

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
DUMFRIES

[2023] FAI 12

DUM-B229-22

DETERMINATION

BY

SHERIFF KEVIN F McCALLUM KC, ADVOCATE

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

into the death of

MICHAEL COYLE McARTHUR

7 March 2023

Determination

1. The Sheriff, having considered the evidence presented at the Inquiry, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths Etc.

(Scotland) Act 2016 that:

1.1 In terms of section 26(2)(a) of the Act (when and where the death occurred):

At 22 23 hours on 11 April 2022, Michael Coyle McArthur, born 5 July 1947, died within the Combined Assessment Unit, Dumfries and Galloway Royal Infirmary, Dumfries.

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

Mr McArthur's death did not result from an accident.

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

1 (a) Sepsis

due to

1 (b) Bilateral pyelonephritis

2 Liver cirrhosis, diabetes mellitus type 2 and chronic obstructive pulmonary disease.

1.4 In terms of section 26(2)(d) of the Act (the cause of any accident resulting in the death):

Mr McArthur's death did not result from an accident.

1.5 In terms of section 26(2)(e) of the Act (the taking of precautions):

There were, on the available evidence, no precautions which (i) could reasonably have been taken, and (ii) had they been taken, might realistically have resulted in the death being avoided.

1.6 In terms of section 26(2)(f) of the Act (defects in any system of working):

There were, on the available evidence, no defects in any system of working which contributed to the death.

1.7 In terms of section 26(2)(g) of the Act (any other facts relevant to the circumstances of death):

There were, on the available evidence, no other facts relevant to the circumstances of death.

Recommendations

2. In terms of section 26(1)(b) of the Act, there are, on the available evidence, no recommendations to be made.

NOTE

Introduction

Representation:

Procurator Fiscal: Ms McLintock, Procurator Fiscal Depute.

Scottish Prison Service ('the SPS'): Bell, Solicitor, Anderson Strathern LLP.

Dumfries and Galloway Health Board ("DGHB"): Holmes, Solicitor, NHS Central Legal Office, Scotland.

[1] This is an Inquiry into the death of Mr Michael Coyle McArthur. Mr McArthur died at Dumfries and Galloway Royal Infirmary on 11 April 2022. He was aged 76 years at the time of his death. His death was intimated to the Procurator Fiscal on 12 April 2022. At the time of his death, Mr McArthur was a serving prisoner within HM Prison, Dumfries. This is, accordingly, a mandatory Inquiry in terms of section 2(4)(a) of the Act.

[2] A preliminary hearing was held on 18 January 2023.

[3] The Inquiry was conducted virtually with participants appearing by video conference on 3 March 2023. All evidence was agreed by way of a Joint Minute of Agreement lodged on 23 February 2023.

[4] I have found that Mr McArthur died of natural causes and, on the evidence, there are no systemic defects arising or precautions that might have been taken to avoid the death. I undernote a narrative of the facts which I find established.

Legal Framework

[5] 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 McArthur was in legal custody at the time of his death. Although Mr McArthur died whilst in hospital, he remained a prisoner within HM Prison, Dumfries throughout that time, meaning that at the time of his death, he was in legal custody.

[6] 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 or her 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.

[7] 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.

[8] 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).

Summary

Background

[9] Mr McArthur was born on 5 July 1947. He was aged 76 years as at the date of his death on 11 April 2022.

[10] On 26 November 2004, at Glasgow High Court, Mr. McArthur was convicted of charges of murder (charge 1) and attempting to pervert the course of justice (charge 2). On 23 December 2004, at Edinburgh High Court, Mr McArthur was sentenced to life imprisonment in relation to the charge of murder (charge 1) and was sentenced to a concurrent sentence of 5 years' imprisonment in relation to the charge of attempting to pervert the course of justice (charge 2). These sentences were ordered to run or date from 1 September 2004. In terms of section 2 (2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, the 'Punishment Part' of the sentence of life imprisonment (that is, the period of imprisonment that required to be served before Mr McArthur would become eligible for release on licence) was fixed at a period of 20 years, but this aspect of the sentence was the subject of a successful appeal heard on 15 March 2007 whereby the 'Punishment Part' of 20 years' imprisonment was quashed and a 'Punishment Part' of 16 years' imprisonment, again to run or date from 1 September 2004, was substituted. Mr McArthur was initially incarcerated within HM Prison Barlinnie, Glasgow but was transferred to HM Prison, Dumfries on 13 January 2005. Mr McArthur was transferred from HM Prison, Dumfries to HM Prison, Edinburgh on 25 August 2021 for the purposes of his participation on a course, and was then transferred from HMP Edinburgh back to HM Prison, Dumfries on 13 October 2021. Accordingly, as at the date of his death on 11 April 2022, Mr McArthur was in legal custody and was incarcerated within HM Prison, Dumfries.

