

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT ABERDEEN

[2021] FAI 43

ABE-B474-20

DETERMINATION

BY

SUMMARY SHERIFF IAN WALLACE

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

into the death of

PHILIP REID

ABERDEEN 28 JUNE 2021

Findings

The Summary Sheriff, having considered the information presented at the inquiry determines that:

- 1. In terms of section 26(2)(a) of the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the 2016 Act”) (when and where the death occurred):**

Philip Reid, born 13 March 1959, resident at 1 Newseat of Dumbreck Farm, Udny, Ellon, AB4 0PL, died at Aberdeen Royal Infirmary on 18 May 2016 at 19:07 hours.

2. In terms of section 26(2)(b) of the 2016 Act (when and where any accident resulting in death occurred):

Philip Reid died as a result of injuries sustained in an accident which occurred between 17:15 hours and 17:20 hours on 18 May 2016 at his farm, Newseat of Dumbreck, Ellon.

3. In terms of section 26(2)(c) of the 2016 Act (the cause or causes of death):

The cause of Mr Reid's death was chest injuries sustained during demolition work being carried out on his farm when part of a wall fell on top of him.

4. In terms of section 26(2)(d) of the 2016 Act (the cause or causes of any accident resulting in death):

The accident was caused when Mr Reid pushed against a stone and lime wall of a partially demolished steading building, causing the adjacent gable end part of the wall to fall on top of him.

5. In terms of section 26(2)(e) of the 2016 Act (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):

An exclusion zone could have been created around the wall which fell on top of Mr Reid. Such an exclusion zone would have identified the area where there was a danger of being struck by falling debris. It would have helped to prevent

persons unnecessarily entering that zone. The zone could have been created using fencing, or post and tape, or similar, or have been agreed in advance by all those involved in the work, with reference to a particular identifiable physical area or features.

6. In terms of section 26(2)(f) of the 2016 Act (any defects in any system of working which contributed to the death or any accident resulting in death)

The failure to discuss, assess, create and observe an exclusion zone as set out above was a defect in a system of working which contributed to the death of Mr Reid.

7. In terms of section 26(2)(g) of the 2016 Act (any other facts which are relevant to the circumstances of the death)

There are no other facts relevant to the circumstances of the death.

Recommendations

In terms of sections 26(1)(b) of the 2016 Act (recommendations (if any) as to the taking of any other steps, which might realistically prevent other deaths in similar circumstances):

That the Health and Safety Executive ensure that sufficient information is available and communicated effectively so that those involved in construction and demolition works in relation to agricultural premises are aware of their duties to take account of health

and safety risks in terms of relevant regulations and industry standards, including the requirement to assess and identify exclusion zones.

NOTE

Introduction

[1] At Aberdeen Sheriff Court on 24 March 2021 and 27 May 2021 an inquiry was held under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the 2016 Act”) into the death of Philip Reid which occurred on 18 May 2016 as a result of an accident at the farm at Newseat of Dumbreck, Udney, Ellon. Mr Reid was the tenant of that farm and had been running it since 1998. The farm was managed at the time by Strutt and Parker LLP, and owned by Aberdeen Endowments Trust.

[2] Mr Reid’s death was reported to the Crown Office and Procurator Fiscal Service on 20 May 2016.

[3] The First Notice in relation to this inquiry, in terms of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (“the 2017 Rules”), was issued by the Procurator Fiscal on 16 September 2020. All subsequent hearings took place by Webex.

[4] Preliminary hearings in terms of Rule 3.6 of the 2017 Rules were held on 21 January 2021 and 3 March 2021.

[5] There were three participants in the inquiry. The Crown was represented by Nicola Gillespie, procurator fiscal depute. BNP Paribas (trading name, Strutt and Parker LLP) was represented by Mark Donaldson, solicitor. Aberdeen Endowments Trust was

represented by Karen Cameron, solicitor. The family of Mr Reid did not participate in the inquiry, but I was informed that the Crown had been in ongoing communication with members of his family and that Mr Reid's brother attended and viewed the inquiry by Webex on 24 March 2021.

