SHERIFFDOM OF TAYSIDE, CENTRAL & FIFE AT ALLOA

[2021] FAI 59

ALO-B59/21

DETERMINATION

BY

SUMMARY SHERIFF NEIL BOWIE

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC (SCOTLAND) ACT 2016

into the death of

DEYAN NIKOLOV

Alloa, 22 December 2021

DETERMINATION

The Sheriff having considered the information presented at an inquiry into the death of DEYAN NIKOLOV (date of birth 8 October 1984), under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (the Act), determines in terms of section 26 of the Act that:

(1) In terms of S26(2)(a) of the Act, Mr Deyan Nikolov born on 8 October 1984, died in Cell 3/45 Harviestoun Hall, at HMP Glenochill, King O Muir Road, Tullibody, Clackmannanshire FK10 3AD. He died during the night of the 10 June 2018 or the early hours of the morning of 11 June 2018 with life being pronounced extinct at 07.40 hours on 11 June 2018.

(2) In terms of S26(2)(b) and (d) of the Act, there was no accident which caused or contributed to Mr Nikolov's death.

(3) In terms of S26(2)(c) of the Act, the cause of Mr Nikolov's death was Cocaine Toxicity and a contributory factor may have been Coronary Artery Atheroma.

1a Cocaine Toxicity

2. Coronary Artery Atheroma.

(4) In terms of S26(2)(e) of the Act there were no precautions which could reasonably have been taken, which if taken, might realistically have resulted in Mr Nikolov's death being avoided.

(5) In terms of S26(2)(f) of the Act, that there were no defects in any system of working which contributed to Mr Nikolov's death.

(6) In terms of S26(2)(g) of the Act, there are no other facts which are relevant to the circumstances of the death.

(7) In terms of S26(1)(b) of the Act, there are no recommendations as to the taking of reasonable precautions, the making of improvements to or introduction of, a system of working, or the taking of any other steps which might realistically prevent other deaths in similar circumstances.

Introduction

[1] This is a mandatory inquiry in terms of Section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016, to establish the circumstances of the death of Mr Deyan Nikolov, born 8 October 1984, who was in legal custody at HMP

Glenochill, King O Muir Road, Tullibody, Clackmannanshire FK10 3AD, at the time of his death. Mr Nikolov was serving a sentence of imprisonment for life, with a punishment part of 23 years. He was aged 33 years at the date of his death.

[2] The inquiry is brought following an investigation by the Procurator Fiscal into the circumstances of the death, and is regulated by the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (the Act), and the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 SSI 2017/103 (the rules).

[3] Inquiries under this Act are held following an investigation into the circumstances of the death conducted by the Procurator Fiscal. The Procurator Fiscal then arranges for an inquiry to be held before the Sheriff. The purpose is to establish the circumstances of the death, and to consider what steps (if any) might be taken to prevent other deaths in similar circumstances. It is not the purpose of an inquiry to establish civil or criminal liability.

[4] The death of Mr Nikolov was first reported to COPFS on 12th June 2018, with further enquiries thereafter.

[5] The Procurator Fiscal gave first notice of the requirement of a mandatory inquiry into the death of Mr Nikolov by notice in terms of rule 3.1 and form 3.1 on 24 May 2021. First orders were then given by the Court on 25 May 2021 and a preliminary hearing was assigned for 6 July 2021. Public notice was given dated 26 May 2021. At the preliminary hearing the inquiry date was assigned for 31 August 2021 reserving 1 September 2021 if required. There was discussion in respect of the processes to be adopted, extensive agreement of evidence, the lodging of affidavits and a continued

preliminary hearing was then assigned for 6 August 2021. On 6 August 2021 after further discussion the inquiry was continued to the hearing assigned. On 31 August 2021 the hearing was discharged due to the sudden illness of one of the parties. The 9 November 2021 was hence assigned as the hearing date. It proceeded on that date at Alloa Sheriff Court.

[6] Mr Morrison Procurator Fiscal Depute appeared for the Crown at the hearings, representing the public interest. Mr Smith, solicitor, appeared for the Scottish Prison Service and Ms Wallace, solicitor, appeared for the Scottish Prison Officers Association. Mr Nikolov's next of kin were aware of the inquiry, and were kept advised by the Crown, but were not separately represented at it. I understand that his relatives predominantly live in Bulgaria, although some do live in the United Kingdom. The Court extends its condolences to them.

