

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2018] FAI 14

B1540-17

DETERMINATION

BY

SHERIFF IAN H L MILLER

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

into the death of

**KIRK ALEXANDER LEGGATT**

GLASGOW, 17 November 2017.

The sheriff, having considered the application, the evidence presented, the productions used in evidence and the submissions made

**FINDS AND DETERMINES under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016:**

- (1) In terms of subsection (2)(a) that Kirk Alexander Leggatt, whose date of birth was 22 December 1980, and who resided latterly in Inverness died on 27 July 2015 at 22:25 hours within Her Majesty's Prison Low Moss, 190 Crosshill Road, Bishopbriggs, Glasgow;
- (2) In terms of subsection (2)(c) that the cause of his death was hanging;
- (3) In terms of subsection (2)(e) that there were no precautions that could reasonably have been taken that, had they been taken, might realistically have resulted in his death being avoided;
- (4) In terms of subsection (2)(g) that there were no other facts which are relevant to the circumstances of his death.

## NOTE

[1] This fatal accident inquiry (“the Inquiry”) has been convened to inquire into the circumstances of the death of Kirk Alexander Leggatt (“Mr Leggatt”). His date of birth was 22 December 1980, and he resided latterly in Inverness. He died on 27 July 2015 at 22.25 hours within Her Majesty’s Prison Low Moss, 190 Crosshill Road, Bishopbriggs, Glasgow. The holding of the Inquiry is mandatory under and in terms of section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the Act”) because his death occurred in Scotland and at the time of his death he was in the legal custody of the Scottish Prison Service within a prison.

[2] Other than the Procurator Fiscal, the participants in the Inquiry were the Chief Constable of the Police Service of Scotland, the Scottish Prison Service, Detective Constable Ross Anderson (as he is now) and Police Custody Support Officer Denise Young. All parties were legally represented.

[3] The Inquiry heard from 8 witnesses, all led by the Procurator Fiscal: Ms Victoria Syme, Police Constable Ross McNaught, Police Constable Martin Cracknell, Detective Constable Ross Anderson, Police Custody Support Officer Denise Young, Police Chief Inspector Gordon Milne, Prison Officer Glen Di Ciacca and Mr James Durnion. The parties entered into a joint minute of agreement in which they set out a number of facts over which there was no dispute. Beyond that the way in which the Inquiry was presented and conducted by all made it clear that with a few limited exceptions, none of which had any material bearing on the issues for determination, there was no real dispute over the facts that were given by the witnesses to fact. At the hearing on

evidence no participant made any criticism of the reliability let alone the credibility of any of the witnesses.

[4] I am satisfied that I can treat as reliable all the evidence that was presented by the witnesses to fact and no question of their credibility arises. In addition I accept entirely the factual and opinion evidence given by Chief Inspector Milne. He is an extremely experienced police officer with a particular expertise in the practice, procedures and conduct demanded within police custody suites in Scotland obtained from his experience as a serving officer but especially from his work in the review that he conducted within Tayside Police force in 2009 and into 2010. He demonstrated readily that he had the necessary specialised knowledge and experience that entitled him to give skilled evidence on matters relating to the operation of police custody suites in Scotland in particular. He assisted the work of the Inquiry greatly by his impartial presentation of the evidence that he gave about police procedures and custody practices and of his assessment of how they were put into practice when dealing with Mr Leggatt on which he was invited to comment.

[5] From all the evidence that was led, it is possible to present a sequence of events that had a bearing upon how he came to be in prison and what happened there up to the point of his death and what formal procedures occurred thereafter. It falls conveniently into two parts, the first dealing with events between 20 July 2015 and 27 July 2015 involving Mr Leggatt and the police and covered by the evidence of various witnesses to fact and the second, from the point in time that he was transferred from the care of the

police to the care of G4S and eventually the Scottish Prison Service, concerned with events of 27 July 2015 is contained almost entirely in the joint minute.