[6] All evidence and information was agreed in the form of joint minutes which were read out by the procurator fiscal depute at the inquiry. The first joint minute (presented on 24 March 2021) set out the background to the demolition works being carried out and incorporated:

- A statement given by Peter Scott, plant operator, Aberdeen Trailers Ltd, on 8 July 2016;
- A statement given by Robert Gerrard, farm worker, on 19 May 2016;
- Photographs of the farm at Newseat of Dumbreck taken by Christopher Copeman, Inspector of the Health and Safety Executive ("HSE"), on 19 May 2016; and
- A report by Graham Martin, an HSE specialist in construction, dated 11 March 2020.

[7] After the presentation of this joint minute, and having discussed the matter with parties, I considered that there remained some uncertainty in relation to the extent of any discussion between Mr Reid and others carrying out the works in relation to the creation of an "exclusion zone" (see further below). I therefore required the Procurator Fiscal, in terms of section 20(2) of the 2016 Act, to bring forward further information in relation to this matter. On 27 May 2021 a second short joint minute of agreement was

presented. This joint minute confirmed that there had been no discussion of an exclusion zone between Mr Reid and any others involved in the demolition works.

Legal framework

[8] This inquiry was held in terms of section 1 of the 2016 Act and was governed by the 2017 Rules. This was a mandatory inquiry in terms of section 2 of the 2016 Act as Mr Reid died as a result of an accident in the course of his employment or occupation.

[9] The purpose of the inquiry is set out in section 1(3) of the 2016 Act as being to establish the circumstances of the death and to consider what steps (if any) might be taken to prevent other deaths in similar circumstances.

[10] In terms of section 26 of the 2016 Act the inquiry must determine certain matters, namely when and where the death occurred, when and where any accident resulting in the death occurred, the cause or causes of the death, the cause or causes of any accident resulting in the death, any precautions which could reasonably have been taken and might realistically have avoided the death or any accident resulting in the death, any defects in any system of working which contributed to the death, and any other factors relevant to the circumstances of the death. It is open to the Sheriff to make recommendations in relation to matters set out in subsection 4 of section 1 of the 2016 Act.

[11] The procurator fiscal represents the public interest. The inquiry is not intended to establish liability, either criminal or civil. The inquiry is an exercise in fact finding,

not fault finding. It is not open to me to engage in speculation. The inquiry is an inquisitorial process.

Summary

The facts

The planning stage

[12] Mr Reid was the tenant at the farm at Newseat of Dumbrek, Udney, Ellon, and had been running it since 1998. Before that, Mr Reid had worked on the farm when it was run by his father. Mr Reid employed Robert Gerrard as a farm worker.

[13] The farm was one of 60 farms owned by Aberdeen Endowments Trust (“The Trust”) and was managed on their behalf by Strutt and Parker LLP. Strutt and Parker reported regularly to the Trust in order that the Trustees could make informed decisions that Strutt and Parker would then action.

[14] As part of the lease agreement for Newseat of Dumbreck, it was the Trust’s responsibility to carry out any renewals of fixed equipment and it was the tenant’s responsibility to carry out maintenance of fixed equipment.

[15] Mr Reid considered that a large existing steading on the farm, which comprised 4 different buildings, was no longer suitable for its purpose. He began discussions with Strutt and Parker in 2012 in relation to works to replace or improve the existing steading. Over the course of the next 3 years designs were drawn up and approved, and quotes were received from contractors.

[16] Mr Reid had very clear ideas about how he wanted the work to be progressed. It was agreed that Mr Reid would organise the works and take on the responsibility as project manager, and liaise directly with any contractor. Mr Reid had lived on the farm since the commencement of the lease. He knew the workings of the farm. There had been a number of previous projects at the farm authorised by the Trust which Mr Reid had completed to a high standard, both with and without contractors.

