

SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT PETERHEAD

[2019] FAI 32

PHD-B71-19

DETERMINATION

BY

SHERIFF CHRISTINE P McCROSSAN

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

into the death of

ROBERT MACGILLIVARY

Peterhead, 3 July 2019

The Sheriff, having considered the information presented at an inquiry under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016

("the Act") finds and determines:

- (1) In terms of section 26(2)(a) of the Act that Robert MacGillivary born on 19 December 1962 died at Aberdeen Royal Infirmary, Foresterhill Road, Aberdeen on 23rd August 2016, life being formally pronounced extinct at 2130 hours on that date;
- (2) In terms of section 26(2)(c) of the Act that the cause of death was,
I (a) Chest Sepsis.

NOTE

Legal Framework

[1] This Inquiry was held under section 1 of the 2016 Act. This was a mandatory inquiry in terms of section 2(1) and (4) of the 2016 Act as, while Mr MacGillivray died while an inpatient at Aberdeen Royal Infirmary (ARI), he was in legal custody at the time of his death.

[2] The Crown in the public interest is represented by the procurator fiscal depute. A fatal accident inquiry is an inquisitorial process and it is not the purpose of an inquiry to establish civil or criminal liability. The purpose of such an Inquiry 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.

[3] The Procurator Fiscal issued notice of the inquiry on 25 April 2019. A preliminary hearing took place at Peterhead Sheriff Court on 19 June 2019 with the date for the inquiry being set for 3 July 2019. Mr Hanton, Procurator Fiscal Depute appeared for the Crown. Mr MacGillivray's next of kin did not enter appearance in this inquiry. Representatives were in attendance for the Scottish Prison Service, the Prison Officers' Association (Scotland) and NHS Grampian. The Crown and Scottish Prison Service intimated that they proposed to enter into a Joint Minute setting out all salient facts, thus it was unlikely an evidential hearing would be required. The matter was continued to the date of the inquiry.

[4] On 3 July 2019 Mr Hanton again represented the Crown. Mr Smith attended for the Scottish Prison Service. Mr Hanton read out the terms of the Joint Minute. He

invited the court to make formal findings in terms of section 26(2)(a) and (c) of the 2016 Act. This position was supported by Mr Smith. Mr Hanton and Mr Smith concluded by expressing condolences for the family and friends of Mr MacGillivray.

Circumstances

The following narrative is taken from the terms of the agreed Joint Minute.

[5] Mr MacGillivray was a prisoner at HMP Grampian, South Road, Peterhead having been sentenced to life imprisonment at Aberdeen Sheriff Court in 2013.

[6] Mr MacGillivray had suffered with Chronic Obstructive Pulmonary Disease (COPD) for a number of years, with his health deteriorating severely to the extent that he had a life expectancy of around five years.

[7] Mr MacGillivray had signed a “do not resuscitate” form during an admission to ARI since his health had further deteriorated and he was not expected to survive.

[8] At about 1530 hours on 23 August 2016 Dr Bruce Strachan received a call requesting his attendance at HMP Grampian due to concerns for Mr MacGillivray’s health, at which time he was struggling to breathe. Dr Strachan did attend and established that Mr MacGillivray had low oxygen levels. He contacted an ambulance to transfer him to ARI. At about 1950 same day he was transferred to the High Dependency Unit at ARI where he was found to be suffering from Type 2 respiratory failure with acidosis. Mr MacGillivray was assessed as being at the end stage of COPD. He was made comfortable with no invasive lifesaving attempts being considered appropriate.

[9] At about 2130 on 23rd August 2016 the life of Mr MacGillivray was pronounced extinct by Dr Ali Khan at ARI with the death certified as being due to 1(a) Chest Sepsis.

[10] The death of Mr MacGillivray was reported to the Procurator Fiscal at Aberdeen on 31 August 2016.

[11] No post mortem examination was conducted.

Conclusion

[12] Taking into account the circumstances of Mr MacGillivray's death I am satisfied that formal findings should be made in this case. Mr MacGillivray's passing was due to his unfortunate health condition. His being in custody at the time did not contribute to that. No submissions were made to the effect that any precautions could reasonably have been taken which might realistically have resulted in Mr MacGillivray's death being avoided (section 26(2)(e)); or that any defect in any system of working had contributed to his death (section 26(2)(f)). Nor were there any other facts relevant to the circumstances of his death which fell to be included in this determination (section 26(2)(g)).

[13] I have set out the formal findings at the outset of this determination.

[14] I wish to add my condolences to the bereaved family of the deceased Mr MacGillivray.