Procedure

[7] An extensive joint minute of agreement was entered into by parties. There were affidavits lodged in process in respect of the majority of the witnesses. There were a number of extensive documentary productions, including post mortem and toxicology reports, prison records, prison and NHS medical records, forensic services report, cell search history report, death in prison learning, audit and review (DIPLAR), prisoner records including social work and psychology files, staff statements, standard operating procedures, and photographs lodged and agreed. Parties were of the opinion that the

evidence in the inquiry could be agreed. I was satisfied that much could be agreed with the support of appropriate affidavit evidence.

[8] The joint minute was read out in open court and lodged in process along with the affidavits. The affidavits were read out in court also. In addition I heard evidence from the following witnesses. Detective Constable Jamie Reid of Police Scotland, Prison Officer VH and Mr MS of the Scottish Prison Service (Head of Operations at HMP Glenochill). They adopted their respective affidavits and supplemented their evidence, addressing any questions parties or the Court had for them. I found the witnesses to be credible and reliable.

[9] The Crown lodged the following productions:

1. Post Mortem report (incorporating toxicology)
2. Death in Prison Learning Audit and Review (DIPLAR)
3. Death in Custody Pack Part 1 and 2 (incorporating a variety of Prison documents)
4. Death in Custody Pack part 3.
5. Medical Records – summary report
6. Prison Medical Records
7. NHS Medical Records
8. Forensic Services Report
9. Cell Search History Report
10. Photographs
11. E mail exchange with pathologist.

The SPS lodged the following productions:

1. Affidavit of Mr MS
2. Governors & Managers ACTION (GMA) - Witnessing the administration of a Controlled Drug dated 16 March 2016.
3. HMP Glenochil Standard Operating Procedure-Routine Cell Searches.
4. HMP Glenochil Standard Operating Procedure-Searching Prisoners.
5. HMP Glenochil Standard Operating Procedure-Issuing of Medication.
6. The SPOA lodged a number of affidavits of officers, ED, FL, GM, AL, AM, VH and GB, Prison Chaplain.

Summary

[10] The deceased, Mr Deyan Nikolov was born on 8th October 1984 in Bulgaria. He was a Bulgarian national. He was raised in Bulgaria and attended school there. He also attended University there to study history. He was noted to speak Bulgarian, English, Russian and Polish. He came to Scotland in 2005 as a student to carry out seasonal farm work, and thereafter remained resident in Scotland. Prior to imprisonment Mr Nikolov was employed as a door steward from 2005.

[11] On 9 December 2010 at Kirkcaldy Sheriff Court Mr Nikolov was remanded in custody to HMP at Perth awaiting trial on a charge of murder. On 29 February 2012 he was convicted of murder at the High Court of Justiciary at Edinburgh. He was sentenced to imprisonment for life with a punishment part of 18 years on 28 March 2012.

Following a Crown appeal the punishment part was increased to a period of 23 years on 5 March 2013.

[12] The deceased was transferred from HMP Perth to HMP Glenochil on 7 March 2013. He resided at HMP Glenochil thereafter until his death on 11 June 2018. A period of over 5 years. HMP Glenochil is not a receiving prison. It does not receive prisoners direct from court, as does eg HMP Barlinnie or HMP Perth, but rather transferred from other prisons, both long term, short term and remand.

[13] During the deceased's time in custody he reported only minor health concerns such as back pain and dermatology issues. There were no major health concerns. The only medication he was prescribed was propranolol for anxiety. The deceased presented to prison staff as a polite prisoner and generally good natured. Despite some disciplinary matters, (noted below within paras 12 to 17) he was regarded by staff at the prison as a prisoner whose behaviour did not cause staff concern. He assisted as a translator for a prisoner who spoke only Russian, and was noted to be happy to assist prison staff in this respect. While in custody he completed a number of courses including barbering in July 2013 and Health and Safety in 2014. He was employed within the prison engaged in hairdressing. He had plans to undertake an Open University course.

Significant Events

[14] Mr Nikolov was found in his cell on 19 August 2017 by staff, showing pictures on an illicit mobile phone to other prisoners. When asked to hand the phone to staff he

smashed it. He was placed on a Governor's report on 20 August 2017 for having a prohibited article in his possession.