[17] The arrangement that Mr Reid would act as project manager was finalised on 28 May 2015. Strutt and Parker wrote to Mr Reid informing him that the Trust agreed to make a contribution of £110,000 towards the cost of an umbrella roof over the traditional section of the dwelling. Any additional works would be considered a tenant's improvement, the cost of which he would be responsible for.

[18] Some demolition works had begun at the farm in early 2016. In May 2016, Mr Reid arranged for Aberdeen Trailers to deliver a forklift and digger to the farm. The digger was delivered to the farm on 14 May 2016. It was agreed that the witness Peter Scott, plant operator, would attend on 18 May 2016 to operate the digger. This would be under the sole direction of Mr Reid.

18 May 2016

[19] Mr Scott arrived at the farm early in the morning. He checked the digger was in working order. Mr Reid told Mr Scott that he was putting up a new milk parlour. He told Mr Scott which buildings were coming down. There were two separate areas Mr Scott was to work on. Robert Gerrard, farm worker, was also to assist.

[20] There was no discussion in relation to creating any exclusion zone to prevent persons unnecessarily entering any danger area during the works.

Works on first area of steading

[21] Mr Scott worked on the first area of the steading in the course of the morning.

This was an area of stone and lime wall from which Mr Reid wanted to save steel poles for reuse. Mr Scott used a small bucket on the digger to break off bits of the wall.

Mr Scott would then stop his digger and Mr Reid and Mr Gerrard would clear the stones and wood from the wall to another area. Mr Gerrard used the forklift to clear away stones and wood from the area.

[22] During this work Mr Reid was quite close to the wall. On two occasions Mr Gerrard told Mr Reid to move away from the work that was being carried out as he felt it was unsafe for Mr Reid to be standing where he was. Any time that Mr Reid was too close to the wall being worked on, Mr Scott would stop the excavator until Mr Scott was a safe distance away.

Works on second area of steading

[23] Around 3.00pm Mr Reid left the steading area to feed his cattle. Mr Scott started knocking down the other part of the building's walls. This was easier work as no steel poles required to be saved for reuse. Mr Scott loaded the materials from the wall onto a

trailer connected to a tractor, which Mr Gerrard then took into a field. This work lasted for up to 2 hours. Mr Reid did not assist with this work.

[24] During the later part of the afternoon Mr Scott was working on a long stone and lime wall, with an adjacent gable block wall. There was an old steel door at the gable end. He had taken the peak of the gable end down, and half of the stone and lime wall. Between 17.15 hours and 17.20 hours Mr Scott was working at the end of the stone and lime wall opposite the gable end. He then saw that Mr Reid had returned to the steading area, and was at the other end of the wall beside the gable end. Mr Reid was in the corner, holding a plastic water pipe which was connected to, or near, the wall. Mr Reid said something, but Mr Scott could not hear him so he turned his digger off. Mr Reid told him that the water pipe was "live". Mr Scott told him to just leave it and they would sort it later. He told Mr Reid to "just get out of there". Mr Reid again said the pipe was live, and Mr Scott again told him to "just get out of there" and that they would sort it later.

[25] Mr Reid then started pushing the long stone and lime wall. As soon as he did so, the gable end started to move. Mr Scott shouted at Mr Reid to get out. Mr Reid tried to run, but he was only able to move one step before the wall fell down on top of him. Mr Scott jumped down from his digger and went towards Mr Reid. Mr Reid was trapped from his shoulders down.

[26] Mr Scott then used the digger to lift the steel door in the wall which managed to take the weight off Mr Reid. He then lay beside Mr Reid and encouraged him to start speaking to him. Mr Scott told Mr Gerrard, who had returned to the area, to call 999.

Mr Scott did not move Mr Reid. He took off his own boiler suit and put it under Mr Reid's head.

Medical intervention

[27] The Scottish Ambulance Service received a call at 17.45 hours, and attended at the farm between 17.55 hours and 18.00 hours. Mr Reid was lying face down under the remains of the wall which was being held 3 or 4 feet off the ground by the digger.

