And he had, perhaps typical of his age, as it were, fairly strong opinions about a number of things?
- C A Oh, no doubt about that, yes.
- Q I want to move, please, to a time when you went along to the Thalassa Nursing Home on 21 September 1998. I think you were taking him some of his belongings from his previous residence. Is that right?
- D A Yes, that is correct. He had moved from mostly rest homes rather than nursing homes; he had moved from one to another in the recent past. I was actually still in the process of moving him from one to another at the time. I was actually moving one of these boxes, unprogrammed. I was moving them when I could and when he could cope with emptying them and sorting them. That is what I did on the Monday morning, on 21 September.
- Q What happened when you arrived at the nursing home with the box?
- E A I saw whoever was in charge – I cannot remember who it was – and said I had a box for Brian in the car, could I deposit it in his room. And they said "He is not here. He is in the hospital" which I knew nothing about. I knew he had an appointment that morning, which is not unusual. He used to go to the day hospital on occasion.
- Q Is that the Dophin?
- F A At the Dolphin day hospital, yes. That morning he had been admitted and I knew nothing about it till I arrived at this nursing home.
- Q As a result of that information, did you take yourself off to the Gosport War Memorial Hospital where you had been told that he had gone?
- A Yes. I left his box in his room and went immediately there, yes.
- Q I think you found that he had been admitted to a ward called Dryad Ward?
- G A Yes, that is right.
- Q And did you go and see him in Dryad Ward?
- A I did.
- Q All right. What sort of state was he in when you found him?
- H A Perfectly normal as I had previously remembered him. He was normally alert and lying on his side a bit. I asked him what he was doing, and he said, "I've got a sore butt." I knew he had a sore butt because he had mentioned it previously in a telephone

A conversation, I think it was. And they decided to take him in for aggressive treatment.

Q When had you see him prior to this when he had been at the Thalassa? Can you remember how long before you had seen him?

A It might have been a couple of weeks. I was working in London at the time and I could only see him at all at weekends, and usually it was just for a few hours.

B Q Up until this point, up until he got to the Gosport War Memorial Hospital, when you had seen him a few weeks before, what had his mental state been, for instance?

A I did not notice any serious deterioration in his mental state. It was perfectly normal, as I said. Lucid and able to hold a conversation.

Q I do not think he was a very big man, was he?

C A He was for a long time overweight, I would say, especially with a disability, but he coped with that. Gradually he got weaker and he lost weight.

Q When he was at the Thalassa, how would you describe his build?

A I think by then he was quite frail. He had lost a fair bit of weight and he was quite frail, unable to get around in the way that we had been used to him getting around.

Q Was he still mobile?

D A I do not think he was on his own, no. No. I remember pushing him around in the wheelchair when we took him out occasionally, although he could obviously get out of it and transport himself to a restaurant chair, if you see what I mean – but we had to take him around in a wheelchair.

Q Let us go back, then, to the 21st. You went in and you saw him. Was he in a ward or in a private room, in a room on his own?

E A In a private room, yes. Sorry – where?

Q In Gosport.

A In the hospital?

Q Yes.

F A He was in what I think was a four bed sub-ward.

Q Was there anybody else in the ward?

A No. He was the only one in there, yes.

Q He was able to talk to you?

A Oh, yes.

G Q He told you, as he put it, that his butt was a bit sore?

A Yes.

Q You mentioned also that he had been admitted for aggressive treatment. Is that something you have read in the notes since or is that ---?

A I think I read that, yes – those words. But yes, I knew he was in for treatment and it was a bed sore. He told me that.

H

A Q It is fair to say that since these events, you have had access to his nursing notes and you have read through his medical notes. Is that right?

A To a large extent, yes. Those I have seen, that I have been allowed to see – put it that way.

Q On the 21st, how long do you think you spent with him approximately?

B A Probably about an hour in the hospital. I was actually on the way to London and I delayed leaving the area. I took the opportunity of moving one of his boxes before I travelled and so consequently my departure from the area was delayed by finding him in the hospital.

Q When you were with him did you see him eat anything or drink anything? Can you remember?

C A No, nothing whatever.

Q When you left, did he ask for anything in particular?

A Yes, I asked if I could get anything for him from the nursing home because of his rather unexpected admission, or anything else for that matter. And he said no, he had everything he wanted except perhaps I could get some chocolate for him and a box of tissues. One of the symptoms of his Parkinson's was the moisture on his lips, and he was very conscious of that. It was more or less habitual, I suppose, to wipe his lips frequently.

D Q Did you go off and get him some stuff?

A Oh yes, I went to the shops, and then returned to the hospital with a supply to last a couple of days. This was the Monday morning. I was coming back on the Wednesday. I just bought enough to last a couple of days.

E Q You took him his chocolate and then you were going to leave the hospital. Did you speak to anybody before you left?

A Yes I asked to speak to the doctor who had admitted him and I was told that I could not do that; it was Dr Lord, who would not be back until the following Monday, but an appointment could be made for me to see her then. It was also said there was a visiting doctor who would be in later in the day, at which point I explained that I was going to London, and I would not get to see her either. Nurse Hamblin then explained to me the situation.

