

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
AYR**

[2019] FAI 45

AYR-B370/19

DETERMINATION

BY

SHERIFF JOHN MONTGOMERY

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

into the death of

KENNETH RUTHERFORD

For the Crown: Gillian Bradshaw, Procurator Fiscal Depute

For Roadbridge: Mr Ramsay Hall

AYR: 22 October 2019.

The sheriff, having considered the evidence presented at an Inquiry under section 1(1) of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the Act”), finds and determines that:-

- (i) in terms of section 26(2)(a) of the Act, that Kenneth Rutherford, born 28 February 1976, died within his home address at 56 Car Road, Cumnock, on 27 October 2018, life being formally pronounced extinct at 14:23 hours on that date;
- (ii) in terms of section 26(2)(c) of the Act, that the cause of death was:-

(1)(a) pulmonary thromboembolus;

due to

(1)(b) deep vein thrombosis;

due to

(1)(c) non-displaced tibial plateau fracture and obesity.

NOTE

[1] This Inquiry was held under section 1(1) of the Act. This was a mandatory Inquiry as Mr Rutherford had an accident at work which ultimately led to his death.

[2] At the Inquiry, the crown tendered a Joint Minute signed by the represented parties. The Joint Minute represented the sole evidence at the Inquiry. Parties invited the court to make only formal findings in terms of section 26(2)(a) and (c) of the Act in relation to the time, place and cause of death. No party suggested any other findings as recommendations.

[3] The agreed evidence at the Inquiry was set out in the Joint Minute.

[4] Mr Rutherford had been employed as a security guard at a Sicim/Roadbridge site at Twynholm hereinafter referred to as "the site".

[5] On 15 October 2018 at approximately 04:45 hours Mr Rutherford started work as a security guard at the site. At approximately 06:00 hours he attended the site gate to allow a third party entry. He left the security office and made his way to the gate for that purpose. Unfortunately as he did so he took an unauthorised shortcut to the gate.

Mr Rutherford knew the area was muddy and slippery. He slipped, lost his balance and fell to the ground injuring his knee.

[6] Mr Rutherford was taken to Dumfries and Galloway Royal Infirmary on the day of the accident where it was ascertained that he had suffered a non-displaced tibial plateau fracture of the left leg to which a full length back slab cast was applied and he was discharged that day.

[7] Mr Rutherford was seen at University Hospital Ayr on 18 and 25 October 2018 with no concerns to suggest signs or symptoms of deep vein thrombosis or pulmonary embolism. He was given a follow-up appointment four weeks post 25 October 2018.

[8] At approximately 13:00 hours on 27 October 2018 while within his home Mr Rutherford began to feel unwell with "pins and needles" in his leg. He appeared agitated and was struggling to breathe. His wife called an ambulance and her mother started CPR.

[9] On arrival of paramedics at Mr Rutherford's home he was found to be unresponsive, not breathing with no pulse. Resuscitation attempts were unsuccessful and life was pronounced extinct.

[10] A post mortem examination was carried out on 5 November 2018 at Queen Elizabeth University Hospital, Glasgow and cause of death was recorded as:-

(1)(a) pulmonary thromboembolus;

due to

(1)(b) deep vein thrombosis;

due to

(1)(c) recent fractured fibula and obesity which was an error which should have been recorded as “non-displaced tibial plateau fracture and obesity”.