

SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT ABERDEEN

[2021] FAI 36

ABE-B60-20

DETERMINATION

BY

SHERIFF MORAG McLAUGHLIN

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

into the death of

KEVIN KENNETH STEWART

ABERDEEN 5 OCTOBER 2020

The sheriff, having considered the information presented at the inquiry, Determines in terms of section 26 of the Act, that:

DETERMINATION

- a) Kevin Kenneth Stewart (born 17 November 1966), who resided at Methlick, Aberdeenshire, died at 15.33 hours on 15 September 2018 at Aberdeen Royal Infirmary;
- b) The death occurred following an incident on 3 September 2018 at the Hilton Hotel forming part of the TECA Events Complex, then under construction at Stoneywood, Aberdeen where Mr Stewart was at that time working as a painter foreman;
- c) The cause of death was:

- 1(a) Head injuries, due to
- 1(b) Fall
- d) The accident occurred when Mr Stewart fell from a set of podium steps whilst applying filler by hand to remedy minor plasterwork defects on the wall. The reason for the fall is not clear. It is possible that Mr Stewart suffered a cardiac episode which caused him to fall from the ladder thereby striking his head on the concrete floor and sustaining the injury which led to his death, albeit the examining pathologist could not rule out another reason for the fall;
- e) In terms of section 26(2)(e), there were no precautions which could reasonably have been taken to prevent the death; and
- f) Makes no findings in terms of section 26(2)(f)

NOTE:

[1] The Fatal Accident Inquiry into the death of Kevin Kenneth Stewart was held on Monday, 9 March 2020. The Crown was represented by Mr Hanton, procurator fiscal depute. Miss Love, solicitor, appeared for MN Hamilton & Sons Limited, and Mr Bissett, solicitor appeared for Robertson Construction Group Limited. Mr Stewart's family – his son and daughter – were in court to observe but did not take part in proceedings.

[2] A preliminary hearing took place on 5 March 2020 at 09.30.

[3] The evidence consisted of a joint minute, entered into amongst the parties, together with relevant documentary productions.

The legal framework

[4] The inquiry was a mandatory inquiry under section 2(2) of the Act, as Mr Stewart died following an accident that occurred whilst he was acting in the course of his employment. I was advised that his death was reported to the procurator fiscal at Aberdeen on 18 September 2018.

[5] The inquiry was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017/103. The purpose of such an inquiry is to establish the circumstances of a death and to consider what steps (if any) might be taken to prevent other deaths in similar circumstances. It is an inquisitorial process and it is not the purpose of an inquiry to establish civil or criminal liability. The procurator fiscal represents the public interest in such an inquiry.

Summary of facts

[6] The facts, as agreed between parties in the joint minute of agreement submitted to the inquiry, are as follows:

- a. Kevin Kenneth Stewart (born 17 November 1966), painter foreman, residing in Methlick, died at 15.33 hours on 15 September 2018 at Aberdeen Royal Infirmary, where he had been receiving intensive care following an accident on 3 September 2018 at the Hilton Hotel forming part of the TECA Events Complex then under construction at Stoneywood, Aberdeen, where he had fallen from a set of podium steps whilst applying filler by hand to remedy minor plasterwork defects on the wall. The defects were within an area of

approximately one square foot located one third of the way down the wall adjacent to the right hand side of the window frame looking towards the window;

[7] Mr Stewart's death was reported to the procurator fiscal at Aberdeen on 18 September 2018;

[8] Mr Stewart had been employed by MN Hamilton & Sons, Aberdeen, as a full-time painter foreman for approximately two years and was a time served tradesman with more than 30 years experience covering a wide range of painting and decorating tasks. At the time of his death he was contracted to Robertson Construction Limited, Aberdeen, to work at the said development. He had proved himself to be a very able, hardworking and popular employee. As a painter foreman he was trusted to manage and direct other employees and was often the more senior person permanently on site. On the day of the accident he was one of two painter foremen working at the said TECA Events Complex and was leading a team of five.

[9] Following his death, a post-mortem examination was conducted by Doctor Leighanne Margaret Deboys, senior lecturer in forensic medicine, on 19 September 2018 at Aberdeen Mortuary and it was her considered opinion that Mr Stewart died as a consequence of head injuries, sustained due to a fall. The full post-mortem report was available to the inquiry.

[10] Doctor Deboys considered that, given the degree of underlying heart disease found post-mortem, it was possible that Mr Stewart suffered a cardiac episode that caused him to fall from the ladder thereby striking his head on the concrete floor and

sustaining the injury that led to his death, albeit she could not rule out another reason for the fall. A colleague, who had been working in the same room as Mr Stewart at the time of the fall, indicated to investigators that he heard Mr Stewart make a sound similar to “Oocha” just before falling.

[11] A full Health & Safety Executive investigation was conducted into the circumstances of Mr Stewart’s death and found no failings on the part of any individual or organisation, or material breaches that would account for the fall that led to his death. They made no recommendations for further proceedings. The full HSE report was available to the inquiry.

Recommendations

[12] In light of the terms of the HSE report and the evidence agreed and presented to the inquiry, there are no recommendations that I can make in terms of section 26(1)(b).

Conclusion

[13] In all the circumstances I was invited by all parties to make formal findings and I considered it appropriate to do so.

[14] The medical cause of death is as noted above. It is clear that Mr Stewart died as a result of head injuries because of his fall. A full Health & Safety Executive investigation did not disclose any failings on the part of either MN Hamilton & Sons Limited or Robertson Construction Group Limited that may have led to the fall. Whilst the investigation has not made it possible to reach a definitive conclusion about what caused

Mr Stewart to fall, it is at least possible, according to the pathologist, that his underlying heart disease may have contributed to this.

[15] The court extends its sympathy to Mr Stewart's family and loved ones. As the procurator fiscal advised, it was clear that Mr Stewart was a much loved father and also well respected by his employers and colleagues, who did what they could for him in those moments after he fell in order to give him the best chance possible.