F Q We cannot hear everything that Nurse Hamblin said to you, but, in short, did you understand that your stepfather had a sacral sore? LORD

A Oh, yes, she said it was one of the worst sores she personally had seen and I ought to take action and complain against the nursing home. HAMBLIN

G Q That was the Thalassa?

A The Thalassa.

Q For allowing him to get into that state presumably?

A Yes, that's what the implication was and I wrote a letter to the Nursing Home Inspectorate on the Wednesday, 23 September.

H Q What happened the following day?

A A Well, I was in London and I initially telephoned the hospital myself, could not speak to anyone of consequence. They said they would call back, which they did, and I was told that Brian --

Q Let us see if there is any objection to this. I would have thought we could have it.

B MR JENKINS: (Nodded in agreement)

MR KARK: Yes, you tell us what you were told.

A Brian had become aggressive to the staff, abusive, and they had had to give him something to quieten him down. And I fully understood that Brian could be abusive and aggressive to staff; there was nothing -- I said as a result not to be too concerned I would be there the following day and I would have strong words with him and sort it out.

C Q Because you had a relationship with him where you could talk to him.

A Yes, person to person I am sure we would have got through and quietened him down myself.

Q Had you been aware that when he was at the Thalassa that there had been some bad behaviour there as well?

A Actually, no, I was not, I was not aware of that.

D Q Okay. Tell us, please, about the following day. Did you go back to see him at the hospital?

A On the Wednesday?

Q Yes.

E A Yes, I did. As soon as I could I collected my wife from Fareham on the way to Gosport and we went together round about lunchtime.

Q This would now be the 23rd?

A The 23rd, yes.

Q Did you go up to the same room to see him?

A Yes, I went to the same place and he was unconscious.

F Q Did you have try and speak to him?

A Well, of course, yes, but it was pointless, you know, the man was unconscious.

Q Was he rouseable?

A No, he was not. Indeed, the last time I spoke to him was the Monday morning before I left.

G Q It may be obvious, but was there a significant difference between how he had been when you seen him two days before?

A A totally different person. He had gone from being a normal person who could converse to someone who was totally comatose.

H Q When you had seen him on the Monday before he said that he had had a sore butt. Had he complained otherwise of pain?

A A No, he had not. In fact he did not complain about pain when I saw him. He was not in any pain in the way that you describe it. If he had I am sure he would have said something.

Q You said you had an hour with him. During the course of that hour, did he indicate to you at any stage that he was in very significant pain?

A Not the slightest, no.

B Q You found on the 23rd that Brian was unconscious and unrouseable, did you discover why?

A Yes, I did, I discovered, for whatever reason I went to other side of the bed and discovered the syringe driver.

Q You knew what a syringe driver was?

C A I knew instantly what was going on quite frankly and I went berserk. I got very, very angry. I demanded to see the person responsible in the hospital at that time and we had a row I am afraid.

Q Who did you speak to?

A It was actually Hamblin in the end. The doctor was not available of course and she was the most senior person available. HAMBLYN

D Q What did you ask to happen?

A I asked for it to be removed immediately so I could speak to Brian. Things were beginning to add up in my mind. One thing you have not asked me, which is relevant, that when I first went to the hospital to find Brian on the Monday morning --

E Q I am going to stop you. There is a reason I did not ask you, all right. We can only hear what you directly saw and heard.

A I am going to tell you something I heard, and I think it is relevant I am afraid.

Q Well --

THE LEGAL ASSESSOR: Perhaps I may assist here and really support Mr Kark in this.

F A Sorry, I ca not hear what you are saying.

THE LEGAL ASSESSOR: If I may interrupt here as the Legal Assessor and really support Mr Kark in this. One understands of course very much the strong feelings of Mr Stewart-Farthing, but the Panel is, I am afraid, obliged to stick to rules of evidence. It does not really have a discretion about that here at all. It is important I advise that, although one understands the strong feelings very much, that Mr Stewart-Farthing does restrict himself to the questions directly asked by Counsel and, in due course, by the Panel.

G THE WITNESS: I am not sure I heard all that, but are you saying I am not to say any more about that subject?

H MR KARK: This Tribunal runs by criminal evidence rules. There is a rule about hearing evidence of what somebody else said to you, unless it is in very particular circumstances. I know you are very keen to tell us about a particular comment that was made, but it is not admissible.

