

SHERIFFDOM OF LOTHIAN AND BORDERS AT SELKIRK

[2018] FAI 9

B77/17

DETERMINATION

BY SHERIFF P PATERSON

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

into the death of

KENNETH SCOTT

Selkirk 25 January 2018

The Sheriff having considered the evidence and submissions of the parties; determines that in terms of Section 26 of the Inquires into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 ("the Act") as follows:-

[1] In terms of Section 26(a) of the Act, that Mr Scott's death took place at an area of woodland within Sunderland Hall Estate, Lindean, Galashiels at 1701 hours on Tuesday 31 January 2017, that being the time life was pronounced extinct by medical personnel on the scene.

[2] In terms of Section 26(2)(b) of the Act the accident resulting in Mr Scott's death took place at Sunderland Hall Estate, Lindean, Galashiels between 1300 and 1445 on 31 January 2017.

[3] In terms of Section 26(c) of the Act the cause of Mr Scott's death was determined by post-mortem examination , specifically 1(a) multiple injuries due to 1(b) incident when tree felling and that ischemic heart disease may have been a significant condition contributing to his death.

[4] In terms of Section 26(d) of the Act the cause of the accident was that Mr Scott was struck by a tree.

[5] In terms of Section 26(e),(f) and (g) of the Act makes no further determination.

Note

[6] The inquiry was conduct over the course of the morning of 25 January 2018, when I heard evidence and on the afternoon of the 25 January submissions were made on behalf of the Crown, represented by Ms McJannett procurator fiscal depute and by Miss Campbell solicitor for RD and CM Smyly the heritable proprietors of Sunderland Hall Estate ("the estate"). The relatives of Mr Scott were not represented. As a result of the evidence and submissions I was able to make a determination on the day of the inquiry.

[7] The deceased was working as a contractor on the site at the estate carrying out tree felling. The project was being managed for the estate by Forest Direct Limited of Clovenford.

[8] The deceased, who was aged 58 at the time of his death, was an experienced forester, having undergone appropriate training which was in date at the time of his death.

[9] As I explained to the parties at the time of my determination on the day of the inquiry, it is simply not possible to say how the accident occurred. It is clear that a tree fell on Mr Scott, but how it came to fall cannot be determined with any degree of certainty. To attempt to make any detailed finding in fact about the cause of the accident would amount to speculation and accordingly I decline to do so.

[10] What can be said that no blame for the accident can be said to attach to the RD and CM Smyly, Forest Direct Limited or the emergency services.

[11] Accordingly, I find myself unable to make any determination as to how the accident was caused, any precautions that might have prevented it or any recommendations.

Sheriff P. Paterson