[15] On 12 October 2017 a "code blue" was called in respect of Mr Nikolov when he was found unresponsive in his cell. He came round slowly and medical staff queried whether he may have consumed something which caused his presentation. The deceased was vague as to what had happened. A urine sample was requested but the deceased was unable to produce a sample and none was given. A care plan was initiated by NHS staff at the prison which included regular observations until 15 October 2017. On 13 October 2017 the deceased was reviewed in his cell and he was again unsteady on his feet with slurred speech. He denied being under the influence of any substance and later refused to attend the General Practitioner for further assessment.

[16] On 18 December 2017 Mr Nikolov was reported to the Governor for involvement in a violent assault that involved weapons. He was moved to Devon Hall, Segregation Unit under Rule 95 Procedures to maintain good order and discipline. He was reintegrated to the mainstream prison on 6 February 2018.

[17] That following a mental health review conducted on 5 February 2018, it was found that there was no evidence of intoxication or withdrawal and Mr Nikolov denied any illicit drug use. On 27 March 2018 Mr Nikolov was again involved in an assault upon another prisoner. He received three days cellular confinement in the orderly room. Following this he was placed into Devon Hall Segregation Unit on 31 March 2018

under Rule 95 Procedures to maintain good order and discipline. He was reintegrated into the mainstream prison and the Rule 95 order revoked on 1 May 2018.

[18] At a case conference regarding the incident on 27 March 2018, Mr Nikolov stated that he had been sticking up for a fellow prisoner who was being bullied. He advised he and the other prisoner he was accused of assaulting, remained friends despite the incident. He suggested it was his intention to apply to take an Open University course, and was about to apply prior to the incident occurring.

[19] On 5 June 2018 staff entered Mr Nikolov's cell as there was a strong smell of alcohol. He was found with two buckets of "hooch". One bucket was wired into the socket and was hot to touch. The floor was covered in the illicit alcohol. He was placed on a Governor's report in respect of this incident. Prison Officer VH and First Line Manager (FLM) Mr C spoke with him to ask him if he required any help or support for substance misuse, and also to remind him that staff were there to assist him if he was struggling. These staff members noted that during their discussions with Mr Nikolov that he was not presenting any signs indicative of addiction or substance misuse issues, despite the discovery of the "hooch." He was not intoxicated.

Cell Searches

[20] During the deceased's time in custody, the cells he resided within were subject to a number of searches on a random basis. In the 12 months to June 2018 there were four such searches, on 21 August 2017, 9 October 2017, 5 December 2017 and 5 June 2018. All of these searches produced a negative result for any prohibited items.

Drug Tests

[21] During the period of time the deceased was in custody, he was subject to seven drug tests which all returned negative results. The initial three tests were undertaken as part of a risk assessment process. The rest of the tests were administered on the basis of there being a reasonable suspicion.

1. Risk assessment 25 June 2011 negative result.
2. Risk assessment 21 May 2012 negative result.
3. Risk assessment 31 October 2012 negative result.
4. Reasonable suspicion 23 April 2017 negative result.
5. Reasonable suspicion 30 August 2017 negative result.
6. Reasonable suspicion 18 November 2017 negative result.
7. Reasonable suspicion 10 December 2017 negative result.

Circumstances and cause of death

[22] The deceased was locked within his cell on the evening of 10 June 2018. It is a single occupancy cell, he being the sole occupant. He was last seen alive by Prison Officer FL just after 5.00pm on Sunday 10 June. PO FL was checking and locking the cell for the night. He knew Mr Nikolov well from his time in the prison and they got on well. He saw him sitting on the chair in the cell, alone. He spoke to him, carrying out visual and verbal checks. Mr Nikolov responded appropriately to PO FL's greeting to him. There was nothing in his demeanour or presentation that caused any concern to

the officer, or was out of character. He did not appear under the influence of any substance. There was nothing untoward within the cell that the officer could see. If he had presented with intoxication a nurse would have been called to assess him and the "Management of Offenders at Risk due to a Substance" policy (MORS) instigated. If after assessment it were deemed necessary Mr Nikolov would have been placed on regular observations overnight. The observations can be as frequent as every 15 minutes if deemed necessary. This was not deemed necessary as there was nothing untoward in his presentation.

[23] At 07.15 hours next day Prison Officer AL was carrying out routine morning numbers checks, unlocked the cell and discovered Mr Nikolov lying on the floor of his cell face down. He was lying across the cell floor with his feet by the bed and his head by the work top. There was a plastic bag in the vicinity of his head although not over his head or obstructing his airways. Mr Nikolov was cold to touch and unresponsive. The Officer called a "code blue" alert which indicated to staff an urgent situation where a prisoner is not breathing. Prison Officers and nurses ran to the cell to assist. He was given cardiopulmonary resuscitation and an ambulance was summoned. The ambulance crew arrived at 07:35 hours. At 07:40 hours Mr Nikolov's life was pronounced extinct. Police Scotland were notified of the death.

