

**SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT STIRLING**

**[2018] FAI 18**

STI-B42-18

DETERMINATION

BY

SHERIFF A WYLLIE ROBERTSON

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

into the death of

**GARY McEACHRAN**

Stirling, 2 May 2018

The sheriff, having considered the information presented at the inquiry, determines:

in terms of section 26(2)(a) and (b) of the Act that Gary McEachran, who was born on 26 December 1974 and resident in Brightons, Falkirk died between 0724 hours and 0806 hours on 30 March 2017 on the A81 Aberfoyle to Glasgow road having been involved in a road traffic collision approximately 85 metres south of the entrance to Easter Ballat Farm at 0724 hours that day;

In terms of section 26(2)(c) of the Act the cause of death was chest and abdominal injuries sustained in the collision;

In terms of section 26(2)(d) of the Act the cause of the accident was failure to maintain control of a lorry he was driving in the course of his employment when distracted by an incoming text message on his mobile telephone while driving at excessive speed and unaware of his surroundings or other road users;

In terms of section 26(2)(e) of the Act had Mr McEachran driven his lorry in accordance with speed limit for heavy goods vehicles, maintained awareness of his surroundings and other traffic and not used his mobile telephone whilst driving, the collision and his resultant death might realistically have been avoided;

In terms of section 26(1)(b) of the Act there are no recommendations to make.

## **Note**

### **Introduction**

[1] This inquiry was held into the death of Gary McEachran.

[2] Preliminary hearings were dispensed with and the inquiry held on 2 May 2018.

[3] Mrs Bell, procurator fiscal depute, represented the Crown. Miss Anderson, solicitor, represented Pollock (Scotrans) Limited, who were Mr McEachran's employers. No other party took part in the inquiry.

[4] Evidence was heard from PC Richard McEwan, a police constable attached to the road policing unit. He is 53 years of age and has completed 25 years police service, more

than 18 of which have been in the road policing unit. He has been involved in collision investigation and construction for 13 years and holds a certificate from Grampian Police in the discipline of collision investigation and reconstruction for police officers and a City and Guilds certificate in road collision investigation for police officers. He had been invited to give evidence at the invitation of the sheriff and was the only witness to give evidence. He was able to supplement his report by explaining that the width of the lorry at 2.5 metres was only between the outside of the wheels and did not take into account the overhanging cab structure and wing mirrors. It is his evidence that the lorry was travelling at 57 miles per hour before it left the carriageway onto the nearside grass verge. If the relative timings of the tachograph and mobile telephone were accurate, Mr McEachran was probably distracted by the last text message and lost control of the lorry allowing it to drift onto the nearside verge.

[5] In addition, a joint minute of agreement was agreed on behalf of participating parties in which substantial facts were agreed obviating the need for evidence to be led thereon. A further joint minute agreed that a statement taken from a driver behind Mr McEachran's lorry was true and accurate. An affidavit had been produced from the driver of the car who overtook the lorry just before the incident. A post mortem report, a police collision investigation report and a report of the examination of Mr McEachran's mobile telephone were also lodged.

## **The legal framework**

[6] This was a mandatory inquiry under section 2(3)(b) of the Act, the purpose of which is to establish the circumstances of Mr McEachran's death and consider what steps, if any, might be taken to prevent other deaths in similar circumstances. The procurator fiscal depute represents the public interest and the inquiry is an inquisitorial process the purpose of which is not to establish civil or criminal liability.

## **Summary**

[7] The material facts in this inquiry were undisputed. Mr McEachran was an experienced and professional heavy goods vehicle driver. He had been employed by Pollock (Scotrans) Limited since 2014. On 30 March 2017 he was driving a Volvo four axle tipper lorry with single wheels on the front two axles and double wheels on the two rear axles. He had driven to Cambusmore Quarry, Callander where the vehicle was loaded with some 18 tonnes of gravel. It was not overloaded.

[8] At 0724 hours that day Mr McEachran was driving the vehicle south in the southbound lane of the A81 Aberfoyle to Glasgow road approximately 85 metres south of the entrance to Easter Ballat Farm. This is a long straight section of road, which is a single undivided carriageway with one lane in each direction. It was daylight. The weather was dry and overcast. Visibility was good. The road surface was damp. The speed limit on that section of road for Mr McEachran's vehicle is 40 miles per hour.

[9] The carriageway of the A81 at this point is 5.7 metres wide. The southbound lane along which Mr McEachran's vehicle was travelling is 2.7 metres wide. The width

of the distance between the outside of his vehicle's wheels is 2.5 metres wide, not taking into account the overhanging structure of the vehicle or the mirrors attached to the cab. Accordingly, the road is narrow compared to the width of his vehicle.