Provision of Healthcare to Prisoners

[11] On 1 November 2011, the responsibility for the provision of healthcare to prisoners transferred from the Scottish Prison Service (SPS) to the NHS. Since then, individual NHS health boards have been responsible for the delivery of health care services within prisons in Scotland that fall within their geographical ambit for the provision of medical care. Since 1 November 2011, the SPS has been responsible for the provision of personal and social care for prisoners in Scottish prisons.

Medical History and Treatment of Mr McArthur

[12] Mr McArthur was known to suffer from multiple long-term medical conditions including drug and alcohol abuse, cirrhosis, type 2 diabetes, angina, chronic obstructive disease and ankylosing spondylitis. He also had a history of hepatitis C infection, hypertension, chronic leg ulcers and oesophageal varices. He was on a wide variety of medication for these various conditions. However, due to the quantity of medication, Mr McArthur found it very difficult to manage his medication regime, and so his medication was issued to him by prison nursing staff on a supervised basis, usually twice daily. He had poor mobility and used a walking aid and occasionally a wheelchair if required to travel long distances. He was reviewed annually by the Diabetic Eye Screening service, his last appointment being on 14 December 2021 when nothing of concern was noted.

[13] As noted above, Mr McArthur suffered from chronic leg ulcers that were dressed by prison nursing staff on a regular basis as required, but typically at least

twice weekly. He was admitted to the Royal Infirmary of Edinburgh on 27 August 2021 and again on 9 September 2021 due to recurring issues with ulcers and Sepsis whilst he was incarcerated within HM Prison, Edinburgh. He was seen by a Specialist Lymphoedema Nurse on 11 February 2022 and was provided with compression wraps and compression stockings that were made to fit his legs better. He was also referred to Podiatry Services in recent years, with his most recent consultation being on 23 November 2021 when a dressing was placed on his foot.

[14] For many years, Mr McArthur presented with severe shaking and exhibited as unresponsive and drowsy. He was seen by a number of specialists at Dumfries and Galloway Royal Infirmary on various occasions without any conclusion or diagnosis being made. He was admitted to Dumfries and Galloway Royal Infirmary on 25 March 2020 with confusion and pyrexia (abnormal elevation of body temperature). His symptoms on this occasion settled following treatment with antibiotics and he was discharged on 30 March 2020. However, he was re-admitted to Dumfries and Galloway Royal Infirmary on 4 April 2020 with the same symptoms. Tests on this occasion did not reveal anything especially unusual. When hospital staff discussed discharge with him, Mr McArthur developed a stutter, double vision and a tremor. However, nothing remarkable was found upon subsequent neurological examination.

[15] On 23 January 2020, an occupational therapy assessment was carried out on Mr McArthur and his cell at HM Prison, Dumfries. He was provided with a Bariatric frame that ought to have been more comfortable for him to use. In addition, he was provided with a foam cushion for a chair in his cell to assist him in getting up from the

chair and adjustments were made to the shower to make it more comfortable for him to use. He required additional support in most aspects of daily life, including requiring assistance from prison staff or other prisoners to complete menus or to take food to his cell on days when he was feeling unwell. Nursing staff and another prisoner assisted him with personal hygiene. Additional prison staff were required to monitor him whilst showering due to his concerns that he may fall. He required to use utensils such as a kettle tipper and a cutlery with larger handles.

[16] Mr McArthur tested positive for COVID-19 on 11 February 2021. He was admitted to Dumfries and Galloway Royal Infirmary on 16 February 2021 following complaints of shortness of breath and a cough. He was treated with oxygen and discharged on 17 February 2021. He was administered his first and second doses of COVID-19 vaccination respectively on 14 May 2021 and 9 July 2021, and he was administered a booster vaccination on 19 December 2021.

[17] Mr McArthur had no documented mental health issues whilst within HM Prison, Dumfries. He was never placed on 'Talk To Me', this being the SPS Prevention of Suicide In Prison Strategy ('SPIS').

Events of 7 April 2022

[18] On the morning of 7 April 2022, Mr McArthur was seen by Nurse Ross Haggerty within HM Prison, Dumfries for his morning medication. Nurse Haggerty noted that Mr McArthur was somewhat unsteady on his feet, but that he managed to make it through the surgery. On returning to the prison hall, Mr McArthur requested assistance

from prison staff, stating that he could not move his legs. Following some encouragement and assistance, he was able to mobilise with the aid of a walking stick.

