

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2022] FAI 37

GLW-B828-21

DETERMINATION

BY

SHERIFF GERARD CONSIDINE

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

into the death of

JOHN DARGACZ

Glasgow, 22 November 2022.

The Sheriff, having considered all the information presented at the Inquiry, Determines in section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (hereinafter “the Act”) that:

- (1) In terms of section 26(2)(a) of the Act, John Dargacz, born on 17 July 1964, then a prisoner within HM Prison Low Moss, 190 Crosshill Road, Glasgow, died at 0815 hours on 24 April 2020 within Glasgow Royal Infirmary, Castle Street, Glasgow.
- (2) In terms of section 26(2)(c) of the Act, the cause was:
 - 1a acute exacerbation of chronic lung disease.
- (3) 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.

(4) In terms of section 26(2)(f) of the Act, there were no defects in any system of working which contributed to the death.

(5) In terms of section 26(2)(g) of the Act, there are no other facts which are relevant to the circumstances of the death.

Recommendations

The sheriff having considered the information presented at the Inquiry, Makes no recommendations in terms of section 26(1)(b) of the Act.

NOTE

Introduction

[1] The Determination is made following the Fatal Accident Inquiry held under the Act into the circumstances of the death of John Dargacz, born 17 July 1964, who died whilst a prisoner in HM Prison, Low Moss, Glasgow on 24 April 2020.

[2] Three parties were represented at the Inquiry. Miss Allan, Procurator Fiscal Depute, appeared for the Crown. Miss Paton, Solicitor, appeared for Greater Glasgow Health Board. Mr Devlin, Solicitor, appeared for the Scottish Prison Service. Intimation of the Inquiry was made to Mr Dargacz's sister Mrs A Paige who elected not to participate.

[3] For the purposes of the Inquiry parties tendered a Joint Minute of Agreement which covered all the necessary chapters of evidence which required to be placed before

the court. Therefore, no parole evidence was presented. All parties invited me to make only formal findings in terms of section 26(2)(a) and (c) of the Act.

Legal Framework

[4] This Inquiry was held under section 1 of the Act. It was a mandatory Inquiry in terms of section 2(4)(a) of the Act as Mr Dargacz was in legal custody at the time of his death. Although Mr Dargacz died whilst in hospital, he remained a prisoner of HM Prison Low Moss throughout that time, meaning that at the time of his death, he was in legal custody.

[5] In terms of section 1(3) of the Act, the purpose of an Inquiry is to establish the circumstances of the death and to consider what steps, if any, may be taken to prevent any other deaths in similar circumstances. Section 26 requires the sheriff to make a Determination which in terms of section 26(2), is to set out factors relevant to the circumstances of the death, insofar as they have been established to his satisfaction.

These are:

- (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 could reasonably have been taken and if they had been taken might realistically have resulted in the death being avoided;

(f) any defect in any system of working which contributed to the death or to the accident; and

(g) any other facts which are relevant to the circumstances of the death.

[6] In terms of 26(1)(b) and 26(4), the Inquiry is to make such recommendations (if any) as the sheriff considers appropriate 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.

The procurator fiscal depute represents the public interest. An Inquiry is an inquisitorial process and the manner in which evidence is presented is not restricted. The Determination must be based on the evidence presented at the Inquiry. It is not the purpose of an Inquiry to establish criminal or civil liability (section 1(4) of the Act).