Ambulance staff spoke with Mr Reid. He told them he had significant pains in his chest and leg areas. They administered pain relief, and requested the assistance of police and fire and rescue services. Around 10 minutes later Mr Reid began to communicate less, and the ambulance staff decided to remove him to the ambulance. Mr Reid was assisted with his breathing, and given 1mg of adrenaline at set intervals.

[28] The ambulance left the farm at 18:33 hours. At that time Mr Reid was asystolic. Ambulance staff continued to administer CPR on the way to Aberdeen Royal Infirmary. On arrival at 19:04 hours Mr Reid was taken into the hands of the resuscitation unit. Life was pronounced extinct at 19.07 hours.

Cause of death

[29] On 23 May 2016, a post mortem was carried out on Mr Reid's body by Dr Matthew Lyall, MBChB, FRC Path, DMJ, Senior Lecturer in Forensic Medicine. Mr Reid had suffered multiple rib fractures, and the sternum was fractured. Pulmonary

contusions were also observed. Dr Lyall concluded that the cause of death was chest injuries sustained during demolition work being undertaken on the farm.

[30] The death certificate issued on 25 May 2016, recorded the causes of death as:

- (a)1 (a) Chest injury
- (b) Incident during demolition work on a farm.

HSE investigation

[31] Graham Martin is an employee of the Health and Safety Executive, and HM Specialist Inspector of Health and Safety Construction Engineering. He prepared a report, dated 11 March 2020, in relation to this incident.

[32] Mr Martin concluded the works being carried out on the farm were “construction works” as defined in Regulation 2 of the Construction (Design and Management) Regulations 2015 (“2015 Regulations”). The 2015 Regulations therefore applied. These Regulations set out certain procedures for the client (in this case Aberdeen Endowments Trust) in any construction works to appoint certain duty holders, including a principal designer and principal contractor (if there is more than one contractor). This was not done in this case. The term “project manager”, the agreed role of Mr Reid according to the letter of 28 May 2015, is not used in the 2015 Regulations. Mr Martin concluded that the project, design and construction phases did not comply with the 2015 Regulations in this respect.

[33] However, Mr Martin concluded that the “underlying issue and root cause” of the accident was the failure to properly assess the risks and devise a safe system of working: in particular, the failure to establish an “exclusion zone” designed to prevent personnel unnecessarily entering a danger area. Mr Martin confirmed that the use of a digger/excavator in conjunction with an exclusion zone was standard industry practice. This method of demolition is common and is preferred to “hand demolition” because the excavator operator is remote from the hazard.

[34] Mr Martin confirmed that the relevant industry standard was the BS6187: 2011 Code of practice for full and partial demolition. Clause 13.4 of that code states “Exclusion zones should be applied when a whole structure or part of a structure is being demolished and should include areas where demolition machines are operating.” The extent of the exclusion zone required depends on the height of the building to be demolished and the method of demolition. Exclusion zones are there to prevent the workforce being struck by destabilised structures, debris and also the risk of being struck by the machines carrying out the demolition. The exclusion zone would normally be marked with a fence line, or a post and tape boundary line. In some cases where the works are remote, away from others, of short nature and there is a limited workforce on site, the exclusion zone may be identified by way of an oral agreement.

[35] In this case the exclusion zone could readily have been created, using fencing, or post and tape as would have been appropriate. However, when no exclusion zone was established, the method was unsafe because personnel were allowed to enter the danger area and be struck by destabilised structures, debris or machinery.

Parties' submissions

[36] Parties provided written submissions which they supplemented with oral submissions at the inquiry. There was agreement in relation to the findings I was invited to make in terms of sections 26(2)(a) to (d) of the Act, which were uncontroversial. None of the parties submitted I make any findings in terms of section 26(2)(g), or recommendations in terms of section 26(1)(b) and (4). I will therefore only summarise parties' submissions in relation to sections 26(2)(e) and (f).