[19] Nurse Haggerty again attended to Mr McArthur in the afternoon of 7 April 2022 in order to dress the ulcer wound on his leg. The wound was noted to be slightly sloughy but in good condition. However, Mr McArthur's right leg was noted to be very swollen due to him not wearing his prescribed stockings and wraps for sufficient time. Nurse Haggerty explained to Mr McArthur the benefits of wearing the stockings and wraps, and Mr McArthur indicated that he would try to wear them for longer.

[20] Around 18 30 hours on 7 April 2022, Operations Officer Lynette Greenaway was carrying out checks on cells when she noted that Mr McArthur was slumped over his bed and moaning incoherently. Officer Greenaway alerted First Line Manager Sean McIntyre who attended the cell. Mr McArthur told Mr. McIntyre that he felt unwell and that his head was sore. It was difficult to comprehend what Mr McArthur was saying at this time. Mr McArthur was advised that Nurse Haggerty would see him shortly when back on duty and he seemed satisfied with this. Officer Greenaway checked on Mr McArthur every 15 minutes until the arrival of Nurse Haggerty, with Mr McArthur appearing somewhat restless during this period.

[21] Nurse Haggerty attended Mr McArthur's cell shortly thereafter and noted him to be short of breath and lying flat on his bed. He was hot to the touch and appeared drowsy, with Nurse Haggerty requiring to shake him in order to awaken him. Observations were taken. Mr McArthur was found to be tachycardic. Nurse Haggerty was concerned as to the possibility of Sepsis. Accordingly, Nurse Haggerty requested

SPS staff to arrange for an ambulance to take Mr McArthur to Dumfries and Galloway Royal Infirmary for further assessment.

[22] Paramedics from the Scottish Ambulance Service arrived at HM Prison, Dumfries at approximately 19 30 hours on 7 April 2022. By this time, Mr McArthur showed signs of improvement and was able to converse with Nurse Haggerty and prison staff. He disclosed that he had been having diarrhoea for the last day or so, but that it was unlike diarrhoea he had experienced previously. Nurse Haggerty noted stool in the cell that was very soft and very yellow in colour. Mr McArthur was thereafter transported by ambulance to Dumfries and Galloway Royal Infirmary at approximately 20 10 hours on 7 April 2022. He was accompanied by Operations Officers Samantha Garden and Jimmy Johnston.

Admission to Dumfries and Galloway Royal Infirmary on 7 April 2022

[23] On arrival at Dumfries and Galloway Royal Infirmary, Mr McArthur was taken to Accident and Emergency and assessed. It was determined that he would require to be admitted; and he was moved to the Combined Assessment Unit. It was noted that he was suffering from abdominal pain, diarrhoea and fever. Medical staff commenced the administration of medication for Sepsis. Because of this, the Operational Officers present arranged for GEOamey staff to take over the escort of Mr McArthur, with two GEOamey officers arriving at the hospital and receiving a handover at approximately 2320 hours on 7 April 2022.

[24] On admission to hospital, Mr McArthur was assessed to be clinically unwell and approaching the end of life. Blood tests revealed acute kidney injury and raised inflammatory markers. In addition, he was noted to be swollen and carrying fluid, including fluid in the lungs. He was catheterised and started on intravenous antibiotics and fluids. Throughout his admission, Mr McArthur was struggling to speak.

Consequently, GEOamey staff found it difficult to understand him, which caused Mr McArthur to become stressed. Mr McArthur was bedbound for the duration of his admission. He was noted to be breathless. His condition was noted to be deteriorating.

[25] On 8 April 2022, Mr McArthur's condition deteriorated and bacterial infection was confirmed in his blood cultures. An ultrasound scan showed an increase in size of his intra-abdominal fluid collection. A new antibiotic was started; and despite treatment, his inflammatory markers and kidney function continued to deteriorate. It was noted that Mr McArthur would repeatedly take out his oxygen line and wished to get out of the bed. He was advised by nursing staff and custody officers that he must remain in bed due to his mobility issues, and that he required to wear a full face mask for oxygen and a catheter due to his poor health. During the evening of 9 April 2022, all treatments were discontinued and Mr McArthur was moved to a palliative programme of care as healthcare staff considered that there was no further treatment that could be provided.

[26] Mr McArthur's life was pronounced extinct at 2223 hours on 11 April 2022 by Dr Robina Khan.

Risk Assessment

[27] Mr McArthur was assessed as requiring a 'low' level of supervision following an assessment on 7 April 2022 that considered his poor health, reduced mobility and previous escorts out of prison with no issues as relevant risk factors. Consequently, he did not require to be handcuffed whilst within Dumfries and Galloway Royal Infirmary.