[6] The first part starts with a consequence of the breakdown of Mr Leggatt's relationship with Ms Victoria Syme. That resulted in him being apprehended by four police officers, of whom Constable Ross McNaught was one, on Monday 20 July 2015. He appeared subsequently in court and was released on a grant of bail that included a special condition that he did not contact Ms Syme. On Saturday 25 July 2015 he was detained on suspicion of breaching that grant of bail and taken to Stirling Police Office. Once there he was presented at the charge bar by two escorting police officers, Constable Martin Cracknell and Special Constable Ross Ramsay. The duty custody officer who processed him was Sergeant Ross Anderson and also present throughout was Police Custody Support Officer Denise Young. The entire procedure at the charge bar was captured on CCTV and much use was made of it during the Inquiry. It shows that Mr Leggatt was presented to Sergeant Anderson at 21:32 hours and that it took until 21:51 hours to complete the procedure. Mr Leggatt was taken to another part of the Office to be interviewed after which he was returned to the charge bar at 23:11 hours, this time to be arrested. That took until 23:15 hours when he was taken back to his cell. On Monday 27 July at 09:12 hours he came into the charge bar area where he was transferred to the care of G4S who took him to Court.

[7] At this second part of the narrative of events the joint minute takes over almost entirely. Mr Leggatt appeared at Stirling Sheriff Court charged with a contravention of section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (a charge of

stalking) and a contravention of section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995 (failing to comply with a condition of bail without reasonable excuse). He pled not guilty and was remanded in custody. Following upon that court appearance he was taken to and incarcerated in HMP Low Moss, 190 Crosshill Road, Bishopbriggs, Glasgow. He was accordingly in legal custody at the date of his death. On admission to HMP Low Moss every prisoner is routinely referred for a health and risk assessment. The assessment is called an ACT 2 Care and the purpose of this is to check the health care needs of a prisoner and assess if he is at risk of self-harm or suicide. Each prisoner is asked a series of questions designed to assess if he has any intention of self-harming or of attempting suicide. His replies are recorded in the ACT book and VISION system. If a prisoner's replies cause concern he is placed "at risk" and given anti-ligature clothing, placed in an observation cell and re-assessed the following day. On Mr Leggatt's admission to HMP Low Moss Nurse Amanda Peden carried out that health and risk assessment on him. That assessment raised no concerns regarding his condition and he was considered fit to be detained. He was admitted to Kelvin Hall and taken to its cell number 1A29 at approximately 20:00 hours. On his admission to his cell Prison Officer Campbell Kettle completed an "immediate need screening tool" on him. Officer Kettle had no concerns regarding Mr Leggatt's condition and he was thereafter secured in his cell in accordance with the prison regime.

[8] At approximately 21:05 hours he pressed the emergency buzzer within his cell and spoke to Prison Officer Glen Di Ciacca. Mr Di Ciacca then went to his cell and opened the door hatch to speak to him. At approximately 21:40 hours Mr Di Ciacca

returned to Mr Leggatt's cell and found him suspended from the bedframe with a ligature around his neck. He immediately radioed for assistance, broke his sealed pack and entered the cell. Shortly thereafter Prison Officers James Durnion and Michael McElhinney attended at the cell. Mr Di Ciacca and Mr Durnion began to administer CPR and an ambulance was summoned. The two officers continued with CPR turn about until the arrival of paramedics Jackie Rankin and James Tomnay. They attended at 21:59 hours and attempted to resuscitate Mr Leggatt. They were unable to achieve that. His life was pronounced extinct at 22:37 hours.

[9] Events that occurred following his death were that Police Scotland was contacted regarding his death. As a result Police Constables Daniel Doherty and Rona Stewart and Detective Constables Kelly Doak and David Baillie attended at HMP Low Moss, were taken to his cell and observed him there. There were no suspicious circumstances surrounding his death. On 3 August 2015 at the Queen Elizabeth University Hospital, Glasgow Dr Julia Bell, Forensic Pathologist, carried out a post mortem examination on Mr Leggatt. She found and recorded that the cause of his death was 1a: Hanging. His death was intimated in proper form to the registrar of births, deaths and marriages for the district of Inverness confirming that he died on 27 July 2015 at 22:25 hours at 190 Crosshill Road, Glasgow and that the cause of death was 1(a) Hanging.

[10] All the submissions made in light of all the evidence led at the Inquiry invited me to make what are usually called formal determinations. Mrs Dunipace for the procurator fiscal took the lead and all the others adopted her proposals. She invited findings under section 26(2)(a) and (c) only: namely, that Mr Leggatt, whose date of

birth was 22 December 1980, and who resided latterly in Inverness died on 27 July 2015 at 22:25 hours within Her Majesty's Prison Low Moss, 190 Crosshill Road, Bishopbriggs, Glasgow; and that the cause of his death was hanging. I am satisfied to the required legal standard, that being on the balance of probabilities, that the evidence requires me to make those findings under those two paragraphs.