[24] A search of the cell by police officers found the following items: a mobile telephone, 3 bags containing white powder, 2 further bags containing white powder, 2 yellow tablets, 3 white tablets, a tub containing various white tablets, an Amoxicillin box prescribed to the deceased, Propranolol 160 mg prescribed in the name of the

deceased, Amitriptyline 25 mg prescribed in the name of "Mr L", empty pieces of plastic bags, a rolled up piece of paper and a pen casing.

[25] The unlabelled tablets and bags of powder were seized and analysed. The yellow tablets were negative for controlled drugs. The presence of Mirtazapine was detected but not confirmed. It is not a controlled drug. 2 of the 3 white tablets were tested and confirmed to be Tramadol, a Class C controlled drug under the Misuse of Drugs Act 1971. A number of the tablets from the tub were tested and were positive for Tramadol and Codeine. Codeine is a Class B drug and Tramadol a class C drug under the Misuse of Drugs Act 1971.

[26] The bags of white powder tested positive for Cocaine, a Class A drug in terms of the Misuse of Drugs Act 1971. Each bag of cocaine was knotted and weighed approximately 0.3 to 0.5 grams.

Police investigations

[27] The mobile phone is PIN protected and it has not been possible to examine it further. This is an illicit mobile phone. Prisoners at that time not being permitted to possess one in prison. During the subsequent pandemic prison issue phones were issued, but restricted to prison sim cards with restricted capability. DC Reid stated that the phone was small in size and colloquially known as a "beat the boss" phone. They are sometimes hidden in speakers or internally concealed. They have quite basic functions (text / phone) and can be difficult for the police to access. It was sent to the cyber crime unit for investigation but the data could not be accessed.

[28] Following police enquiry it has not been possible to identify the source of the drugs found in Mr Nikolov's cell. The Police made enquiries that included DNA and finger print examination. Nothing evidential was found in respect of the controlled drugs. There were partial finger print lifts that proved unsuitable for further analysis.

[29] There was medication found in the cell in the name of a Mr L. He was another prisoner within the establishment. He repeatedly refused to co-operate with police enquiries as to why his medication was in Mr Nikolov's cell.

[30] There were no concerns in respect of the bag found near the deceased's head. The assessment was that this had come from the waste bin in the cell. It was toppled over as if he had either tried to vomit in to it or collided with it when he collapsed to the floor. It was not suspicious. It did not obstruct his airways. There was a cut/abrasion under the deceased's chin. It was superficial and consistent with falling to the floor and not putting the hands out to break the fall.

[31] The police found letters dated 9th June 2018 within the shelving unit in the cell. These appeared to have been written by Mr Nikolov and were awaiting postage. The contents raised no concerns and demonstrated future planning by the deceased.

[32] There is nothing to suggest this was other than an accidental drug death, as opposed to a deliberate over dose. There are no suspicious circumstances in respect of the death. It was a locked single occupancy cell. The bag near to the head did not raise any concerns. The source of the drugs could not be identified by the police investigation. There was clear evidence of drug taking including paraphernalia (rolled paper and pen casing). DC Reid advised that neither he, nor the two other detective

constables that attended the scene, nor the scenes of crime officer noticed anything they regarded as suspicious.

Post Mortem and Toxicology

[33] A post mortem examination was conducted on the body of the deceased at the Edinburgh City Mortuary on 14 June 2018 by consultant forensic pathologists Doctor Robert Ainsworth and Doctor Ralph BouHaidar. Toxicological examination was additionally carried out. On 9 August 2018 the final post mortem report was issued which certified the cause of Mr Nikolov's death as 1a. Cocaine Toxicity; 2 Coronary artery atheroma. Post mortem examination showed that death was due to cocaine toxicity. It is possible that coronary artery atheroma may have played a contributory role as he was noted to have moderate atheroma within two of the coronary arteries, which was further examined with subsequent histology showing moderate to severe atheromatous plaque. The only other internal finding was that the lungs were moderately oedematous. Of note however, there were no signs of trauma in respect of any of the internal examinations. Externally the only findings were some abrasions, one being on the underside of the jaw and another on the back of the right wrist. These were not considered significant.

