SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2024] FAI 38

EDI-B426-24

DETERMINATION

BY

SHERIFF MATTHEW AUCHINCLOSS

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

into the death of

PETER TOBIN

Edinburgh, 3 October 2024

The sheriff, having considered the information presented at an inquiry under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 ("the Act") determines:

1. In terms of section 26(2)(a) of the Act that Peter Tobin, born 27 August 1946, a prisoner held in legal custody at His Majesty's Prison Edinburgh, died at Edinburgh Royal Infirmary on 8 October 2022.

2. In terms of section 26(2)(c) of the Act that the cause of death was bronchopneumonia in a man with a fractured right next of femur (surgically treated on 9 September 20220, generalised vascular disease and prostate cancer.

3. In terms of sections 26(2)(b),(d),(e), (f) and (g) no findings fall to be made and no recommendations are made.

NOTE

Introduction

[1] This inquiry was held under section 1 of the Act. It was a mandatory inquiry in terms of section 2(1) and (4) of the Act as Peter Tobin was in legal custody at the time at the time of his death, serving a life sentence having been convicted of three murders. The procurator fiscal lodged a notice of the inquiry on 26 March 2024. There was a preliminary hearing on 27 May 2024, and the inquiry itself took place on 17 September 2024.

[2] Three parties were represented at the inquiry. A procurator fiscal depute appeared for the Crown. A solicitor appeared for the Scottish Ministers on behalf of the Scottish Prison Service and a solicitor advocate appeared for NHS Lothian.

[3] No oral evidence was led at the inquiry. A joint minute of agreement was entered into by all of the parties. This formed the entirety of the evidence. All parties invited me to make formal findings only in respect of paragraphs (a) and (c) of section 26(2) of the Act. None of the parties invited me to make any recommendations. The following evidence is derived from the joint minute of agreement.

Background

[4] Peter Tobin, was born on 27 August 1946. At the time of his death he was age 76.

[5] In September 2022 Peter Tobin was being held in legal custody at His Majesty's Prison ('HMP') Edinburgh, 33 Stenhouse Road, Edinburgh, EH11 3LN.

[6] Peter Tobin had previously been accommodated in a number of establishments across the Scottish prison estate since entering custody in October 2006.

[7] Peter Tobin was a life sentenced prisoner having been convicted of three separate murders: that of Angelina Kluk in 2006; Vicky Hamilton in 2008; and Dinah McNicol in 2009.

Medical History

[8] Peter Tobin's prison medical records date back to 2006. These records show he had suffered from a number of medical issues during his time in prison, including:

i) A number of strokes and transient ischemic attacks (also known as 'mini strokes');

ii) Suspected prostate cancer (diagnosed in 2016 though unconfirmed due to his unwillingness to undergo follow up testing);

iii) Recurring chest pain;

iv) Repeated complaints of dizziness;

v) Chest infections;

vi) Vascular dementia (diagnosed in December 2020);

vii) General confusion and a number of falls;

viii) Use of a wheelchair and walking stick due to mobility issues.

Incident leading to hospitalisation

[9] On 8 September 2022 Peter Tobin was being held within Hermiston 2 North Hall within HMP Edinburgh. He was allocated cell 42 within this Hall.

[10] At approximately 1900 hours that day Peter Tobin's cell was opened by a prison officer to allow him to leave his cell and collect his usual medication.

[11] Peter Tobin had taken several steps out of his cell and did not have his walking stick. He was reminded by a prison officer that he did not have his walking stick.

[12] On returning to his cell to collect his walking stick, Peter Tobin suffered a fall and landed on the floor on his side. The fall was not witnessed.

[13] The prison officer who had reminded Peter Tobin to collect his walking stick heard him fall and went to his assistance. A nurse working within the Hall also came to the aid of Peter Tobin.

[14] Peter Tobin was assessed by the nurse and by the prison officer, a trained first aider. He reported that he was in pain but that he was "ok".

[15] The nurse and prison officer lifted Peter Tobin from the floor and helped him to lie down on his bed within his cell. The nurse called for an ambulance for him but noted that this was not an emergency call out.

[16] An ambulance later conveyed Peter Tobin to Edinburgh Royal Infirmary ('ERI'), 51 Little France Crescent, Old Dalkeith Road, Edinburgh.

