SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT HAMILTON

[2018] FAI 15

HAM-B736-17

DETERMINATION

BY

SHERIFF DAVID M BICKET

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

into the death of

ANTHONY FRANCIS MOLLOY

Hamilton, 26 November, 2018

DETERMINATION

The sheriff having considered the information presented at the inquiry, determines in terms of section 26 of the Act that:-

a) In terms of section 26(2)(a) Anthony Francis Molloy, date of birth 8 December 1959, died at Wishaw General Hospital at 10.27am on Tuesday 22 December 2015.

b) In terms of section 26(2)(c) of the Act, the causes of death were:-

(i) Infective endocarditis due to (ii) valvular heart disease (previous aortic valve replacements) (iii) liver cirrhosis, hepatitis B and C infections, chronic leg ulceration and cellulitis.

c) In terms of section 26(2)(e) of the Act, there were no reasonable precautions by which the death might have been avoided.

d) In terms of section 26(2)(f) of the Act, there were no defects in any system of working which contributed to the death.

e) In terms of section 26(2)(g) of the Act, any other facts which are relevant to the circumstances of the death are dealt with in the note appended hereto.

RESPRESENTATION AT THE INQUIRY:
For the Crown, Mr Calderwood, Procurator Fiscal Depute
For the family of Anthony Francis Molloy, Ms Lorna McCann, Solicitor
For Scottish Prison Service, Ms Anne Marie Chalmers, Solicitor
For Lanarkshire Health Board, Ms Kerry Ritchie, Solicitor

General legal framework

[1] This was an inquiry held under section 2(4)(a) of the Act, on the grounds that the person who died was, at the time of his death, in legal custody.

[2] The purpose of the inquiry held in terms of the Act is for the Sheriff to establish the circumstances of the death, and to consider which steps (if any) might be taken to prevent other deaths in similar circumstances. The Sheriff is required in terms of section 26 of the Act to make a determination setting out the circumstances of the death, so far as they have been established to his satisfaction;

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 –

i. Could reasonably have been taken

ii. Had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided

f) Any defects in any system of working which contributed to the death or any accident resulting in the death

g) Any other facts which are relevant to the circumstances of the death.

[3] The Sheriff must also make such recommendations as to the taking of reasonable precautions, the making of improvements to any system of working, the introduction of any system of working and the taking of any other steps which might realistically prevent other deaths in similar circumstances (sections 26(1)(b) and s26(4)).

[4] The court proceeds on the basis of evidence placed before it by the Procurator Fiscal and by any other party to the inquiry. The determination must be based on the evidence presented at the inquiry, and is limited to the matters defined in section 26 of the Act. Section 26(6) of the Act sets out that the determination of the Sheriff shall not be admissible as evidence or be founded on in any judicial proceedings, of any nature. This prohibition is intended to encourage a full and open exploration of the circumstances of a death. It also reflects the position that a Fatal Accident Inquiry is not a forum designed to establish legal fault.

The proceedings, witnesses and evidence

[5] Preliminary hearings of the Inquiry were held on 18 December 2017, 9 February 2018, 7 March 2018, 11 May 2018, 20 July 2018, 24 August 2018, 28 September 2018 before my colleague who was unable to conduct the Inquiry. The inquiry heard evidence on 7, 8, and 9 November 2018 with written submissions being thereafter submitted by parties and received by 13 November 2018.

[6] Evidence was led by the Procurator Fiscal Depute in accordance with the duty under section 20 of the 2016 Act. The Crown witnesses were as follows:-

1) Gillian Dick (nurse)
2) Lisa Wallace (nurse)
3) Stephanie Clarke (nurse)
4) Doctor Mohammed Saleem Khan (GP)
5) Doctor Lewis Vickers (Cardiologist)
6) Doctor Katharine Morrison (GP and expert witness)
7) Doctor Robin J Northcote (Cardiologist and expert witness)

No evidence was led for any other party. A joint minute of agreement was lodged.

The circumstances

[7] Anthony Francis Molloy was born on 8 December 1959. He was convicted after trial on 3 October 2011 on a charge of murder. On 8 November 2011, he was sentenced to imprisonment for life and it was ordered that a minimum of 14 years in prison would be served in relation to that. The commencement of the sentence was 3 October 2011. He

was initially imprisoned in Barlinnie Prison and thereafter transferred to Shotts Prison on 10 November 2011, where he remained until his admission to Wishaw General Hospital on 17 November 2015.

[8] He had a history of intravenous drug use, had suffered from bacterial endocarditis in 2003, and had undergone surgical aortic valve replacement at that time. In 2014/2015 he was admitted to Wishaw General Hospital with severe aortic regurgitation (leaking of the aortic valve) resulting in cardiac failure and required implantation of an artificial aortic valve, which was carried out in London in January 2015, using the transcutaneous aortic valve transplantation (TAVI) procedure, which was new at that time. He had also contracted hepatitis B and C, developed liver cirrhosis, and suffered both from an arterial embolus and venous occlusion of the legs. He additionally suffered from chronic leg ulceration and venous insufficiency.

