

SHERIFFDOM OF LoTHIAN AND BORDERS AT LIVINGSTON

[2020] FAI 37

LIV-B76-20

DETERMINATION

BY

SUMMARY SHERIFF JOHN A MACRITCHIE SSC

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

into the death of

DAVID MCFARLANE O'ROURKE

Livingston, 21 October 2020

DETERMINATION

The Sheriff having considered the information presented at the inquiry, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc.

(Scotland) Act 2016 that:-

- (1) In terms of section 26(2)(a) of the Act, David McFarlane O'Rourke, born on 21 February 1958 (aged 61), died at Her Majesty's Prison Addiewell, on 28 July 2019, at 08:10 am.
- (2) In terms of section 26(2)(b) of the Act, no accident had occurred.
- (3) In terms of section 26(2)(c) of the Act, the cause of death was a Hepatitis C infection, leading to liver cirrhosis, leading to upper gastrointestinal haemorrhaging.

- (4) In terms of section 26(2)(d) of the Act, no accident had occurred.
- (5) In terms of section 26(2)(e) of the Act, there were no precautions which could reasonably have been taken, which might realistically have resulted in the death being avoided.
- (6) In terms of section 26(2)(f) of the Act, there were no defects in any system of working which contributed to the death.
- (7) In terms of section the 26(2)(g) of the Act, there are no other facts which are relevant to the circumstances of the death.

RECOMMENDATIONS

- (1) In terms of section 26(1)(b) of the Act, I do not consider it appropriate to make any recommendations as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, or (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances.

NOTE

Introduction

[1] The inquiry was held under the said Act into the death of David McFarlane O'Rourke.

[2] On 29 July 2019, the death was reported to the Crown Office and Procurator Fiscal Service.

[3] On 29 September and 21 October 2020, respectively, a preliminary hearing and hearing were held.

[4] The representatives of the participants of the inquiry were (1) Rebecca Swansey, Procurator Fiscal Depute for the Crown, (2) Liam Smith, Solicitor for the Scottish Prison Service, (3) Stuart Holmes, Solicitor for NHS Lothian and (4) Stephanie Canda, Solicitor for Sodexo.

[5] A joint minute of agreement and the productions referred to therein, constituted the entire evidence before the inquiry.

The legal framework

[6] An inquiry was held under section 1 of the Act.

[7] The inquiry was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

[8] The purpose of the inquiry was to (a) establish the circumstances of the death, and (b) consider what steps (if any), might be taken to prevent other deaths in similar circumstances.

[9] The matters which require to be covered in this determination under section 26 of the Act in relation to the death to which the inquiry relates, are my findings as to:

- (1) (a) when and where the death occurred, (b) when and where any accident resulting in the death occurred, (c) the cause or causes of the death, (d) the cause or causes of any accident resulting in the death, (e) any precautions which - (i) could reasonably have been taken, and (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided, (f) any defects in any system of working which contributed to the death or any accident resulting in the death, and (g) any other facts which are relevant to the circumstances of the death; and
- (2) such recommendations (if any), as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, and (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances.

[10] This determination is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature.

[11] The procurator fiscal represents the public interest, an inquiry is an inquisitional process and it is not the purpose of an inquiry to establish civil or criminal liability.

Summary

[12] In June 2012, Mr O'Rourke was diagnosed with Hepatitis C. He refused to accept medical treatment for this. He was fully advised then and thereafter, of the serious consequences of such a refusal. Mr O'Rourke had then and thereafter, the capacity to understand medical advice and make his own decisions in relation to medical care and treatment.

[13] On 18 September 2017, Mr O'Rourke was remanded in custody for the offence of assault and robbery.

[14] On 7 March 2018, Mr O'Rourke was sentenced to 8 years imprisonment for said assault and robbery.

[15] During his time at HMP Addiewell Mr O'Rourke was diagnosed as suffering from cirrhosis of the liver caused by his said untreated hepatitis C infection. He continued to refuse to engage with treatment for this.

[16] On 25 July 2019, Mr O'Rourke was taken from HMP Addiewell by ambulance to the Royal Infirmary of Edinburgh due to his having been vomiting blood (hematemesis). It was suspected that Mr O'Rourke was suffering from gastrointestinal bleeding and observations suggested that he had active internal bleeding. On examination at hospital Mr O'Rourke was fully alert. He refused to allow any further investigations or treatment, to establish the cause of the hematemesis. The examining Doctor confirmed that Mr O'Rourke had capacity to make this decision and despite again being advised of the risks and potential complications of self-discharging without medical intervention, Mr O'Rourke refused to remain in the hospital. Mr O'Rourke discharged himself

against medical advice, signed a self-discharge form and was returned to the care of prison staff.

[17] Of even date, the risks of refusing treatment were again explained to Mr O'Rourke. He confirmed that he understood all of these risks and a Do Not Attempt Cardiopulmonary Resuscitation Form was completed in agreement with Mr O'Rourke.

[18] In accordance with Rule 41(1) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011, conditions were implemented within HMP Addiewell in order to care for Mr O'Rourke in the most unobtrusive manner, while maintaining adequate observations of him throughout.

[19] On 27 July 2019, at 20:45 hours, Prison Custody Officer Luke Gornall called an ambulance due to his concern for Mr O'Rourke's deteriorating condition. Paramedics attended and Mr O'Rourke told the paramedics that he wanted to die. He continued to refuse all treatment. Mr O'Rourke's condition deteriorated further.

[20] On 28 July 2019, at 08:10 hours, Senior Charge Nurse Lorraine Mitchell and Primary Care Nurse Elaine Moffat confirmed that Mr O'Rourke had died.

[21] On 1 August 2019, Mr O'Rourke's body was taken to Edinburgh City Mortuary, Cowgate, Edinburgh, and was examined by Doctor Sally-Anne Collis, Consultant Forensic Pathologist. The medical cause of the death was a Hepatitis C infection, leading to liver cirrhosis, leading to upper gastrointestinal haemorrhaging.

[22] All interested parties submitted that there should be formal findings.

Discussions and conclusions

[23] Mr O'Rourke was suffering from Hepatitis C, but refused to engage with treatment for this. He was assessed by medical professionals as having the capacity to understand medical advice and make his own decisions in relation to his medical care and treatment. Mr O'Rourke was advised of the serious risks and potential complications from such a refusal. Despite this and the onset of cirrhosis of the liver and gastrointestinal bleeding, Mr O'Rourke still refused to engage with treatment for this illness.

[24] In the foregoing circumstances there was nothing more which prison or medical staff could be expected to have done to assist Mr O'Rourke; and particularly no precautions which could reasonably have been taken, which might realistically have resulted in the death being avoided, nor were there any defects in any system of working which contributed to the death.

[25] I conclude by taking a further opportunity to record that my thoughts are with all those affected, by the untimely death of Mr O'Rourke.