- A A Why not?
- Q Well, you have to accept it from me--
- A I am afraid it formed my opinion at that time, which is very relevant.
- Q Well, I am going to move on and I am going to ask you how things carried on with Nurse Hamblin.
- B A Well, I trust the Panel will ask me later what I am talking about.
- Q We will see. You had a conversation with Nurse Hamblin and you asked her to stop the syringe driver? *HAMBLIN*
- A I did.
- Q Did she comply with that?
- C A No, she did not.
- Q How did that progress?
- A She told me that only a doctor could authorise its discontinuation.
- Q All right. It follows from that that you wanted to speak to the doctor.
- A Of course.
- D Q Right. Did you get an opportunity of speaking to Dr Barton that day?
- A No, I accused Dr Barton -- I accused Nurse Hamblin of killing my stepfather and I was told that she would speak to the doctor and would come back to me later, at which point from nowhere came the hospital vicar who invited me into her office, my wife and I, and she told me about death being part of life and rubbish of this nature, which was quite obvious to anybody. *HAMBLIN*
- E Q Did you get an opportunity of speaking to Dr Barton?
- A I was told she was supposed to be coming later in the day. After my interview with the vicar, Hamblin reappeared and said Dr Barton would not be appearing that day after all, she would be coming the following day.
- F Q Right.
- A Which would be the Thursday.
- Q And that was despite the fact you had made it very clear that you wanted the syringe driver to stop?
- A Absolutely.
- Q All right. Tell us what happened.
- G A When?
- Q After that.
- A Well, I had no choice but to wait as long as we could before we went home ourselves for the night, came back the following morning and waited the rest of the day for Dr Barton to show up which happened about 5 o'clock on the Thursday as far as I remember, late afternoon anyway.
- H

- A Q During the whole of that time of course your stepfather remained on the syringe driver. How much of that time did you remain with him?
A All day.
- Q At any stage did he become conscious?
A Not at all, no. The last opportunity I had to speak to him was the Monday morning before I left, he was totally unconscious after that.
- B Q Tell us about your meeting, please, with Dr Barton on the evening of the 24th?
A Well, I very calmly asked her, I told her I wanted to speak to my stepfather, "would you please suspend the syringe driver to enable him to come round so I could have words with him?" I wanted to ask him if there were any last wishes, realising that he was dying - in fact she told me quite bluntly that he was dying from the poison emanating from his bed sores is what I was told. I also wanted to ask him if he realised what was happening to him and was he happy with that. If I had known that I would have walked away at that time. But I was not allowed to ask those questions.
- C Q You wanted an opportunity of confirming with Brian that the treatment that was being given to him was the right treatment?
A Absolutely.
- D Q Which was to keep him unconscious?
A Absolutely.
- Q Dr Barton said what to you?
A She refused bluntly and said she could not authorise the removal due to the pain he would experience at which point I accused her of murdering him and the interview terminated rather quickly after that.
- E Q Was there any discussion about the responsibility of lowering the dose so that he could become conscious?
A Not at all.
- Q You accused Dr Barton of murdering your stepfather. Presumably that brought the interview to a fairly abrupt end?
F A Yes, it did.
- Q Did you return to Brian's bedside?
A Yes, we stayed there, apart from going home to sleep ourselves, we stayed there until he died, which was the inevitable as well, I was never going to speak to him again. There was no point in pressing it any further.
- G Q Were you there at any stage, can you remember, when he was moved by nurses? Did you remain in the room?
A I do not think I remember that happening personally, no.
- Q Did you see from him any sign of pain or increased pain?
A None whatsoever, no.

H

A Q We know that Brian's death was recorded as 23:15 hours on 26 September.
A Yes.

Q Did you see him that day?

A Oh, yes, we had stayed with him all day again and we left I think sometimes in the early evening, I imagine. We were certainly back at Fareham, we had eaten and were back at Fareham and we got the telephone call to go to the hospital immediately.

B Q When you got to the hospital--
A He was already dead.

Q I think following this, and I am not going to spend a lot of time on this, did you see the Death Certificate?

C A On the Monday morning following I collected the Certificate of Death - I do not know what exactly you call it - but the Certificate of Death from the hospital in a sealed envelope and took it to the Registrar, and the normal Registrar was not actually there, it was a deputy that was standing in. Would you like me to go on?

Q Yes, certainly.

D A She looked at the certificate and said "do you know what he died of?" I said "no, please tell me" and she said "Bronchial Pneumonia". I said "that is utterly ridiculous. There is nothing wrong with his bronchial system whatever".

Q I think you challenged that?

A Of course.

Q Did you ask for a post mortem?

E A Yes, I did, which was eventually carried out under duress I think. The coroner was not at all happy for me asking for a post mortem, and I wanted a test done for drug overdose. And the following day when it was done no such tests were done at all. I spoke to the pathologist afterwards and he said he was not asked to do any tests of that nature. He could only act on the coroner's directions and the coroner had no intention of carrying out toxicology tests at all.

F Q You wanted a toxicology test?

A Of course, that's the reason why I asked for a post mortem.

Q And none was done?

A None was done.

Q Thank you very much. Would you wait there, please?

G Cross-examined by MR JENKINS

MR JENKINS: Hello, Mr Stewart-Farthing.

H A Just a point, I would like to express some objection, I am afraid, Mr Chairman. Mr Jenkins was at the coroner's inquest and questioned me there, and he is quite apt to throw in slanderous personal comments which I objected to at the time, and I have no intention of subjecting myself to on this occasion. If you ask him to please restrain himself to direct questions I will try and give direct answers, but nothing more.