Post-Mortem

[28] A post mortem examination was conducted on Mr McArthur on 19 April 2022 at Dumfries and Galloway Royal Infirmary by Dr Jarmila Lastikova, Consultant Pathologist, and the cause of death was recorded as:-

1a. Sepsis

due to

1b. Bilateral pyelonephritis

2. Liver cirrhosis, diabetes mellitus type 2 and chronic obstructive pulmonary disease

[29] The summary section of the Post Mortem Report states as follows:

"The post-mortem revealed bilateral purulent pyelonephritis, which is kidney inflammation caused by bacterial infection. This was also confirmed on histology. Generalised and extreme immune reaction is sepsis and usually leads to multi organ failure. People with chronic illnesses, such as diabetes are more prone to develop sepsis and show lower response to treatment.

Contributing factors to death were liver cirrhosis, diabetes mellitus 2 type and COPD, as noted from the documentation.

The toxicology report stated no remarkable findings.

There were no suspicious findings in this case and the death was due to natural causes”

Death in Prison Learning, Audit and Review (DIPLAR)

[30] Following Mr McArthur’s death, a Death in Prison Learning, Audit and Review (‘DIPLAR’) was conducted on 20 June 2022 by the Scottish Prison Service (‘SPS’). The DIPLAR lists the various health conditions that Mr McArthur suffered from and the events of 7 April 2022 leading to his admission to hospital. In relation to care provided to Mr McArthur on 7 April 2022, the DIPLAR states:-

“It was discussed and agreed that the contact with nursing staff throughout the day was appropriate in regards to Mr McArthur’s condition. Mr McArthur showed no signs of symptoms until after the meal break in which he was assessed and an ambulance phoned upon the belief that he was suffering from sepsis. NHS Healthcare Manager Lenny Allen stated that the staff are sufficiently trained in sepsis and that the required information is on display for others.”

[31] The DIPLAR also noted the following learning points:-

“It was reflected that the process of identifying who was responsible for Mr McArthur’s body after passing was a lengthy one and although it was highlighted that there was good practice in regards to the work input by social work to find a resolve to this, that the length of time it can take to resolve it too long (sic). This learning point was not individualised and it was noted that this is a common occurrence for those in our care who do not have a next of kin.

It was discussed that information being passed from DGRI to SPS is restricted. Lenny Allen stated that he has discussed this with the health board and highlighted that it is particularly difficult for those who have no next of kin as there can be no-one being informed of the condition of the individual. It was highlighted that the communication from GEOAmev was good and that the prison was informed of Mr McArthur’s condition regularly. However, it was noted that on occasion the information was being passed onto reception staff rather than managers. It was agreed that moving forward that all information would be given to Operation FLMs in the first instance.”

[32] It was also noted that Mr McArthur did not have a next of kin listed or any community contacts. He did not receive any visits in prison either, but was supported by prison staff and other prisoners in relation to his poor health, which was a positive factor in his life.

Submissions

[33] The Procurator Fiscal Depute submitted that formal findings should be made in terms of sections 26(2)(a) and 26(2)(c) and that no findings should be made in respect of the other elements of the section.

[34] The solicitor for the SPS mirrored the position of the Procurator Fiscal Depute in inviting formal findings only.

[35] Similarly, the solicitor for DGHB invited formal findings only and made substantially similar submissions to the other participants.

Conclusions

[36] On the evidence, there is no difficulty in making the formal findings noted above in terms of sections 26(2)(a) and (c).

[37] Mr McArthur had suffered from complex health needs for some time. The medical records disclose an intense health management regime after incarceration. He was assessed regularly and substantially engaged well with the medical and prison staff administering treatment.

[38] I have not identified any substantive matter that would merit a finding or recommendations in terms of sections 26. The evidence discloses that the medical and general treatment of Mr McArthur was adequate and appropriate. Mr McArthur's deteriorating presentation on 7 April 2022 was reacted to appropriately with prompt transfer from prison to hospital on the same date. Thereafter, investigations were carried out, and a treatment regime initiated, with a view to establishing appropriate management, but these efforts were hampered by Mr McArthur's chronic, complex health conditions and his progressive deterioration, culminating in his demise on 11 April 2022.

[39] There is, accordingly, no basis on which to make any substantive findings in terms of section 26 or to make any corresponding recommendations.

[40] Finally, at the conclusion of submissions all parties offered their condolences to Mr McArthur's family. The court joins in that expression of sympathy.