[34] Toxicology identified quantities of cocaine and its metabolites in his blood. There were therapeutic amounts of Mirtazapine and Amitriptyline in his blood. A contribution to death cannot be definitively excluded by the Mirtazapine and Amitriptyline.

[35] Sudden deaths related to the use of cocaine is well recognised medically. The mechanism of death can be the induction of cardiac arrhythmias and/or seizures. As deaths from cocaine toxicity may be due to cardiac dysfunction, it is possible in this instance that the coronary artery disease may also have therefore contributed to his death, this potentially increasing his risk of suffering a cardiac arrhythmia having ingested cocaine. The presence of arterial disease that the deceased had was unusual for someone of his age. The disease can be associated with chronic drug use (cocaine and other stimulants) as well as life style factors.

[36] There was nothing in the examination to suggest that airways obstruction played a role in the death. There were no other significant findings.

[37] There was evidence from GB Prison Chaplain as well as Prison Officers who knew the deceased quite well. That included VH. As Mr Nikolov had been a prisoner in the establishment for over 5 years he was well known to a number of staff.

[38] Prison Chaplain GB knew the deceased well. He knew him as "Niko" having met him soon after his transfer from HMP Perth. He had engaged with the Church services run by GB, attending sporadically in the first year, then regularly thereafter. He attended all of the workshops and courses that were put on. He would regularly see the deceased three times a week and also have one to one catch ups. They had a good working relationship and the deceased would confide in him if feeling low. The deceased had been vocal to him and others in the Chapel about his dislike of other prisoners taking drugs. This was in about 2015. He was open that he had taken drugs himself in the past on occasion but claimed to have been free of drugs for a number of

years. GB was aware of the deceased becoming subject to the MORS " Management of Offenders at Risk of any Substance" procedure in October 2017. He considered this to be out of character for him. His contact with the deceased was reduced during the periods the deceased was in segregation post October 2017, although he still saw him occasionally. At that time he did not confide to GB that he was taking drugs. He did look more dishevelled when he came out of segregation but if asked would say he had had a poor night's sleep or laugh off the enquiry. There was nothing in the deceased's presentation to him that caused him to believe he was a risk to himself. He had positive plans for the future, including that he intended to apply to serve the latter part of his sentence in Bulgaria. He last saw the deceased at a Chapel service the Tuesday before his death. He was talking positively about his future plans. GB was shocked when he heard of the as death of Mr Nikolov. He does not believe the death was a deliberate suicide. Despite the relative deterioration in the deceased's conduct, the death by drug taking was still a shock to GB.

[39] VH Prison Officer gave evidence and adopted her affidavit. She advised that she first came to know the deceased when he was in segregation 6 months prior to his death. She remained his personal officer thereafter in Harvieston Hall. He seemed to manage segregation quite well. He had stopped going to the gym due to being assaulted there. They discussed this. He said it was an accident. He started going to the gym again. He did not confide in PO VH that he had any issues or concerns. She found him to be polite and did not cause her or the staff any difficulties generally. She spoke of discovering the "hooch" in the deceased's cell on 5 June 2018. Mr Nikolov made a joke about this. Illicit

alcohol is not uncommon. Mr C FLM and VH spoke to him on level 3 in a meeting room about the hooch. They asked him about any addiction issues. He made light of it saying he had seen it made on TV and wished to try it out. He denied any substance issues. He was not intoxicated. His cell was searched later that day. She could not recall if she had personally participated in the search. VH had never seen Mr Nikolov under the influence. If she had, she would have instigated the MORS policy. It is instigated daily.

Prison procedures re prevention of drugs

[40] Mr MS Head of Operations at Glenochil Prison gave evidence in respect of the measures that are taken within the prison to prevent and detect controlled drugs.

[41] There are numerous standard operating procedures (SOPs) in respect of drug prevention policies and procedures in the establishment. They cover a variety of different aspects from how to deal with packages thrown over the walls to opening prisoners' mail and cell searching policies.

Admissions

[42] Glenochil has an Intelligence Management Unit to gather, compile and analyse all prisoner related data. This allows risks to individual prisoners to be assessed and may allow the prison to focus its drug prevention efforts on particular individuals or lines of enquiry. It assesses prisoners in advance of admission in respect of risks posed to the introduction of or selling drugs etc. It looks at prisoner associations and conduct elsewhere. It can result in decisions to not admit certain individuals.