A THE CHAIRMAN: Well, I am sure that in these surroundings there will be no slanderous questions put to you. This is a very experienced member of the Bar and I would hope and expect that we will see from him absolutely the standards that one expects.

A Yes, it did not show at the coroner's inquest.

B THE CHAIRMAN: Well, I am afraid I was not there and I have no access at this time to what may or may not have been said. I note what you say, and I am sure that he also notes what you have said, and we will proceed and I hope we will get through the process without any difficulty.

A Thank you.

C MR JENKINS: Would you like the Panel to see the transcript of my cross-examination of you in the coroner's inquest?

A I have got no concern at all about that.

Q Because that would either bear out or refute what you have just suggested, would not it, Mr Stewart-Farthing?

A If you want to show it, please do. I have got no preference whatsoever.

D MR KARK: With the greatest respect, he is just challenging the witness to an argument. I cannot see how that sort of invitation is going to help this Panel in any way in relation to the issues it has to decide.

THE CHAIRMAN: I agree. Thank you, Mr Kark. Please confine ourselves to the issues that are in question here.

E MR JENKINS: I think what you have suggested in your statement to the police was that the coroner's office was corrupt in the way in which they approached a post mortem for your stepfather?

A I came to that conclusion as a result of what was not done in light of the evidence that was facing me, yes.

F Q What you asked for was a post mortem and that was done. The pathologist who undertook the post mortem came to exactly the same conclusion as the doctor, Dr Brook, who had certified your stepfather's death, namely that the medical cause was Bronchial Pneumonia? *Brook*

A Yes, but it was artificially induced Bronchial Pneumonia as I now know.

Q Do you accept that it was Bronchial Pneumonia?

A I have got no choice, but I still think he died from an overdose of drugs.

G Q Yes.

A Indeed the drugs caused the Bronchial Pneumonia.

Q What you have suggested in your statement is that this was a conspiracy involving doctors, nurses, a corrupt coroner's office were the individuals who caused the death, and who were aided and abetted by Dr Brook who had signed the Death Certificate, and had indeed treated your stepfather? *Brook*

H A I suggested that, yes.

A
 Q Do you think the hospital vicar was in on this?
 A I do not know about her. I feel that she has been manipulated possibly as well, yes, quite possibly.

B
 Q Your stepfather deteriorated quite considerably over the year 1998 and the months leading up to his admission to the War Memorial Hospital, did not he?
 A Yes, he did.

Q He was seen fairly regularly on approximately a three-month basis by Dr Lord during that last year? Lord

A Yes, that's correct.

C
 Q Would you agree? I do not know if you were there for any of those assessments--
 A No.

Q --or whether you simply read the documents at a later stage.

A No, I was not there.

D
 Q Sir, I know the Panel have the records, but the first assessment in time by Dr Lord is at page 140. I do not need to take you to it, but I will just give you the reference. The next one in time is three months later, this one in June 1998 and the letter is page 134. I am going to invite people to turn that up. The documents are just in front of you if you want to look at them, Mr Stewart-Farthing. You do not have to look at them at all if you do not wish to. Lord

A I have no need to look at anything. It is embedded in my mind, the whole process.

E
 Q That is fine. The Panel are dealing for the first time today with these medical records. What Dr Lord says in the second paragraph was that on that occasion in June, having last seen him in March, she was most struck at the amount of weight Mr Cunningham seems to have lost since she last saw him. Would you agree that physically there was that deterioration in the first half of 1998?

A I think I have already said that I think he had lost weight, yes.

F
 Q Again, just for the sake of completeness, the next time that Dr Lord saw him we have two references, one is her clinical notes at page 92, and page 98 is the letter. Again, the Panel have read it before you started giving evidence, Mr Stewart-Farthing, but one sees at the bottom of the letter, page 98, that Dr Lord anticipated reviewing Mr Cunningham at the Dolphin Day Hospital on 14 September to monitor his Parkinson's disease and other matters. Lord

A I imagine you are correct.

G
 Q We have heard the suggestion from Mr Kark that there may have been some problems at the Thalassa Nursing Home, but you were not aware of those?

A No, I was never informed, I do not believe, of any problems.

H
 Q How often would you see him at the Thalassa Nursing Home?

A I would say it was probably no more than once a fortnight. Perhaps a bit more on some occasions. I cannot remember what I was doing in 1998, to be honest with you. I may have been aboard at times for a few weeks. I just do not know.