[10] Mr McEachran's vehicle was overtaken by a motor car. No criticism is attached to that overtaking manoeuvre other than the observation of PC McEwan that it was a brave manoeuvre to undertake given the width of the lorry and the narrowness of the road. Either contemporaneously with or immediately after that overtaking manoeuvre, the nearside wheels of Mr McEachran's lorry drifted onto the nearside grass verge, then drifted further into and along the verge with the rear nearside wheels also entering the verge, in total for about 70 metres, before the vehicle was steered to the offside and back onto the carriageway before crossing the carriageway diagonally from east to west, Mr McEachran applying the brakes as it crossed the carriageway. The front offside wheel of the vehicle entered the west grass verge and the vehicle continued to travel southwards along it. The upper offside of the driver's cab collided with a number of mature trees lining the boundary between the grass verge and the fields beyond. Mr McEachran then steered the vehicle towards the nearside to exit the verge. A combination of the steering; the application of brakes; and deceleration due to impact with the trees caused significant weight transfer to the vehicle's front offside wheels and it toppled onto its offside. The driver's cab collided with the mature hedgerow to the east of the carriageway as it toppled causing severe damage. The vehicle came to rest on its offside across the carriageway, some 140 metres from where it first entered the east grass verge.

No vehicles were involved in a collision with Mr McEachran's vehicle immediately prior to or at the time of Mr McEachran's loss of control of the vehicle.

[11] Mr McEachran remained trapped in the driver's seat and lost consciousness waiting for the emergency services to arrive. On arrival of the first ambulance crew at 0759 hours he appeared to be deceased and life was pronounced extinct by the Scottish Ambulance Service paramedic team leader at 0806 hours. After a post mortem examination concluded that the medical cause of Mr McEachran's death was chest and abdominal injuries sustained in the collision.

[12] An examination of Mr McEachran's vehicle revealed no mechanical defects which could have contributed to his loss of control. He was wearing his seatbelt and the driver's airbag had deployed. An examination of the vehicle's tachograph equipment and records revealed that in the month prior to the incident no issues with Mr McEachran's daily driving, daily rest or weekly rest were recorded and his driving complied with the relevant European Union regulations in relation to driver's hours. The tachograph recording equipment on the vehicle was functioning correctly on 30 March 2017 and recorded details of Mr McEachran's work pattern and speed throughout the morning.

[13] Between 0656 and 0724 hours, the vehicle was continually in motion. At 0724:07 hours the vehicle speed increased from 39 miles per hour to 56 miles per hour over a period of 25 seconds. Between 0724:50 and 0724:59 hours the vehicle decelerated severely. During those nine seconds, the vehicle's speed reduced from 57 to nine miles per hour as Mr McEachran tried to regain control.

[14] Mr McEachran's mobile telephone was recovered from the grass next to the smashed windscreen of his cab. An examination of his mobile telephone was carried out. No calls were made or received by him on 30 March 2017. Between 0656 and 0724 hours that day, the telephone was used to send a total of nine text messages to two recipients. The last text message Mr McEachran sent from said telephone was time stamped at 0722:21 hours. Between 0656 and 0724 hours, nine incoming text messages were received on said telephone from two recipients, eight of which were marked as read. The incoming text message which remained unread was received at 0724:26 hours. The vehicle was not fitted with any form of Bluetooth or voice controlled system which would have allowed Mr McEachran to read or send text messages without physically using his mobile telephone.

### **Discussion and conclusion**

[15] Firstly, I extend the court's sympathy to Mr McEachran's family and to his work colleagues. Secondly, I am obliged to both Mrs Bell and Miss Anderson for their efforts to agree substantial evidence which was not in dispute.

[16] A statement was taken from the driver of a car travelling immediately behind Mr McEachran's lorry. That driver had remarked that his impression had been that the lorry driver had not seen the overtaking car until it passed him and might have received a fright, causing him to steer to the nearside. The driver of the overtaking car had returned to the scene, having observed in his rear view mirror before he went round a

bend what he thought might have been the lorry swerve. An examination of his car revealed no evidence of contact having been made with the lorry.

[17] While the last text message was unread, that does not mean it was unseen by Mr McEachran. He had been actively involved in texting while driving and had sent his last message some two minutes earlier. From the timings taken from the tachograph and those from his telephone, that last text message was received just at the point when Mr McEachran's vehicle drifted onto the nearside grass verge. I can therefore conclude that he probably had been distracted by that message, possibly in combination with the car having overtaken him and at the excessive speed he was then travelling, at 57 miles per hour when the maximum speed limit for his vehicle was only 40 miles per hour. Despite his best efforts, he was unable to regain control before colliding with trees on the offside verge and his vehicle overturning.

[18] Had Mr McEachran not been using his mobile telephone while driving, had not been driving at excessive speed and had been more aware of his surroundings and other traffic, the collision and his resultant death might have been avoided

[19] These findings are consistent with those I was invited to make in the submissions from the Crown and Miss Anderson.