Submissions for crown

[37] In relation to section 26(2)(e) the procurator fiscal highlighted that Mr Martin's opinion was that an exclusion zone should have been created around the demolition area. Mr Reid was the project manager who was responsible for the proper operation of the demolition project. It was submitted that "in theory" had an exclusion zone been in place and adhered to by Mr Reid it may have avoided his death. However, it was submitted that the court may think this "a moot point" given that Mr Reid was issued with at least two warnings to remove himself from the area and did not do so. It was noted that the fatal injuries sustained by Mr Reid may have been avoided had he not pushed the section of wall.

[38] In relation to section 26(2)(f) the procurator fiscal submitted that the court may wish to find that the lack of an exclusion zone was a defect in the system of working on the demolition site.

Submissions for Strutt and Parker (trading style of BNP Paribas)

[39] Mr Donaldson submitted there should be no findings in terms of sections 26(2)(e) and (f).

[40] Mr Reid had been brought up on the farm at Newseat of Dumbreck and had tended to it his whole life. He was intimately familiar with the age and condition of the farm buildings, having been responsible for maintaining them since he took over from his father in 1998. He had completed, in conjunction with Strutt & Parker, a number of projects to modernise the farm.

[41] It was submitted on behalf of Strutt and Parker that although there was no demarcated exclusion zone it was clear that the three men involved (Mr Reid, Mr Scott and Mr Gerrard) were operating "something akin" to an oral agreement on what was an isolated site. This was shown in the way the three men had worked together in the morning. Mr Scott would take down a section of wall with the excavator, and then he would stop to allow Mr Reid and Mr Gerrard to sort out the materials. Mr Gerrard would then drive the materials away. However, Mr Gerrard had twice warned Mr Reid to move away because he was standing too close to the area where Mr Scott was operating the excavator.

[42] Mr Reid was experienced and ought to have been aware of the need to maintain a safe distance during demolition works both from his previous experience and from his interactions with Mr Scott and Mr Gerrard on the day of the accident. However, for reasons unknown Mr Reid had ignored two clear warnings from Mr Scott, remained in a

position of danger, and intentionally pushed the partially demolished wall causing the gable end to collapse.

[43] Mr Donaldson submitted that it was difficult to see how the presence of a formally demarcated exclusion zone would have prevented the accident.

Submissions for Aberdeen Endowments Trust

[44] Ms Cameron for Aberdeen Endowments Trust similarly submitted there should be no findings in terms of sections 26(2)(e) and (f). It was submitted that it was not possible on the evidence to draw any “speculative” conclusion about whether the existence of any demarcated or identified exclusion zone would have stopped Mr Reid from taking the actions that he did on 18 May 2016. That was so given the apparent lack of heed taken by Mr Reid to requests for him to leave the demolition area that day.

[45] It was submitted that although the lack of a demarcated or identified exclusion zone was a clear defect in the system of working during the course of the demolition works, it was not possible on the evidence to speculate on whether the presence of such a zone would have avoided the accident occurring.

Discussion and conclusions

[46] Findings in terms of section 26(2)(a) to (d) of the 2017 Act are uncontroversial and self-explanatory. There was no issue with any actions of persons after the accident,

or with the medical treatment Mr Reid received. My discussions will focus on the requirement for an exclusion zone.

The Construction (Design and Management) Regulations 2015

[47] The 2015 Regulations came into force on 6 April 2015. These Regulations impose duties on all persons involved in a construction project to ensure, so far as practicable, works are carried out without risks to the health or safety of any person affected by the project. Any “client” who has construction works carried out has an overarching duty to ensure health and safety (Regulation 4). Where there is more than one contractor, or it is reasonably foreseeable that there will be more than one contractor working on a project at any time, the client has a responsibility to appoint a “principal contractor” and a “principal designer”, and to take reasonable steps to ensure that they comply with their duties. If the client does not appoint a principal contractor or principal designer, the client must fulfil their duties (Regulation 5). It is the duty of a principal contractor to cooperate and consult with workers on matters relating to their health and safety (Regulation 14). Where a structure is to be demolished or dismantled, this must be done in such a manner to reduce danger to as low a level as is reasonably practical, and arrangements for carrying that out must be recorded in writing before that work begins (Regulation 20).