- A Q If the Panel were to turn to page 322 they can follow the chronology. Mr Cunningham was seen at the Dolphin Day Hospital on 14 September 1998 and was asked to attend again on Monday 21 September for review by the doctor. He was told to bring everything all his medications with him. Lord
- A Is that the statement where he told Dr Lord he wished to end his life?
- B Q I was not going to deal with that.
- A Well I am, because that is something I discovered during the inquest. I did not know about that. My step-father actually asked Dr Lord to end his life for him. Lord
- C Q I am not going to ask about that. If people want to turn on over a page they see the clinical notes for 14 September. They are also at page 643. There is actually quite a lot of repetition in this bundle. We go on to page 644, 21 September, when he is seen by Dr Lord at the Dolphin Day Hospital but, as you have told us, Mr Stewart-Farthing, you were not aware that that was due to happen. Lord
- A No. I knew he had an appointment but as far as I was aware it was just another review of his Parkinson's medication.
- D Q Yes.
- A That is something that has always been tinkered with, I have to say. His medication was the reason why he moved from one rest home to another. I think there are a lot of misleading statements around the various literature which imply he was unhappy with the treatment he was being given. It is not at all true. He was actually hallucinating very badly in his last few months. He thought there were ghosts in his room and snakes at the bottom of his bed and things of that nature and could not settle. That is why he was moving from A to B to C to D.
- E Q We have Dr Lord's note who on 21 September, again, page 644, describes him as "very frail". Would you agree or disagree with that? Lord
- A I think he was frail but he was certainly normally mentally lucid and able to manage a conversation.
- F Q I am talking physically, as I anticipate Dr Lord was when she called him "very frail". Lord
- A I would not disagree with that.
- G Q All right. We know that some tablets were found in his mouth on that day, some time after they had been given to him.
- A I do not know what you mean by some time. The fact is tablets dissolve. How long had they been there? You make a big issue of nothing, I think.
- H Q The issue was they had not been swallowed, I think.
- A It is quite likely he had not been given any water to swallow them with, I suggest.
- Q There was a concern, I think, at that point about giving him oral medication and the risk that that might pose. Did anyone say anything ---
- A Dr Lord produced a perfectly normal care plan on the Monday morning of 21 September, which advised Oramorph at 5-10 mg if required. He was given a 5 mg tablet at two-fifteen in the afternoon which apparently had the desired effect, and he was given a 10 mg tablet at eight-fifteen in the evening, and he was noted Lord

A as being comatose by ten o'clock and given the syringe driver at eleven-ten that evening.

Q I was not going to go through all the medical records ---

A Well I am afraid I am because it is very relevant to what happened.

B Q There we are. The prognosis was said to be poor by Dr Lord.

A What does that mean? It is a subjective statement. Lord

Q I hope we will hear from her, but I suggest what it meant was just that.

A What is poor? What is good? What is normal? What is fair? It is a ridiculous statement. It does not mean anything.

C Q He was quite a proud man, I think, your step-father?

A I would say he was proud, yes.

Q What did you know of the detail of the medical problems?

A I knew he had a "sore butt", as he described it.

Q What did that mean, as far as you understood?

D A I knew he had Parkinson's for about fifteen years, which had progressed very gradually over that time. It started off with a very minor finger tremble. It was controlled. Dr Lord, I believe, had it under control. I knew he had constipation at times, as we all do. Nothing unusual about that. He also had a kidney stone removed at some point. I remember that. Again, nothing unusual, I do not believe. I do not think there is anything else of significance I can think of.

E Q What did you understand the "sore butt" related to? Did you know it was a bed sore?

A Yes, I think I did know but I had no idea how serious it was. I understand from Nurse Hamblin it was a very serious bed sore. The most serious she had seen, according to her.

Q It was so bad she was suggesting that would be appropriate for a complaint to be made to the nursing ---

A Yes, she was, and this is what I did, as I said.

F Q Did you know it was photographed because of the concerns?

A I did not know that, no. I know now because the photographs are in the medical records. I have seen those.

G Q Did you know that your step-father was given Oramorph before the dressing on that bed sore was changed?

A On the Monday?

Q It is page 861. You do not have to look at the medical records but I hope the Panel will.

A Are we talking about 21 September?

H Q Yes.

A I guess that is one of the reasons they gave him the Oramorph because of the likely pain due to the dressing they were putting on, I suppose. If it was

A aggressively treated I imagine they were putting something on that would sting rather. You know?

Q On 21 September, the day he was admitted from the Dolphin Day Hospital, part of the War Memorial Hospital, he was noted to have a large necrotic sore on his sacrum by a nurse called Shirley Hallman and seen by Dr Barton.

HALLMAN

A On the 21st?

B

Q Yes.

A That is what you are telling me, yes.

Q He was given Oramorph 5 mg before the wound dressing was changed.

A This is some time in the afternoon. I know he had the 5 mg, I think it was at about two o'clock, plus or minus fifteen minutes.

C

Q When did you stay till that day, do you remember?

A I said I had to leave to travel to London. I left around midday, again, plus or minus half an hour. I cannot remember exactly when.

Q You had gone, if his dressing was dealt with, at ten to three in the afternoon?

A Yes, I was away.

D

Q You cannot tell us what his state was after that time?

A Only what the nurse I spoke to told me the following morning.

Q Did they tell you what his state had been for the afternoon and the early evening?

A No, I was just told very generally that he had become aggressive to staff, very abusive and they had to give him something to "quieten him down" were the words they used.