Findings

i. John Dargacz was born on 17 July 1964.

ii. At the date of his death, Mr Dargacz was serving a sentence of imprisonment. He pled guilty at Falkirk Sheriff Court by way of section 76 Indictment in relation to a charge of assault and robbery. On 7 February 2019, he was sentenced to a period of 28 months' imprisonment backdated to 12 December 2018, the date on which he was first remanded in custody. On

4 March 2019, he received a further sentence of 165 days' imprisonment at Edinburgh Sheriff Court in relation to a contravention of section 47(1) of the Criminal Law (Consolidation) (Scotland) Act 1995. This sentence was to run consecutively to the previous sentence imposed. Mr Dargacz's earliest date of liberation was calculated as 1 May 2020 and the sentence expiry date was 23 September 2021. A supervised released order was also put in place in respect of the first conviction, to run for a period of 12 months following his liberation from prison.

iii. As at the date of his death on 24 April 2020 he was a prisoner in HM Prison, Low Moss and was accordingly in legal custody as at the date of his death.

iv. On his arrival at Low Moss on 12 December 2018, John Dargacz was subject to an assessment by the health care staff as part of his prison admission process. Among other matters it was recorded that he had suspected asthma and a history of emphysema. There were other medical conditions recorded. He was also recorded as having regularly failed to attend at health and medical appointments. On that date he was also the subject of a Talk to Me risk assessment as part of the Scottish Prison Services Suicide Prevention strategy. Following his arrival at the prison on remand he saw one of the prison's general practitioners for a consultation. Various health issues were noted and whilst on remand he received five medical referrals and was the subject of two medical tests, none of which were related to the ultimate cause of death.

v. On 7 February 2019, when John Dargacz returned from court having been sentenced, he was again subject to an assessment. He was recorded to be happy with the sentence imposed on him and he had no thoughts of self-harm or suicide. In due course he attended a number of subsequent medical appointments. He attended at Stobhill Hospital for a CT scan of his chest on 21 March 2019 and was thereafter subject to a further consultation with a prison general practitioner on 22 March 2019 on an unrelated matter. He was also referred for unrelated medical appointments within the prison on 27 March 2019, 3 April 2019, 31 July 2019 and 23 August 2019. These were again unrelated to the ultimate cause of death. On 28 October 2019, he attended Queen Elizabeth University Hospital, Glasgow for surgery to remove a metal plate from his face and he remained in hospital overnight. He attended further hospital appointments at Glasgow Royal Infirmary on 4 November 2019 and 13 November 2019 and he attended Stobhill Hospital for day surgery on 4 December 2019 and was returned to prison the following day. He had further unrelated attendances with the prison general practitioner on 24 February 2020 and 8 March 2020.

vi. At approximately 0845 hours on 20 April 2020, prison health care staff attended at John Dargacz's cell in relation to a "Code Blue" call. On their arrival at the cell, John Dargacz was sitting on the bed and was extremely breathless and ashen in colour. His observations were taken, and an urgent ambulance requested. He described feeling unwell overnight, with a temperature and being

unable to sleep due to feeling breathless. He also indicated that he had been provided with paracetamol at around 0400 hours that morning by prison staff. Whilst awaiting the arrival of the ambulance, he was given supplementary oxygen via a breathing mask and was also given further paracetamol at around 0925 hours. Paramedics from Scottish Ambulance Service thereafter arrived at the prison at around 0950 hours and Mr Dargacz was conveyed to Glasgow Royal Infirmary.

vii. Mr Dargacz arrived at Glasgow Royal Infirmary at approximately 1100 hours on 20 April 2020. He was escorted in the ambulance by prison staff. Upon arrival he was suspected to be suffering from Covid-19 and was treated with high flow nasal oxygen. He was noted to be alert and orientated at the time of admission and he was recorded as 15 on the Glasgow Coma Scale, the best rate of response. He was admitted to the high dependency unit within the hospital, however, it was noted that he would need to be moved to the intensive care unit should he require to be ventilated. As he was recorded as displaying no risk of absconding, the prison custody officers who were escorting him remained outside the ward.