[11] Although that is all that the procurator fiscal and the participants invited me to do I consider that section 26(1) of the Act imposes a mandatory duty on the sheriff to give proper consideration as to whether the evidence permits or requires any further findings as to the circumstances mentioned in subsection (2) and such recommendations (if any) as to any of the matters mentioned in subsection (4) as I consider appropriate.

[12] With regard to the circumstances mentioned in subsection (2) I can discount immediately paragraphs (b), (d) and (f) for they deal with circumstances that form no part of the Inquiry. That leaves paragraphs (e) and (g). For present purposes (e) is concerned with any precautions which could reasonably have been taken, and had they been taken, might realistically have resulted in the death of Mr Leggatt being avoided and (g) with any other facts which are relevant to the circumstances of his death.

[13] At the heart of the Inquiry was the issue of the nature, extent and likely consequences of any vulnerability from which Mr Leggatt suffered. It was said to raise questions of him self-harming or of him committing or attempting to commit suicide. Much time was spent investigating what the various police officers involved in his care were aware of as regards any aspects of vulnerability or might be said ought to have been aware of and how they responded to what they knew in the decisions they took

about the nature, type and levels of care they gave to him during his period in police custody from 25 to 27 July 2015. These are important matters that fall readily under the broad scope of paragraph (e).

[14] I have concluded that the evidence neither permits nor requires me to make a finding that there was a precaution of the kind with which the subsection is concerned. The evidence from Ms Syme and Constable McNaught for what was or was not said at the time of his apprehension on 20 July about Mr Leggatt's state of mental health was not linked to the subsequent events of 25 July in a way that I could hold had any relevance to those events, which were the main focus of attention, and I have put that evidence to one side.

[15] As for how he was treated at Stirling Police Office, on 25 July in particular but also through until the morning of 27 July, the Inquiry had the advantage of seeing that on CCTV footage and following what was said on the transcript of the various conversations that took place as well as of hearing from Constables Anderson and Cracknell and Custody Officer Young. Mr Leggatt appeared before Duty Sergeant Anderson as he then was on two occasions. The first was his first presentation at the charge bar while he was detained. He had to be processed there and it took Sergeant Anderson slightly under twenty minutes to complete that exercise in the company of Constable Cracknell, Special Constable Ramsay and Custody Support Officer Young. The second was some hour and twenty minutes later when, after interview, he was placed under arrest at the charge bar. This second appearance was briefer, lasting some four minutes. Constable Cracknell said of Mr Leggatt that he presented as calm and



compliant and neither aggressive nor angry. He did not present as a threat to self-harm and he assessed him as fit to be interviewed. Support Officer Young said that Mr Leggatt presented as lucid and raising no issues. She agreed with the suggestion that he was both calm and compliant. Sergeant Anderson described the demeanour of Mr Leggatt as being calm, lucid, communicating well, responsive and answering all questions. He displayed no obvious signs of vulnerability. I accept that consistent body of evidence from all three witnesses about his demeanour. It accords very much with what the Inquiry saw of Mr Leggatt's demeanour and actions throughout his first appearance at the charge bar. At his second appearance he became slightly agitated when Sergeant Anderson told him he was being arrested, but it was only a minor change in temperament and I accept from what he and Chief Inspector Milne said that it was right to conclude that it gave no rise for any concern over his personal safety or to re-assess his risk rating.

[16] As for the issues of self-harm and potential suicide risk, Sergeant Anderson had no information before him from the escorting officers but he was aware from his records held on computer that they contained a suicide marker. Aware of that he asked Mr Leggatt about that as a necessary part of booking him in. As recorded in the transcript of what took place within Stirling Police Office, Sergeant Anderson asked Mr Leggatt: "Any acts of self-harm or attempted suicide?" To that Mr Leggatt shook his head, thereby answering in the negative. Sergeant Anderson then asked him: "Nothing at all?" and when Mr Leggatt paused went on to say, "There's a marker, I've got a marker on you right now." To that Mr Leggatt answered in detail: "When I was a child, well I

wasn't a child, I was a kid. I was actually arrested by, eh, I was out at the blue, 21, and it's kind of followed me around ever since.....and they wouldn't give me a fag or a drink or anything and I just took the piss, and I just lay on the floor, I tied a shirt around my neck, and they were like, quick talk to him, talk to him and I was like Ahhhhhhhh." He said that had occurred while in custody in Inverness. By reference to what he said was his age at the time, this incident must have taken place in about 2002 some thirteen years before this disclosure. Sergeant Anderson followed that up by asking: "Are you feeling alright just now? You've no got any suicidal tendencies?" To that Mr Leggatt gave no direct response, instead saying repeatedly, "I could do with some water." Sergeant Anderson described Mr Leggatt's attitude to this entire incident as jovial and laughing it off.

