

**SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH**

**[2018] FAI 39**

B1413-18

DETERMINATION

BY

SHERIFF FRANK RICHARD CROWE, ESQ

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

into the death of

**ROBERT CLYDE**

EDINBURGH, 29 November 2018

**The Sheriff determines as follows**

[1] In terms of section 26(2)(a) of the said 2016 Act that Robert Clyde who was born on 12 September 1943 and late of Her Majesty's Prison 33 Stenhouse Road, Saughton Edinburgh, died at 1508 hrs on 10 September 2017 at the Marie Curie Hospice, Frogston Road West, Edinburgh EH10 7DR, while a serving prisoner.

[2] In terms of section 26(2)(c) of the said Act that the cause of his death was

I (a) Metastatic Right Lung Cancer

II Chronic Obstructive Pulmonary Disease

[3] In terms of section 26(2)(e) of the said Act there were no reasonable precautions which could have been taken whereby the death could have been avoided.

[4] In terms of section 26(2)(f) of the said Act there were no defects in any system of working which contributed to the death.

[5] In terms of section 26(2)(g) of the said Act there are no other facts relevant to the circumstances of the death.

#### **NOTE**

The following facts were agreed:-

[6] This inquiry relates to the death of a 73 year old prisoner who died when in legal custody on 10 September 2017. The inquiry took place at Edinburgh Sheriff Court on 12 November 2018 following upon application to hold the inquiry by the Crown which was received on 19 July 2018. Parties were cited and a Preliminary Hearing took place at Edinburgh Sheriff Court on 5 September 2018 at which the Scottish Prison Service and the Prison Officers' Association were represented. Ms Moore, Advocate, for the family appeared but indicated representation at the Inquiry was unlikely. It was indicated that the evidence could be dealt with by joint minute and having heard an outline of the circumstances I indicated that I wished assurance that steps had been taken to consider whether Mr Clyde had required to be in custody at the time of his death.

[7] At the hearing on 12 November a Joint Minute was produced by Mr James O'Reilly, Procurator Fiscal Depute and also signed by Mr Ross Fairweather, Solicitor of Anderson Strathern LLP, Edinburgh on behalf of the Scottish Prison Service and Mr Stuart Holmes, Solicitor of Central Legal Office Edinburgh on behalf of NHS Lothian, who were the only parties appearing.

[8] On 19 February 2013 at the High Court of Justiciary in Edinburgh Robert Clyde was sentenced following a trial to a total of 9 years' imprisonment in respect of a total of 12 crimes and offences which mostly involved children as victims. This sentence had been back-dated to run from 22 January 2013. At the time of his death Mr Clyde was serving this sentence at Her Majesty's Prison, Saughton, Edinburgh.

[9] Prior to being taken into custody in January 2013 Mr Clyde had been diagnosed as having Chronic Obstructive Airways Disease. He had suffered 3 strokes in 2012, was described as being overweight and smoking in excess of 20 cigarettes a day. He was hard of hearing and in 2015 was registered as partially sighted. Mr Clyde had regular medical interventions and check-ups during his time in custody.

[10] On 25 June 2017 Mr Clyde was seen in the Prison Hall by a nurse at the request of staff as he appeared to be disorientated. Mr Clyde had been waiting for an appointment at hospital after being referred there by an optician. His pupils were not reacting properly and he was taken to Edinburgh Royal Infirmary that day where he was admitted for tests and observations.

[11] Mr Clyde remained in hospital until 11 July 2017 during which time he was found to be suffering from terminal lung cancer and brain metastasis. He was returned to prison but the following day on 12 July was found lying on the floor of cell and was unable to get up himself. He was re-admitted to ERI that day but was returned to prison on 15 July. Mr Clyde's condition continued to deteriorate and he became incontinent. On 23 August 2017 Mr Clyde was admitted to the Marie Curie Hospice, Frogston Road West, Edinburgh for end of life care.

[12] Elizabeth Thomson who is the Casework and Policy Manager within the SPS Parole Unit became involved in Mr Clyde's case in August 2017 due to his deteriorating health. Mr Clyde qualified for parole in July 2017 but in anticipation of that date had been assessed by the Parole Board and had his case continued until June 2018. On 3 August 2017 an application was made for Mr Clyde's compassionate release. After making inquiries the application was submitted by the SPS Parole Unit to the Parole Board on 25 August 2017 for consideration as a matter of urgency.

[13] On 28 August 2017 information was received from Marie Curie Hospice that Mr Clyde's condition had improved and they were not content his risk could be managed there if compassionate release was granted. They could not accept Mr Clyde without having additional security in place. This application was placed on hold the following day until such time as Marie Curie felt they could manage Mr Clyde's risk without additional security.

[14] Unfortunately Mr Clyde's condition deteriorated rapidly and by 2 September he was bedridden and becoming confused. On 8 September he became incontinent, unable to drink and eat and was at times aggressive. Mr Clyde died at the hospice at 15 08 on 10 September peacefully with family members present and prison guards in attendance.

## **FINDINGS**

[15] Having considered the terms of the Joint Minute and related medical notes together with the affidavit:-

- (i) I am satisfied that Mr Clyde's death was the result of natural causes due to underlying and long-standing health difficulties.
- (ii) He was properly kept in custody despite the debilitating nature of his illness and unfortunately deteriorated before his condition could be re-assessed and new plans made for his care.
- (iii) There was no accident involved in Mr Clyde's death.
- (iv) There were no defects in any systems of work which could have contributed to his death.
- (v) There are no recommendations over and above that I wish to make and accordingly have recorded a formal verdict.