viii. He remained in high flow nasal oxygen overnight and into 21 April 2020 where it was recorded that his oxygen saturation was dropping to as low as 69 to 70 per cent during effort and occasionally at rest. He was reviewed by the intensive treatment unit twice overnight who noted that his symptoms may not be Covid-19 related, but instead related to his pulmonary fibrosis. He was

recorded to be still managing food and oral fluids, and to have no requirement for assistance with personal care. He remained alert and orientated. He was swabbed and tested twice for Covid-19 with negative results both times, however, staff continued to treat him as they suspected these could be false negative tests due to his clinical presentation. Hospital staff were also in contact with his nearest relatives, who were unable to attend at the hospital due to their own ill-health and the Covid-19 restrictions in place at that time.

ix. Throughout 22 April 2020, he remained on high flow nasal oxygen and was attached to a cardiac monitor. He was recorded to remain stable, continuing to take oral fluids well and eating, and to be settled and sleeping for long periods. He was not complaining of any pain and his Glasgow coma scale remained at 15 during this period. On 23 April 2020, there was recorded to be little change to his condition, and he continued to be eating and drinking independently with stable renal function.

x. Overnight into 24 April 2020, John Dargacz was noted to appear more agitated and to be moving around his bed excessively. At around 0540 hours there was a significant deterioration in his condition. Staff from the intensive treatment unit attended to review him. They considered whether he would now require to be ventilated, however, there were concerns that this would not work due to his pulmonary fibrosis and lack of response to other treatment provided. It was decided that treatment in ITU was not realistically going to improve his condition and that the staff should move to palliative care. At around 0600 hours

he was recorded to be distressed and agitated due to difficulty breathing. He was administered medication, including 15 milligrams of morphine, and his sister (his next of kin) was updated by telephone. His life was pronounced extinct at 0815 hours on 24 April 2020.

xi. Responsibility for the provision of health care to prisoners transferred from the SPS to the NHS on 1 November 2011. Since then, individual regional NHS Health Boards have been responsible for the delivery of Health Care Services within prisons in Scotland which fall within the geographical ambit for the provision of medical care.

xii. A post-mortem was conducted on 12 May 2020 at the Queen Elizabeth University Hospital, Glasgow by Consultant Forensic Pathologist, Dr Marjorie Turner and the cause of death was reported as:

1a acute exacerbation of chronic lung disease.

xiii. The conclusion section of the post-mortem report included the following:

“Post-mortem examination the appearance of (the deceased’s) lungs was entirely in keeping with the clinical diagnosis of chronic lung disease with histology also identifying such features and although definitive diagnosis would require expert histopathology opinion it could be in keeping with the clinical diagnosis of interstitial lung disease. The clinical suspicion regarding Covid-19 disease was noted but in addition to the two negative swabs in life, additional swabs taken at post-mortem examination have also been reported as negative. The microscopic appearance of his lungs did show a few probable fibrin strands in alveoli and whilst this is seen in Covid-19 disease it did not show the reported typical findings and can be non-specific associated with other forms of lung insult. Therefore, whilst Covid-19 probably cannot be completely excluded given these findings and the reported fairly high false negative results from testing, there is no evidence from post-mortem to confirm such infection. There was no evidence of any other significant natural

disease that would have caused or contributed to his death. There was no significant injury.”

xiv. During his time in prison, the deceased did not attend at three respiratory appointments at Glasgow Royal Infirmary. These appointments were scheduled for 18 February 2019, 26 February 2019 and 31 July 2019. In relation to the first appointment, a referral letter was received by Glasgow Royal Infirmary on 7 February 2019 in relation to Mr Dargacz and an appointment was scheduled for 18 February 2019. All appointment letters are sent to HMP Low Moss, Health Centre PO Box, however, on this occasion the letter was incorrectly sent to the general prison PO Box. Following his non-attendance at this appointment, the address details were checked with the initial referral letter and updated to the Health Centre PO Box. A second appointment letter was sent for an appointment on 26 February 2019 and this was sent to the Health Centre PO Box. The letter was received by the Health Centre but it is not known why Mr Dargacz did not attend this appointment on 26 February 2019, although it is known that transport was not booked for that date or the earlier appointment on 18 February 2019.