E

Q Was that a description of what had taken place on the 22nd or whether he had been agitated on the 21st?

A As a result of my leaving after I left is what I was told, on the 21st.

Q I think there had been problems with your step-father. Again, he was a man of strong opinions. Put bluntly, he was a man with racist views.

F

A I think he was an old-fashioned colonialist.

Q We can put it in different ways but the result may be the same. Would you agree?

A He worked on the tea plantations in Ceylon after the war and he had a very firm master/slave relationship with the people at that time. I am aware of that.

G

Q Dr Lord was from that part of the world originally.

A Yes, she was.

Q Were you ever present when Dr Lord and your step-father were in the same room?

A No, I never met Dr Lord. She managed to avoid meeting me.

Lord

H

Q When you were told over the telephone on the 22nd that your step-father's

A behaviour had been a bit out of order, what did you think was being referred to?
 A I just thought he was being his normal - I say normal, difficult self. That is not what I mean. I would say he is quite reasonable most of the time but he could very quickly turn on someone if they were doing something to him that he did not like, and I suspect that is what had happened. I suspected the dressing they put on his wound was hurting him and I imagine the staff were being rather - I would not say cruel, that is the wrong word, but being very firm with him which he maybe would not appreciate.

B
 Q If he was turning on staff, what did you think that referred to? That he was doing things physically or was saying things that people might object to?
 A I did not know and nothing was said to me at that time.

C
 Q Are you sure nothing was said to you?
 A I have just told you.

Q I am entitled to ask you, Mr Stewart-Farthing, and I am asking, are you sure nothing was said to you about ---
 A About what?

D
 Q I suggest you were told, effectively, what the Panel have at page 861, that Mr Cunningham had tried to wipe sputum onto a nurse, saying he had HIV and was going to give it to her.
 A I cannot remember the words that were used, but certainly his behaviour had been totally unacceptable.

E
 Q It was not just what he was saying though, was it?
 A I really cannot remember in detail. It was a telephone conversation eleven years ago.

Q You were told as well that he tried to remove his catheter and empty the bag. Do you remember that?
 A I cannot remember that either.

F
 Q He took his sacral dressing, removed it and threw it across the room.
 A I think I remember something about that, yes. That suggested to me the dressing was hurting him in some way, but, clearly, his behaviour was unacceptable and I said, "Please do not be too concerned. I'll be back tomorrow morning and I'll have strong words with him, if necessary".

G
 Q I think there were a multiplicity of problems with your step-father. Some of them physical, like his lack of mobility because of his war injury, because of his bed sores, because he was completely immobile. He had been assessed for his mobility. You have heard of the Barthel score, have you not?
 A I have heard about it. I do not know much about it.

H
 Q The Panel have it at page 867. This is an index to show how much someone can do for themselves. At that stage on that day, 22 September, is this not your understanding, that Mr Cunningham, effectively, could do nothing for himself?
 A No, he was perfectly capable of eating and drinking and having a normal conversation. Those three things I know for sure there was no problem with.

A Q I suggest the view from the medical professionals was rather different. Part of his problems was his Parkinsonism and there were difficulties in controlling that in the past. You have told us ---

A I said there were drug alterations which made his hallucinations worse on some occasions and had to be frequently changed to try and overcome that problem.

B Q Was it not explained to you that if Mr Cunningham was removing his catheter or ripping off bed sores that that caused a real problem in trying to maintain his position and improve his bed sores? To treat them properly.

A I am sorry. I was not there.

Q Was that not explained to you?

C A At that time I had a telephone conversation and I was told his manner had been unacceptable and that they had given him something to quieten him down.

Q They were concerned for his health and the nursing of his bed sores. That was what you learned, was it not?

A I have learnt a lot since. A lot came out at the inquest which I was not aware of.

D Q He was still uncomfortable when being moved and treated by nurses. You were aware of that too, were you not?

A No, of course not. I said he was unconscious when I next saw him.

Q You say, "of course not".

A He was unconscious when I next saw him and he never regained consciousness after that.

E Q You had conversations with Dr Barton.

A A conversation with Dr Barton.

Q What we have are entries for 23 September ...

A Which is the Wednesday.

F Q ... to say you saw Sister Jill Hamblin and Staff Nurse Freda Shaw. Do you remember that?

A I remember Hamblin definitely but not Shaw.

HAMBLIN
SHAW

Q Your previous experience with a syringe driver was in relation to your mother who, I think you told us at the inquest, had had cancer for nine years before she died.

G A I do not think I said that, but she certainly had cancer for some considerable period. She was in and out of Queen Mary's Hospital in Portsmouth perhaps two or three times.

Q What you told the inquest, is this right, was your mother was on a syringe driver for six days in the period just before she died?

H A Yes, she was put on a syringe driver on the Monday morning and died on the following Saturday morning. It may be coincidence but Brian was put on a syringe driver on the Monday late evening and died Saturday late evening. Almost to the hour between them.

