

Regulation 28: Prevention of Future Deaths report

Timothy Patrick CLAYTON (died 10.11.13)

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| | <p>THIS REPORT IS BEING SENT TO:</p> <p>1. Mr Ian Learmonth QPM Chief Constable of Kent Police Kent Police Headquarters Sutton Road Maidstone Kent ME15 9BZ</p> |
| 1 | <p>CORONER</p> <p>I am: Coroner ME Hassell Senior Coroner Inner North London St Pancras Coroner's Court Camley Street London N1C 4PP</p> |
| 2 | <p>CORONER'S LEGAL POWERS</p> <p>I make this report under the Coroners and Justice Act 2009, paragraph 7, Schedule 5, and The Coroners (Investigations) Regulations 2013, regulations 28 and 29.</p> |
| 3 | <p>INVESTIGATION and INQUEST</p> <p>Yesterday, the death of Timothy Patrick Clayton was reported to me. I am still at the pre investigation stage of my inquiries, but I anticipate that I shall open an inquest touching Mr Clayton's death.</p> |
| 4 | <p>CIRCUMSTANCES OF THE DEATH</p> <p>Just before 1pm yesterday (Sunday, 10 November 2013), one of my coroner's officers alerted me to the death of Timothy Clayton. He told me that Mr Clayton had been brought to the Royal London Hospital by helicopter from Kent with a severe head injury, and that brain stem death tests had been conducted a little over half an hour before, although Mr Clayton was still being supported medically.</p> |

Police enquiries had revealed CCTV of Mr Clayton being kicked to the head and body in a sustained attack. My officer, [REDACTED], said that Mr Clayton's family had given permission for organ donation and so I was being contacted in this respect.

When a death is reportable to HM Coroner, the coroner has lawful control of the body, and so his or her permission is sought before any organ donation. The coroner does not give consent to the donation, only the individual himself by way of advance directive, or his family consulted at the time of death, can do that. However, after consent is given, the coroner may then raise an objection to donation. If the coroner objects to donation, the donation cannot take place.

Mindful of the ongoing police investigation, I asked that the Kent Police senior investigating officer (SIO) telephone me to discuss the proposed donation. A short while later, the detective chief inspector in charge of the investigation, Paul Fotheringham, telephoned me. He gave me an account of the investigation so far, and told me that Kent Police objected to organ donation going ahead, on the basis that this would compromise the criminal investigation.

We talked through the matter at some length. He was concerned that the organs it was proposed to donate (lungs, kidneys, small bowel and pancreas) might be diseased and the suggestion be made that this had contributed to death. I put it to him that if they were diseased then they would not be suitable for transplant. He was further concerned that these organs might have been injured by the attack. Removal of them would therefore deny us the ability to determine the medical cause of death. I explained that the understanding that I had gained, was that Mr Clayton had died from a traumatic head injury, and therefore the organs in question would not take us any further forward in determining medical cause of death.

I told [REDACTED] that I saw no reason to object to the donation. I suggested that we work together, to facilitate donation without compromise to the homicide investigation. I offered my assistance, for example, I authorised the taking of photographs before donation. The detective chief inspector remained very firmly opposed to donation.

I suggested that he contact the forensic pathologist who was to perform the post mortem examination and then, having spoken to him or her, ask that pathologist to telephone me. I asked [REDACTED] to ascertain from Mr Clayton's treating clinicians the nature and extent of the head injury.

A little while later, I was telephoned by [REDACTED], consultant forensic pathologist on call this weekend. [REDACTED] and I discussed the proposed donation. [REDACTED]'s view was that going ahead with the donation carried with it the potential to lose some evidence, and he advised against it.

██████████ gave me a thoughtful analysis, suggesting that if the organs were donated, we might not discover whether any of these organs had sustained contusions in the kicking that was apparently discernible on CCTV. I asked him how much further forward the discovery of a contusion (that presumably did not significantly affect function or the organs would not be suitable for donation) would really take us, given the nature of the CCTV (showing one person kicking Mr Clayton repeatedly) and most especially given that cause of death appeared to be a traumatic head injury.

He felt that this was really a legal question, and also explained that he did not have any detailed information on the clinicians' view of medical cause of death or the extent of Mr Clayton's head injury.

Having gone through the matter together carefully, ██████████ remained of the view that there was a risk of losing some evidence by allowing donation but, in response to my direct question as to whether he viewed allowing donation to go ahead as foolhardy, he replied that he did not. He told me that he recognised that this was a balancing act, and that the decision was mine.

The decision before me seemed a difficult one. I was inclined towards donation, but I thought it would be helpful to articulate my thoughts by running through the scenario with another senior coroner, and so I telephoned a colleague in a different part of the country. I wanted to be sure that I had considered all angles before coming to my conclusion. Again, we spoke at some length.

I then spoke again to ██████████. He re-emphasised that his duty was to ensure an effective investigation/prosecution, and he once again voiced his objection to donation. I requested that he ask Mr Clayton's treating consultant to telephone me.

I was then called by ██████████. ██████████ is a consultant in critical care and renal medicine, and he explained that he was responsible for Mr Clayton's care. He told me that there was absolutely no doubt in his mind about the cause of Mr Clayton's death. This was an unsurvivable traumatic head injury. He said that the head injury was massive, and that he was not sure when he had seen a head injury of this magnitude, in spite of his role at the trauma centre of the Royal London Hospital.