[43] On admission all prisoners are subject to full body searches. This includes a rub down and scans by machines. This includes a Body Orifice Security Scanner (BOSS) chair which searches for metal objects held internally. Hand held scanners and metal detectors are also used. Prisoners are then strip searched. This is visual. When there is an intelligence basis for an internal search, Police Scotland are contacted as the Prison does not have the statutory powers to do so themselves. This a relatively rare occurrence.

[44] SPS Prod 4- SOP "Searching Prisoners" details when and how rub down and body searches are to be carried out. They are to be carried out as quickly and decently as possible and by an officer of the same gender as the prisoner. The area around the anus, genitals and perineum should only be examined where there are grounds for suspicion of concealment around that area of a prohibited article. This is restricted to a squat or bend over instruction to allow examination. The Officer is not permitted to move those parts of the body and the prisoner must not be asked to.

[45] If there is sound intelligence that a prisoner is internally concealing drugs they may be placed in the Separation and Reintegration Unit under Rule 95 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011, separating them from other prisoners until they pass the suspected item.

[46] There is a National Tactical Search Unit with drug detection dogs. It is not based at Glenochil but can be called upon and utilised when required. It can assist on a random basis with admissions searches or specific intelligence led operations.

[47] All prisoners' property is also searched on admission. Property is a main avenue of entry for drugs. It has been found in all areas of clothing including being professionally stitched in.

Perimeter Checks

[48] The Prison staff regularly intercept "throw over" attempts. These come over the perimeter walls. They are directed to areas prisoners have access to or are near cell windows and are "fished" from cells using instruments. All cell windows have restrictors. This is not a particularly successful route of entry as there is a high risk of interception. A large amount of contraband has been recovered recently through "throw overs". The perimeters are monitored by CCTV on most walls. If noticed by monitoring the packages are recovered. Cell window restrictors are checked and certified. Potential fishing instruments are removed. Intelligence identifies areas believed to be "hot spots". All outside areas prisoners access are checked in advance of their accessing them. The perimeter is checked by staff three times daily. Methods such as drones have been utilised at some Scottish prisons although this has not been detected at Glenochil to date.

Staff and Visitor searches

[49] Staff are subject to random rub down searches on entry and walk through metal detectors. All of their external clothing is searched. Dogs are also utilised randomly. Visitors are similarly searched. They are also constantly observed while in the establishment.

Cell Searches

[50] Cell searches are carried out by staff 1). randomly, 2). following intelligence, and 3). at changeover. Every cell is subject to a random search once every 3 months. The first line manager allocates which cells are to be searched to the residential officers. It is noted and the search is recorded in the Prison Records.

[51] Secondly, searches can be intelligence led. If the Intelligence Unit receives information that a cell requires searched it will be done. This may be intelligence from another prisoner or there may be evidence of eg stockpiling of prescription medication.

[52] Thirdly, cells are cleaned every time a prisoner is moved from a cell. It is also searched and certified as fit for occupation by a new prisoner.

[53] Searches of cells are carried out in compliance with SPS Production 3 -HMP Glenochil's SOP "Routine Cell Searches". It specifies how and what is searched. Everything is searched including the prisoner. It is done clockwise around the cell. Every fixture and fitting is searched including personal belongings and medication. Scanners can be used to examine electrical items such as X boxes or hi fi equipment. The prisoner is present. The prisoner is also searched. This is done in compliance with SPS Prod 4 - HMP Glenochil SOP "Searching Prisoners".

[54] Such searches take 30-60 minutes. Intelligence led searches take up to two hours and are even more thorough including everything not attached to the floor.

[55] There are 674 cells. Most are single occupancy, although some are double occupancy. Prisoner numbers were (719) at the time of the evidence. It is clearly not possible to search every prisoner's cell every day.

RapiScan

[56] The Prison has a Rapiscan machine which can detect a range of substances (drugs) from paper or other surfaces. A swab is taken and an almost instant result obtained. This can be utilised when searching mail etc. It is particularly useful for detecting New Psychoactive Substances (NPS) which are now entering the prison impregnated on paper / card within mail. Such machines cost tens of thousands of pounds.

Mail

[57] The Prison receives a large volume of mail. Any parcel or mail could potentially contain drugs. Mail is subject to random searches and where suspicious further checks including use of the Rapiscan are undertaken. Suspicious mail is opened in front of the prisoner.