[17] Having regard to Mr Leggatt's answers and also his demeanour when giving those answers Sergeant Anderson concluded by the conclusion of the first occasion when he appeared at the charge bar that he did not pose a risk of suicide or self-harm and that he could be classified as low risk. Nothing that occurred during the second occasion justified a change in that conclusion. Chief Inspector Milne viewed the video of both occasions in full in the course of his evidence and followed what was said on the transcript. Having done that he pointed out that Sergeant Anderson, aware of the marker, had asked Mr Leggatt about the risk of self-harm or suicide, had enquired about it and had, as he put it, dug a bit further to satisfy himself. Mr Leggatt appeared to be relaxed and not emotional and had provided a fairly good explanation for the Inverness incident. Chief Inspector Milne concluded that unless there were other pieces of

information of which he was unaware the decision to assess Mr Leggatt as being at low risk was perfectly correct. He concluded, and gave it as his opinion for both occasions, that Sergeant Anderson had fulfilled properly his function as duty custody officer towards Mr Leggatt. I accept the analysis and conclusion of Chief Inspector Milne. As a consequence I am satisfied to the required legal standard that Sergeant Anderson complied with the obligation on him as duty custody officer to investigate the marker on Mr Leggatt's records and that the steps he took were sufficient in the circumstances to support the conclusion that he reached that he did not pose a risk of suicide or self-harm and that he could be classified properly as low risk and I hold that conclusion to have been proved. I am also satisfied that there is no evidence before the Inquiry that would support the idea that Sergeant Anderson's conclusion ought to have been reviewed upwards by other officers at any subsequent time during his period on remand in Stirling Police Office which ended at about 09:12 hours on 27 July 2015. The Prisoner Escort Record form for Mr Leggatt was completed only to a certain extent but in a way that was not inconsistent with that conclusion and it does not undermine it or detract from it. From all those sources of evidence I conclude that the subsequent suicide of Mr Leggatt could not have been predicted from the standpoint of what was investigated about his mental health within Stirling Police Office and of what he said and how he acted there nor could it have been seen as a risk that required to be notified to those to whose care he was transferred. Accordingly there were no precautions falling within paragraph (e) which could reasonably have been taken, and had they been taken, might realistically have resulted in his death being avoided.

[18] Turning to paragraph (g), I am not satisfied that the evidence supports making any finding under it. In the course of her submissions Mrs Dunipace invited me initially to make a finding, based on a comment made by Chief Inspector Milne that it would have been good practice to have included reference to the suicide warning marker in the Prisoner Escort Record form, but she then withdrew that invitation. Mr Macpherson for the Chief Constable of the Police Service of Scotland pointed out that while it might have been good practice the comment did not imply any criticism of the fact that it was not included in the form. Although Mrs Dunipace withdrew her proposal I think I should deal with it. The paragraph concerns itself with facts not otherwise dealt with under any of the other paragraphs of the subsection which are relevant to the circumstances of the death in question. I am not persuaded that the evidence supports the proposed inclusion as being relevant to the death of Mr Leggatt. The reason for that is because there is no meaningful information about the use that was actually made of that form or of the use that ought to have been made of it once he was transferred from police custody into the care of G4S and from them, via a court appearance, into the care of the Scottish Prison Service. The link between the contents of the form and his death becomes far too tenuous to support any finding of the kind that was proposed initially. Beyond that I can think of nothing arising from the evidence that might fall within paragraph (g).

[19] Having agreed with the submissions that I make findings under paragraphs (a) and (c) I take a different view about making no findings in respect of paragraphs (e) and (g). I am of the opinion that the terms of section 26(1) of the Act entitle me to make a

finding in respect of each of those paragraphs if I consider it right to do that, even if it is only a negative finding to the effect that there are no precautions under paragraph (e) or no other facts under paragraph (g). That has the advantage of demonstrating to all those who have an interest in the determination that these matters have been taken into account and a considered decision taken on them. For these reasons I have made positive findings under paragraphs (a) and (c) and negative findings under paragraphs (e) and (g).

[20] With regard to the dissemination of this determination and the terms of section 27 of the Act, although I have made no recommendations in it, I would like Mr Leggat's mother to receive a copy of it if she wishes that. I think that she is entitled to that.