[48] There was no reference to the 2015 Regulations in the course of planning or carrying out of the works at the farm at Newseat of Dumbreck. The planning had started before the 2015 Regulations came into force (on 6 April 2015). Mr Reid’s

appointment as “project manager” was finalised on 28 May 2015, although he had taken a leading role in the discussions in relation to the project well before then. “Project manager” is not a defined term within the 2015 Regulations. However, Mr Reid’s role would appear to have been equivalent to that of a “principal contractor”. Mr Reid was entrusted with the role of project manager as he had experience in carrying out such works, knew his own farm well, and had carried out a number of similar projects at the farm for the trust to a high standard.

[49] The decision to give Mr Reid the role of managing the works at his own farm was a responsible one. It was taken after much discussion with Mr Reid in relation to his plans for the works, and taking account of his experience. However, if his role had been formalised within the scheme of the 2015 Regulations it may have served to highlight his duties to ensure health and safety in the context of these works. It may have directed attention to the specific duties to cooperate, and consult with workers in relation to health and safety, and in relation to carrying out demolition works. It may consequently have focussed minds on the requirement for an exclusion zone. However, I do not consider that the consequences of the failure to appoint Mr Reid as a formal duty holder within the scheme of the 2015 Regulations are sufficiently clear in the circumstances of this case in order to form the basis for a finding in terms of sections 26(2)(e) or (f) the 2016 Act. My findings focus on the proximate cause of the accident which was the failure to establish an exclusion zone.

Section 26(2)(e) – precautions which could reasonably have been taken and might realistically have resulted in the death, or any accident resulting in the death, being avoided

[50] When carrying out full or partial demolition works with an excavator, it is standard practice to establish an exclusion zone. The purpose of such an exclusion zone in this context is to prevent any persons being struck by destabilised structures and debris, and also to prevent the risk of persons being struck by machines carrying out any demolition.

[51] In this case there was no discussion between Mr Reid, Mr Scott and Mr Gerrard in relation to an exclusion zone. That discussion should have taken place. If it had, it could have been a short one. The dangers were clear in relation to walls which were being demolished, and were unstable. The exclusion zone would not have required to be very large. The farm building was not high and there was limited scope for material to be ejected outwith the immediate drop zone of the walls. In the circumstances of this case, it could have been marked with tape, or even by way of an oral agreement with reference to a clearly identifiable physical area.

[52] I accept that it was, to some extent, evident that those working on the farm buildings at Newseat of Dumbreck were aware of the dangers involved. Over the course of the earlier part of the works on 18 May 2016, Mr Scott had taken care to stop operating his excavator while Mr Gerrard and Mr Reid sorted the materials from the wall he was taking down. Mr Gerrard twice told Mr Reid to move away when he was

too close to where the work was being carried out. Later in the day, immediately before Mr Reid pushed the stone and lime wall, Mr Scott told Mr Reid to move away.

[53] However, I do not consider that Mr Reid, Mr Scott, and Mr Gerrard were operating “something akin” to an oral agreement in relation to an exclusion zone, as was submitted by Mr Donaldson. Rather, Mr Scott and Mr Gerrard showed an awareness of the potential dangers, and admonished Mr Reid in the course of those works to move away when it was considered he was in an unsafe area. This approach was clearly less effective than a pre-existing agreement which excluded entry to an unsafe area.

[54] An exclusion zone will not necessarily identify dangers which workers would otherwise be unaware of, nor make it impossible for them to enter the identified unsafe area. The reasons, however, for agreeing an exclusion zone in advance, are clear.

Identifying an exclusion zone focusses minds on the relevant dangers. It means workers do not have to repeatedly assess those dangers in the course of their work. It sets a clear expectation which all workers are expected to comply with, and serves as a constant reminder. It guards against complacency and momentary lapses in judgement. It relieves the workforce of the burden of constantly reminding colleagues to remain out of unsafe areas. And if colleagues do enter an identified exclusion zone, it is likely to be easier to persuade them to remove themselves from that unsafe area quickly.