Prescription Medication

[58] There are procedures in place in respect of the administration and storage of prescription medication within the prison. The NHS are responsible for prescription. It can be administered on a supervised basis, or in possession of a week's supply. All cells have a medication safe for storage. It should be stored there or on the prisoner's person. If dispensed on a supervised basis it is administered when required in person by healthcare staff at the dispensary, with SPS staff in attendance. Visual checks are carried out to ensure it is swallowed. SPS Prod 2- SOP "Witnessing the administration of a

controlled Drug" and SPS Prod 5-SOP "Issuing of Medication". Healthcare staff are responsible for deciding whether medication is administered on a supervised basis or "in possession" where the prisoner is trusted with a week's medication. Prisoners are also subject to random spot checks by the SPS and NHS, or intelligence led checks to ensure they do not have more medication than they ought.

[59] A prisoner may come into possession of another prisoner's medication by buying it, being given it or extorting it. Sometimes prisoners will tell staff they are under pressure to give up their medication. The staff often have a good idea who will be vulnerable to this type of pressure and will hence carry out checks.

Rehabilitative Measures

[60] The SPS also take rehabilitative measures to try and combat drug abuse. This includes prisoner education and availability of addiction services. The Health centre has an Addictions manager and three addictions workers. Each Hall has four trained mentors (prisoners) who are available at the "Recovery Café" to speak to struggling prisoners. There are also rehabilitation measures encouraged such as a music workshop.

Governor's Report

[61] If a prisoner fails a cell search or is found in possession of drugs he may be placed on a Governor's Report. An investigation takes place. A decision is made by the Governor in respect of the rule breach and punishments such as removal of privileges may be imposed.

Contacts

[62] Mr MS advised that typically a prisoner in the hall will come into contact with potentially 40 other prisoners every day. They are allowed out of their cells for large parts of the day. They have their rights to associate and participate in exercise and activities. The number of contacts will increase if they undertake work duties, and if they attend the gym etc. Drugs may circulate within the prison through the prisoners hand to hand, and can be transported also via the food barrows or the laundry. Every time a prisoner leaves the hall there is a rub down search.

[63] He advised that the challenge in preventing the introduction of drugs to the prison establishment involves constantly trying to monitor the situation and individuals. The prison service focusses resources where they perceive there to be the greatest risk. However if the prison focusses on visits or staff, then those attempting to introduce them will try to introduce drugs elsewhere. If the current method is to introduce contraband via property, then the prison will notice a large increase in property being sent in. This is an attempt to burden the staff with searching property to make the task more difficult. It is organised and there is a lot of money in selling drugs in prison. There is a high demand for drugs in prison, as there is in the community. Some people are willing to take extraordinary risks. The Prison will invest a great deal of resources in eg. A RapiScan machine, and then the method of entry will change as a consequence. In respect of mobile telephones, the issue is more related to sim cards now. These are regularly recovered in searches also. Phones are also still recovered, but to a lesser extent than prior to the pandemic.

Submissions

[64] The Procurator Fiscal on behalf of the Crown invited me to make formal findings only, under section 26(2)(a) and (c) of the Act in respect of where and when Mr Nikolov died, and the cause of his death as certified. This was based on the evidence agreed and led at the inquiry. That Mr Nikolov was not in the main known to be involved in the abuse of drugs or a regular drug user. That his death came as a shock to those who knew him well, in particular Prison Chaplain GB and Prison Officer VH. That the drug testing of the deceased was always negative and the cell searches, including 6 days prior to his death proved negative. That the Crown had identified no systemic failures in the management of the care of Mr Nikolov, nor any deficiencies in systems of work in place at HMP Glenochil designed to tackle the problem of illicit drugs entering the prison and circulating within. That above and beyond the general disruptive and preventative measures spoken to by Mr MS, and the cell searches and testing measures carried out, there were no further precautions which could reasonably have been taken by the authorities which may realistically have avoided Mr Nikolov's death.

[65] Mr Smith for the SPS adopted the submissions of the Crown and sought formal findings also. He focussed on four factors, namely, whether Mr Nikolov ought to have been managed differently, the phone and illicit alcohol, the cell search of 5 June 2018, and drug prevention activity in general. Mr Smith submitted that the evidence from Prison Officer FL highlighted that there appeared to be nothing untoward on the evening he was seen last. There being no cause for concern there was no need to activate the MORS procedure which would have involved a health centre assessment

and observations. This was not merited as the death was entirely unpredictable. In respect of the mobile telephone recovered, and the illicit alcohol there was insufficient evidence to infer either were relevant to the death. In respect of the search on 5 June 2018 nothing illicit was found. It can be inferred the drugs were obtained subsequent to that search. There were significant numbers of prisoner interactions daily. The SPS face considerable difficulties combatting drugs entering the prison. There are a whole range of robust practices in place. They are constantly developing and improving their measures within the constraints of their resources. They are dealing with organised criminal gangs. It is impossible to stop all of the drugs all of the time. What the SPS do is reasonable and proportionate when facing an extremely difficult task. There is no evidence of a defect in any system of work that caused the death.