- A
- Q What you told us at the inquest was notwithstanding the cancer your mother had had for years, it was your view that it was the syringe driver that had killed her.
- A In my mother's case?
- B
- Q That is what you told us at the inquest.
- A I learnt a lot about my mother's case, I said.
- Q I am sorry. I missed that.
- A I learnt about syringe drivers from my mother's experience with them.
- Q It was your view, was it not, that syringe drivers meant death rather than the treatment of pain or ---
- C
- A I came to realise they could be seriously misused, quite frankly.
- Q That is why when you were told by the nursing staff that your step-father was on a syringe driver for pain and for treatment to control his symptoms that you became very angry?
- A Yes. It was total overkill.
- D
- Q So you were accusing Sister Hamblin of murdering your step-father.
- A I did not use those words with her.
- Q You told the Panel that you did.
- A I did not. I told the Panel that I accused her of killing him.
- Q I beg your pardon then. I thought it was murder. Was it just murder with Dr Barton?
- E
- A Yes, it was.
- Q We have an entry dealing with night staff ---
- A Uh-hum.
- Q --- on 24 September.
- A Uh-hum.
- F
- Q The night staff were reporting that Brian was in pain when being attended to, and also in pain with the day staff?
- A Well, they would. They were pushing up the diamorphine levels without reason, in my view. By then I had already given up hope of ever seeing him. After, I spoke to Dr Barton, it was quite obvious to me Brian was being put away and there was nothing more I could do about it. I resigned myself to that.
- G
- Q Did you make any comment on the reports from night staff?
- A I have no comment to make.
- Q Forgive me. And day staff?
- A I discovered ---
- H
- Q Excuse me. Can I ask the question?

- A A Yes.
- Q Do you make any comment on the reports from night staff and also day staff that your stepfather was in pain despite the medication that he was on?
- A I think that is a fictitious statement. The man was unconscious so how would they know he was in pain?
- B Q Then you spoke to Dr Barton on that date, 24 September?
- A No. Yes, there was – on the 24th, yes.
- Q And you accused her of murder?
- A Yes.
- C Q Did you think that the conversation would be a long one after you made that accusation?
- A Of course not. I expected her to be a bit more sympathetic to my situation, and to have at least interrupted the process, perhaps using different analgesics, or whatever, to allow me to have a final conversation with him, but that was not on offer and it was made quite clear to me.
- D Q Did you think that if your stepfather was on medication because of pain, and the assessment was that he needed the medication that he was on, it would be cruel to put him in pain?
- A No, because I think the pain was mostly imagined. They were making a big issue about pain. If he had been in serious pain, I would have known on the Monday, I am sure about that. Brian was not slow in coming forward when there is something wrong, I can assure you.
- E MR JENKINS: Thank you very much, Mr Stewart-Farthing.
- Re-examined by MR KARK
- Q The Barthel score that my learned friend was relying on – can I just confirm. Is it the one on page 867? Yes. Mr Stewart-Farthing, you have been asked about the Barthel score showing zero capability on 22 September 1998?
- F A I do not know what that means. Zero capability is, again, subjective. The thing is ---
- Q Wait for the question.
- A When you say what “zero” means, I will accept it, but I cannot accept it as it is.
- G Q What I was going to ask you is this. We know from the records that in fact your stepfather had been on a syringe driver since the night before, because that was started at ten past eleven in the evening, so when a Barthel score is taken from him on the following day, the 22nd ---
- A You would expect it to be zero, would you not?
- Q --- he is not able to do much.
- A Yes.
- H Q But when you saw him on the 21st, did you think he was capable of feeding himself?

A A Oh, of course. Yes. He was perfectly normal in that respect, yes.

MR KARK: Sir, there is a matter of law I think that arises because I stopped Mr Stewart-Farthing from dealing with a comment that was made to him when he went to the hospital, 21 September, because it was then, it seemed to me, irrelevant. The way he is being cross-examined is to put to this witness that he has made serious allegations effectively without foundation.

B MR JENKINS: Can I help? I do not object if that comment comes out.

MR KARK: Thank you very much. (To the witness)

MR JENKINS: Mr Stewart-Farthing wants to say it, so I do not object.

C MR KARK: Not only that. It seems to me whether the witness wants to say it or not, it is now admissible so, Mr Stewart-Farthing, I am going to ask you what the comment was that you were keen to us about and how it came about?

A I am just trying to tell the whole story.

Q I understand.

D A I saw what happened from a different perspective to anyone else. I saw it from my own unique view.

Q Tell us ---

A And I was struck by the most ridiculous statement, I thought, at the time, when I first arrived at the hospital. I asked where Brian was, and they told me he was in Dryad Ward and directed me to it, and someone else in the reception box, probably a cleaner or something like that, said, "Ah, that is the death ward". And I thought, "What a stupid statement anyone could make; Brian is nowhere near death." It just seemed utterly ludicrous.

Q At the time I think did you dismiss it?

A I am sorry?

Q At the time did you dismiss it?