I thought very carefully about all the evidence that had been presented to me and I made my decision. I telephoned ██████████ once more and told him that I would not raise any objection to donation.

Once again I went through my responsibilities with him, re-iterating that I wanted to guard against the failure of a proper conviction or a proper acquittal because of any compromise by organ donation. I told him that,

although I completely took [REDACTED] point that some evidential detail might be lost by organ donation, I did not believe that this would impact upon the proper exploration/prosecution of any person potentially responsible for Mr Clayton's death.

I asked that the following steps be taken:

1. an immediate whole body scan;
2. photographs before organ retrieval;
3. the forensic pathologist to be offered the opportunity to be present at organ retrieval;
4. the transplant surgeon(s) to document all findings at retrieval.

I telephoned my coroner's officer and explained my decision. My involvement in the matter that day concluded at around 4pm. However, I received a telephone call at 5.30pm from [REDACTED]. [REDACTED] introduced herself as the specialist nurse for organ donation with responsibility for this matter. She had spent much of the day working with Mr Clayton's family on the potential donation.

She told me that, quite literally as Mr Clayton's family were leaving the hospital, the Kent Police family liaison officer (FLO) stopped them and told them that, if they allowed the organ donation for which they had already given their written consent to go ahead, the person who had killed Mr Clayton might not be convicted (I paraphrase). Apparently the FLO had been instructed to have this conversation by [REDACTED].

Mr Clayton's family had hoped that some good could come from Mr Clayton's very untimely death. They had firmly indicated that they wanted organ donation to go ahead, and were apparently devastated at the news that donation would compromise the homicide investigation. They felt they had no choice but to withdraw their consent to organ donation.

The organ donation did not, therefore, go ahead.

5 **CORONER'S CONCERNS**

My inquiries have revealed matters giving rise to concern. In my opinion, there is a risk that future deaths will occur unless action is taken. In the circumstances, it is my statutory duty to report to you.

The **MATTERS OF CONCERN** are as follows.

1. Kent Police approached Mr Clayton's family to consider a decision that is, by law, conferred upon HM Coroner. This action placed Mr Clayton's family in desperately difficult and desperately painful position. Having already given their consent to donation, they

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| | <p>were asked to go back on this and to make a further decision based upon the likely success of prosecution of Mr Clayton's killer, rather than this separate decision resting with a trained, experienced, dispassionate judge – the coroner.</p> <p>This must have added horribly to their distress, and it was a wholly improper burden to place upon them.</p> <p>2. As the coroner with responsibility for this matter, I did not make the decision not to object to organ donation on a whim. I did so after a great deal of discussion and thought.</p> <p>Though I am a senior coroner with particular experience of organ donation, a subject on which I have lectured to doctors, nurses and police officers on several occasions, I nevertheless sought out a senior coroner colleague on a Sunday afternoon, to try to ensure that I had not missed anything.</p> <p>I was transparent in my thinking, I listened carefully to all advice, including that of the senior investigating officer, and I gave detailed reasons for my decision. Nevertheless, that police officer sought to subvert my judicial decision.</p> <p>He did not ask a more senior police officer to contact me to discuss the matter further. He did not seek to challenge in a higher court. Instead, he effectively reversed the decision made by a judge because he preferred his own view of the matter, and he did this by bringing pressure to bear on a grieving family.</p> <p>In short, a police officer has subverted the rule of law.</p> <p>You may be surprised that I write to you about this matter by way of a prevention of future death (PFD) report. I do so because in this instance, six organs were lost to their potential recipients - two lungs, two kidneys, a small bowel and a pancreas. Six organs represents six lives.</p> |
| 6 | <p>ACTION SHOULD BE TAKEN</p> <p>In my opinion, action should be taken to prevent future deaths and I believe that you Kent Police have the power to take such action.</p> |
| 7 | <p>YOUR RESPONSE</p> <p>You are under a duty to respond to this report within 56 days of the date of this report, namely by 7 January 2014. I, the coroner, may extend the period.</p> |

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| | <p>Your response must contain details of action taken or proposed to be taken, setting out the timetable for action. Otherwise you must explain why no action is proposed.</p> |
| <p>8</p> | <p>COPIES and PUBLICATION</p> <p>I have sent a copy of my report to the following.</p> <ul style="list-style-type: none"> • HHJ Peter Thornton QC, Chief Coroner of England & Wales • ██████████, Chair of the IPCC (Independent Police Complaints Commission) • ██████████, Kent Police and Crime Commissioner • Detective Chief Inspector ██████████, Kent Police • ██████████, consultant forensic pathologist • ██████████, regional lead for organ donation • ██████████, specialist nurse for organ donation • ██████████, consultant in critical care & renal medicine, Royal London Hospital <p>I have not sent a copy to Mr Clayton's family, because that seems inappropriate only a day after Mr Clayton's death. I appreciate that immediate family members are properly interested persons and must, of course, see a copy of my report, but I should like to give them a little time to come to terms with their loss first.</p> <p>I am also under a duty to send the Chief Coroner a copy of your response.</p> <p>The Chief Coroner may publish either or both in a complete or redacted or summary form. He may send a copy of this report to any person who he believes may find it useful or of interest. You may make representations to me, the Senior Coroner, at the time of your response, about the release or the publication of your response by the Chief Coroner.</p> |
| <p>9</p> | <p>DATE</p> <p>11.11.13</p> <p style="text-align: right;">SIGNED BY SENIOR CORONER</p> |