[66] Ms Thomson for the SPOA submitted that the only precautions that may reasonably have prevented Mr Nikolov's death, would have been placing him on the MORS procedure on 10 June 2018 in order that he be observed. There was no basis to do this at the time. The cell he resided in could have been searched prior to lock up. This would not have been reasonable. There was no basis and it was searched a week prior. Prison Officer FL confirmed he had seen Mr Nikolov and he had no concerns. Had he presented as intoxicated the MORS procedure would have been adopted. He had previously been placed on this procedure. The staff activate it when necessary. PO VH confirmed this. There was no intelligence he had drugs. There are precautions but none are reasonable. She submitted that formal findings should be made in respect of S26(2)(a) and (c).

Discussion and Conclusions

[67] The deceased was a prisoner at HMP Glenochil for over five years. However, it was only in the last 9 months that he came to the attention of the staff presenting as a prisoner who may be intoxicated on occasion, notably October 2017, hence potentially abusing drugs. He also became involved in disciplinary matters on a number of occasions over this period of time which may also be indicative of involvement in misuse of substances.

[68] However, all drug tests were returned as negative. Mr Nikolov denied having any such issues. A cell search carried out only 6 days prior to his death also proved negative for prohibited substances. His presentation to officers, including officers who knew him well, and indeed to GB, the Prison Chaplain, prior to his death, did not raise any specific concerns of risk. He remained appropriate in his dealings with staff. There was no basis to activate the MORS procedure and have Mr Nikolov observed and assessed.

[69] It seems clear that Mr Nikolov's death due to cocaine toxicity was accidental rather than suicidal. There was clear evidence of planning for the future by him. GB the Chaplain was sure of this, and further that suicide was contrary to the deceased's religious beliefs. There were letters within the cell supportive of the death being accidental.

[70] It has not been established by police investigation how Mr Nikolov obtained the controlled drugs within his cell, which I infer was since the cell was searched 6 days prior.

[71] The focus of the inquiry was the prevention of drugs into the institution. There is a duty on the SPS to take all reasonable precautions to prevent deaths such as Mr Nikolov's. There are robust and clear policies and operating procedures in place in respect of the prevention and detection of drugs within the prison establishment. It is accepted that these have to take account of prisoners' rights, and be proportionate. There are 674 cells with predominantly single occupancy. There are practical and resource limitations on the frequency of searching cells, as well as appropriateness. However, clearly it remains an ongoing problem to prevent the introduction of drugs to the prison, and circulating within. The value of drugs is much higher in the prison than outside in the community. Organised criminality is involved with significant demand and high financial rewards for those supplying the drugs to the prison establishment. High levels of ingenuity and sophistication are used on occasion to introduce drugs to the prison including eg professional stitching inside clothing, concealing within property and prisoners internally concealing, etc. Drones are known to have been used at some Scottish prisons although not yet detected at Glenochil. Illicit mobile telephony / sim cards is also an issue within the establishment. It can be inferred that such devices are used to assist in the obtaining of drugs. It is clearly a difficult ongoing task for the SPS to combat the introduction of illicit drugs to the establishment. As the Prison shuts down one avenue of entry another would tend to appear. Significant resources and training are invested in tackling the issue. There are a wide range of measures used from searches, technology and intelligence to prevent and disrupt drugs activity, allied with rehabilitative measures also.

[72] However, I am satisfied that it is appropriate to make the above determination in terms of S26 of the Act. On the evidence available to me there were no precautions that could reasonably have been taken that might realistically have prevented the death of Mr Nikolov. There were no defects in any system of work that contributed to the death. I make no recommendations as to the taking of reasonable precautions, the making of improvements to or introduction of, a system of working, or the taking of any other steps which might realistically prevent other deaths in similar circumstances.

[73] I am grateful to parties for their assistance and submissions. The Court extends its condolences to Mr Nikolov's family.