F A I dismissed it at that moment, of course, and I walked in to see Brian. Again, in retrospect things become clearer because before I actually left to drive to London I went to the toilets, which led me along a long passageway, to the far end of this, if you like, ward, where there were maybe half a dozen similar sub-wards to the one Brian was in. Each one of those sub-wards had a single person in them, all a funny colour. It seemed to me they were all comatose, all quite close to death it seemed to me.

Q All right.

G A And I thought that was rather odd. I thought what a cruel place to put Brian in, because he was a gregarious personality.

Q And when you made the allegation that you did against the various people, all of these matters, I expect, did they inform your opinion, from what you heard and saw?

A It did. The thing is later, by the Thursday I saw Dr Barton. All the ticks were in the box. I thought, "Hey, this is very, very serious".

H

A MR KARK: All right, Mr Stewart-Farthing, thank you very much. Would you wait there, please.

THE CHAIRMAN: This is the time now when members of the Panel, if they have any questions of you, may ask them, so I am going to look now to see if there are questions. It appears I am the only Panel member who has a question.

B Questioned by THE PANEL

THE CHAIRMAN: It concerns the conversation you had on the telephone with the nurse on 22 September. It might assist you if you looked at page 861. You will see that that contains the nursing note, and it is signed by what looks like Sister Hallman.

A I have the page. Can you direct me to where I should look.

HALLMAN

C Q Yes. Would you look at the dates column on the left hand side, you have three entries. It is the third one, the 22 September 1998, and it appears to be signed, as I say, by Sister Hallman. Do you happen to recollect the name of the nurse you spoke to?

A No. I thought it was Hamblin, but I am not sure about that.

HAMBLIN

D Q They are very similar and there is a Hamblin and a Hallman in this case. For what it is worth, the Panel will be hearing from both of them in due course. At this stage, of course, we only have yourself in front of us and we have to find out what we can from you. But you told us very clearly that you were shocked when you found the syringe driver under Brian's pillow ---

A Uh-hum.

E Q --- when you subsequently visited and your description of this particular telephone conversation on 22 September, I think you said that the nurse had told you about his poor behaviour and had said that they had given him a little something to calm him down.

A Yes.

Q What she has recorded here is that she explained that a syringe driver had been commenced the day before. To the best of your recollection, was that mentioned?

A To my recollection, absolutely not. This is why I went berserk when I saw it, when I arrived on the Wednesday.

F Q Given your previous experience with syringe drivers, had it been mentioned what would your reaction have been?

A "Please do not do it until I have had a chance to speak to him." Quite honestly, I knew from that experience with my mother what the consequences could be – not would be necessarily, but could be.

G THE CHAIRMAN: That certainly helps me very much, thank you. I am going to ask now first of all Mr Jenkins whether any questions arise out of my questions?

MR JENKINS: No, sir.

THE CHAIRMAN: And Mr Kark, any questions arising out of mine?

H MR KARK: No, thank you.

A THE CHAIRMAN: Thank you very much, Mr Stewart-Farthing. That completes your testimony. This hearing, of course, will roll on for a considerable period as we see other witnesses and build up our own picture, but we are most grateful to you for coming today to assist us in that process. You are now free to go. Thank you very much.

(The witness withdrew)

B THE CHAIRMAN: Mr Kark, I think the Legal Assessor has something he would like to ask.

THE LEGAL ASSESSOR: Thank you, Chairman. It is simply this: I had the impression from something Mr Jenkins said earlier that he was expecting Dr Lord to be giving evidence in the case. If I have misunderstood that ---

C MR KARK: She may be.

THE CHAIRMAN: She may be?

MR KARK: Yes. The GMC are not calling her, but whether the defence are calling her or not, I do not know.

D THE LEGAL ASSESSOR: I simply raise it because the Panel does not normally know who the defence are going to call, but that comment was made.

MR KARK: Yes.

E THE LEGAL ASSESSOR: I think it would be helpful for the Panel, particularly given some of the issues which have arisen, to know whether Dr Lord is definitely going to be called by somebody. Whether they may be... I do not know whether the Panel can be assisted any further about that. Lord

MR KARK: You will remember when I opened it, I explained Dr Lord's role and the fact that she was now in New Zealand, and we had reviewed the patient notes, and the view we had taken. We cannot control who Mr Langdale and Mr Jenkins are going to call, and if there is an indication that she will be called by the defence, then all well and good.

F MR LANGDALE: I think the Panel should anticipate that they will be hearing from Dr Lord.

THE CHAIRMAN: I am most grateful and, of course, that does deal with a third possibility, which is that as we get further into the case, the Panel may itself take the view that evidence from a person referred to who is not planned to be called by the GMC might indeed be a welcome witness. With that understanding, we will say no more.

G MR KARK: In fact on that topic, I think I heard you say that we were going to be hearing from Nurse Hamblin. I think we can indicate that is most unlikely. Among other reasons, Nurse Hamblin is very unwell, but I do not know if the defence have anything to say about that.

H MR LANGDALE: There will be evidence in some form for the Panel from Sister Hamblin.