xv. A further respiratory appointment was scheduled for the deceased on 31 July 2019 and an appointment letter sent to the Health Centre PO Box. This appointment was booked on 2 May 2019. On the day of the appointment it was recorded on the deceased’s medical records by Dr Daly, HMP Low Moss GP, that no appointment letter was received by the Health Centre. Further, no transport

was booked for him on that date. Although he did not attend these three appointments, he did attend a number of other appointments for different specialities between 16 January 2019 and 10 December 2019 as previously set out. When a prisoner is given an out-patient hospital appointment, this is generally as a result of a referral from the Prison GP. This referral will have the patient's address as c/o the Health Centre, with the PO Box number for HMP Low Moss. This is where any correspondence relating to hospital appointments will, thereafter, be sent.

xvi. An independent expert review of the circumstances of Mr Dargacz's death was commissioned by the Crown Office and Procurator Fiscal Service. This was undertaken by Professor Adam Hill, Consultant Respiratory Physician of the Royal Infirmary of Edinburgh which was completed on 27 June 2022. In particular, Professor Hill examined whether there was a causal link between Mr Dargacz's failure to attend or be taken to three respiratory appointments in February and July 2019 and his death. From his review of all the available and relevant medical records, Professor Hill concluded that:

"There are now licensed therapies for pulmonary fibrosis for patients that have forced vital capacity 50-80 per cent predicted. These treatments attenuate the decline in lung function but are associated with significant morbidity in terms of side effects and many patients do not tolerate the treatments. On the balance of probabilities, he may have been offered anti-fibrotic therapy. In my opinion, however, he likely would not have tolerated the anti-fibrotic medications in view of his concomitant medications with nortriptyline, gabapentin, fluoxetine, nefopam and methadone. Even without these concomitant medications, the anti-fibrotic medications are poorly tolerated, in particular with gastro-intestino side effects. These medications attenuate lung function decline.

Individual studies have not shown a mortality benefit, but pooled analysis has shown both a pirfenidone and nintedanib can prolong survival and decrease exacerbations. The reality is that these treatments have had little clinical impact on an individual patient basis and in my opinion would not have materially changed the outcome if John Dargacz had received anti-fibrotic medications. It is well recognised that the medium survival with idiopathic pulmonary fibrosis is three years, and he died five years from first diagnosis.”

xvii. Professor Hill further states that although there was a failure in Dr Dargacz’s not attending respiratory clinic appointments, in his opinion, he did not consider that the failure to attend at the appointments either caused or contributed to the death of the deceased. Professor Hill also comments that Mr Dargacz had appropriate investigations and management from the time of his arrival at prison and throughout his time of imprisonment, that he was appropriately medicated during the time of his imprisonment, and that his acute deterioration on 20 April 2020 was appropriately managed whilst in prison. Professor Hill did not consider that there were any reasonable precautions whereby the deceased’s death might have been prevented.

Conclusions

[7] John Dargacz was a 55 year old man who suffered from a number of health conditions. He was given appropriate medical treatment during his time in custody. On 20 April 2020, he began to feel unwell. He was assessed by medical staff in the prison and a decision was made to transfer him to hospital. Sadly for Mr Dargacz, despite the medical intervention in the care he received, his condition continued to deteriorate until his death. Having considered the treatment provided to Mr Dargacz at HM Prison, Low Moss and subsequently at Glasgow Royal Infirmary, I am satisfied that he was well cared for throughout and there is nothing more that could have been done for him. Given these circumstances of his death I am satisfied, as submitted by all

parties, the only findings in terms of paragraphs (a) and (c) of section 26(2) of the Act should be made in this case.

[8] I am grateful to parties for their preparation for this Inquiry as a result of which all the evidence was agreed and no witnesses were required to attend.

[9] I wish to conclude this Determination by expressing my sympathies and condolences, along with those of the parties who appeared at the Inquiry, to the family and friends of Mr Dargacz and to his next of kin.