[55] Mr Reid was in charge of the demolition works being carried out. He did not apparently heed the warnings given to him to move out of unsafe areas. On this basis it was submitted by all parties, with varying degrees of emphasis, that the court could not conclude that a demarcated exclusion zone would have prevented Mr Reid acting in the

manner he did. However, the test I have to apply in relation to section 26(2)(e) is whether an exclusion zone is a reasonable precaution which “might realistically” have resulted in Mr Reid’s death being avoided.

[56] I consider that the benefits of an exclusion zone apply equally to ensuring the safety of those in charge of demolition works as they do to any other workers. First, one can identify an exclusion zone in advance of potentially dangerous works in order to protect oneself. It guards against the human tendency to have a lesser regard for risks when in the course of works and focussed on getting those works done, than one might have when assessing those risks beforehand. Further, identifying an exclusion zone would act to restrict everyone involved in works, including those in charge. Those in charge are less likely to act freely according to their own assessment at any given time if this were to involve breaching an identified restriction. This is particularly important as persons in charge of works may, in the absence of such a restriction, be particularly susceptible to complacency or taking risks with their own safety. The existence of an identified exclusion zone would also create a mechanism to empower members of the workforce to encourage those in charge to also comply with a safe system of work.

[57] In this case, if Mr Reid, Mr Scott and Mr Gerrard had held a discussion or assessment in relation to exclusion zones, they would inevitably have identified the immediate drop zone around the walls. This would have acted as a reminder to all those involved, including Mr Reid, to stay out of those areas, and at the very least to think twice before entering. It may have made it more likely that those carrying out the works, including Mr Reid, could encourage each other to follow safe working practices.

The formal identification of such areas would have had the effect of inhibiting those involved in the works, including Mr Reid, from entering any such danger area.

[58] Put shortly, if Mr Reid, when he returned to the steading area later in the afternoon of 28 May 2016, had seen or been aware of a marked exclusion zone around the partly demolished long stone and lime wall and gable end, he might realistically have been less likely to approach that wall and push it. The existence of an exclusion zone might therefore realistically have avoided the accident which resulted in his death.

Section 26(2)(f) – defects in any system of working which contributed to the death or any accident resulting in the death

[59] For the reasons set out above I consider that the failure to discuss, assess, create and observe an exclusion zone was a defect in the system of working which contributed to Mr Reid's death.

Section 26(1)(b) and (4) - recommendations

[60] There was no reference to the 2015 Regulations in the planning or carrying out of the works at Mr Reid's farm at Newseat of Dumbreck. A purpose of those regulations is to formalise and highlight the responsibilities that those involved in construction works have in ensuring the health and safety of all those affected by construction works. There was similarly no reference to the standard practice of identifying exclusion zones provided for in the British Standard BS6187: 2011 Code of practice for full and partial

demolition. It is clearly important that those involved in demolition works are aware of these responsibilities and standards. However, I am not aware, for example, that BS6187: 2011 is even freely available online.

[61] It is not known what Mr Reid knew of his responsibilities to take account of health and safety risks, or of the standard in relation to the assessment of an exclusion zone. However, his actions were consistent with someone who did not consider he required to assess and identify an exclusion zone. This may not be uncommon in relation to farmers carrying out construction works on their own farms. If so, a greater awareness of responsibilities in relation to health and safety on the part of those carrying out such works might realistically prevent future deaths in similar circumstances. I therefore recommend that the Health and Safety Executive take steps to ensure that sufficient information is available and effectively communicated to ensure that those carrying out construction works on agricultural premises are aware of their duties and responsibilities under the 2015 Regulations, and the relevant industry codes of practice, particularly in relation to creating exclusion zones.

[62] In closing this Determination I would once again join parties in expressing my condolences to the family and friends of Mr Reid. His loss will no doubt still be keenly felt.