Provision of healthcare in Scottish Prisons

[17] On 1 November 2011, responsibility for the provision of healthcare to prisoners was transferred from the Scottish Prison Service to the NHS (under the Health Board Provision of Healthcare in Prisons (Scotland) Directions 2011). Since then each individual regional NHS health board has been responsible for the delivery of healthcare services within prisons in Scotland which fall within their geographical ambit for the provision of medical care.

Medical care and treatment

[18] Peter Tobin was assessed at the ERI on 9 September 2022. Investigations revealed that he had suffered from a right neck of femur fracture. He underwent surgery that day for a right hemiarthroplasty.

[19] During Peter Tobin's time as an inpatient within the ERI the following issues were diagnosed and, where possible, treated:

i) Metastatic prostate cancer which showed signs of progression;

ii) Delerium against a background of dementia resulting in a lack of capacity for medical and surgical care decisions;

iii) Hospital acquired pneumonia, treated with oral antibiotics;

iv) Heamaturia in his catheter;

v) Acute left leg ischaemia (thromboembolism in the left external iliac artery).

[20] Peter Tobin was seen by the palliative care team during his time in ERI. Efforts were made to make his condition comfortable. He was informed that his general

condition was declining and that it was unlikely that he would be discharged from hospital.

[21] Peter Tobin had a “do not attempt cardiopulmonary resuscitation” (“DNACPR”) order in place. This order meant that medical staff would not attempt to restart his heart or breathing when they stopped.

Death

[22] Whilst an inpatient within ERI, Peter Tobin was monitored at all times by custodial officers from GeoAmey.

[23] On the evening of 7 October 2022, Peter Tobin was within Room 3, Ward 109 of ERI and was being monitored by two GeoAmey officers. The two officers commenced their shift at 2130 hours, taking over from two colleagues who had observed him for the previous shift.

[24] Peter Tobin was in bed and was described as breathing heavily over the course of the evening and into the early hours of 8 October 2022. He was grumbling and speaking incoherently at various intervals.

[25] A staff nurse, who was covering Ward 9 that night into the next morning, attended to Peter Tobin four times over the course of her shift. These visits were to carry out standard checks of the patient.

[26] At approximately 0405 hours on 8 October, the nurse checked Peter Tobin’s heart rate and gave him a painkiller.

[27] At approximately 0455 that morning, one of the GeoAmey officers left Mr. Tobin's room to alert the nurse that Peter Tobin appeared to have stopped breathing.

[28] The nurse immediately attended to Peter Tobin and checked his vital signs. He was not breathing and his pupils were fixed and dilated. The nurse was of the opinion Peter Tobin was now deceased. The nurse was unable to formally verify the death and so contacted a colleague who was able to do so.

[29] An advanced nurse practitioner attended at the ward at approximately 0510 hours to verify the death. She carried out a number of checks to satisfy herself that Peter Tobin was deceased and formally pronounced life extinct at 0535. The nurse practitioner then contacted Police Scotland to advise of the death.

[30] Medical staff had expected Peter Tobin's death given a decline after his injury and surgery, combined with his general frailty.

Post-mortem examination

[31] A post-mortem examination was carried out on 12 October 2022 by Consultant Forensic Pathologist Dr. Kerry-Anne Shearer. Dr. Shearer's report was lodged as Crown Production 3. It contains a true and accurate record of the post mortem examination and toxicological analysis carried out.

[32] The cause of Peter Tobin's death was 1a: bronchopneumonia in a man with a fractured right next of femur (surgically treated on 9 September 2022), generalised vascular disease and prostate cancer.

DIPLAR

[33] A Death in Prison Learning, Audit, and Review ('DIPLAR') is a process for reviewing deaths in custody. It provides a system for the Scottish Prison Service and NHS to record any learning and identify actions following a death.

[34] On 29 November 2022 a DIPLAR in relation to the death of Peter Tobin was carried out. A copy of this document was lodged as Crown Production 5. There were no substantive learning points identified following the death of Peter Tobin.

Conclusions

[35] I accepted the submissions made by each party that formal findings should only be made in terms of section 26(2)(a) and (c) of the Act. Those are set out above.

[36] At the time of his death Peter Tobin was a 76 year old man who had been living with a number of serious health conditions. He suffered a fall in prison. Prison staff dealt with the situation appropriately and he was given appropriate medical care in hospital. The cause of Peter Tobin's death was bronchopneumonia in a man with a fractured right next of femur (surgically treated on 9 September 20220, generalised vascular disease and prostate cancer.

[37] I wish to express my thanks to all parties, and their agents, for their professional and efficient approach to this inquiry.