[9] He was prescribed regular medication, including methadone 70ml daily, Ramipril, Bisoprolol, Bumetanide, Spironolactone, Aspirin, Cyclizine, Codeine, and Omeprazole, in respect of his medical conditions, including his heart problems. Following on his death, a large bag of untaken medication was found in his cell. He did not take the medication he was prescribed on a regular basis.

[10] Following the TAVI procedure, carried out in London because Mr Molloy was rejected for surgery by Scottish hospitals, he recovered well. That surgery took place on 28 January 2015 and he was transferred back to Wishaw General Hospital on 31 January 2015, from where he was discharged back to Shotts Prison on 25 February 2015. He was reviewed by Doctor Lewis Vickers on 23 July 2015. The review only took place after

telephone calls from his family, and by the prison staff, to Doctor Vickers' secretary. Notwithstanding that, on review his tests were good, his cardiogram satisfactory, and Doctor Vickers regarded him as having made good progress.

[11] Whilst in Shotts Prison, following on his TAVI procedure, Mr Molloy received frequent, regular and appropriate care from the nursing staff at all stages. No criticism was made of the nursing staff by any expert witness or indeed any witness at the enquiry. Mr Molloy, on the balance of probabilities, received better and more frequent care and treatment from the nursing staff at Shotts Prison than he would have done had he been at liberty. The dressings on his leg ulcers were changed, and the appropriate care regime was followed in respect of his leg ulcers and other medical matters.

[12] Mr Molloy was eventually admitted to hospital on 17 November 2015 after becoming unwell. His medical symptoms were investigated. Appropriate readings and tests were taken. The appropriate treatment was given, the appropriate investigations were made and a working diagnosis of endocarditis was made on 25th November 2015. Bacterial endocarditis is a particularly difficult condition to diagnose. Despite appropriate treatment, it was not possible to successfully overcome Mr Molloy's condition by way of intravenous antibiotics, and after investigation by the pre-eminent surgeons available, it was decided that his condition was not operable and that therefore would prove fatal. His condition deteriorated and he died of infective endocarditis on Tuesday 22 December 2015 at 10.27am within Wishaw General Hospital as a result.

Submissions

[13] Parties were in agreement as to where and when the death occurred, and the cause or causes of the death, and were also in agreement that no findings under section 26(2)(b) or (d) were appropriate or necessary. The Procurator Fiscal for the Crown, Ms Chalmers for the Scottish Prison Service and Ms Ritchie for Lanarkshire Health Board also submitted that no findings were appropriate under section 26(2)(e),(f) or (g) either. As stated above, I am in agreement with these submissions but an alternative view was taken by Ms McCann for the family and I feel it appropriate to deal with her criticisms of what happened here.

Ms McCann's submissions under 26(2)(e)

[14] Neither the Crown, the solicitor for the North Lanarkshire Health Board, or the solicitor for the Scottish Prison Service, sought that I made any findings under 26(2)(e), as they were of the view that there were no precautions that could have reasonably been taken that might realistically have resulted in the death being avoided. Ms McCann for the family of Mr Molloy, however, submitted that there were a number of precautions that were reasonable that could have been taken.

[15] Firstly, it was submitted that it would have been reasonable, with reference to the medical consultation on 9 November 2018 undertaken by nurse practitioners Lisa Wallace and Stephanie Clarke, and the appointment with G.P. Doctor Khan on 10 November 2018, for the deceased to have been admitted to hospital and for blood cultures to have been obtained. I heard evidence that on the 9 November 2015

Mr Malloy refused an opportunity to go to hospital, despite the best efforts of the nurse practitioners to persuade him otherwise, and signed a form confirming his refusal to go. I am satisfied there can be no valid criticism of the nurses in this regard. That was confirmed by the expert medical witnesses in the case who all thought that the standard of nursing care had been excellent. Some criticism was directed at the nurses' ability to deal with Mr Molloy's capacity to refuse to go to hospital, but I heard no evidence that would allow me to make any adverse finding in that regard.

[16] Doctor Khan when he saw the deceased the following day was aware of Mr Molloy's refusal to go to hospital the night before, and whereas there was criticism of him by Doctor Katharine Morrison for his failure to send the deceased to hospital, there was evidence which I accepted from the other medical experts in the case, particularly Doctor Northcote, that it was a matter of clinical judgement on the day, and that the treatment given by Doctor Khan, namely the antibiotics, checked within two days by him, resulted in an alleviation of the symptoms which Mr Molloy was exhibiting. Doctor Morrison also accepted that this was a matter of clinical judgement and I am not prepared to criticise Doctor Khan in all the circumstances of the case. In any event, given Mr Molloy's long history of intravenous drug misuse and other conditions, including hepatitis B and C and cirrhosis, a compromised immune system was likely and the expert evidence given by Doctor Northcote, which I accepted and which is contained within his medical report in this case, taken together with the evidence which he gave in court, did not criticise Doctor Khan in this regard. Doctor Northcote pointed out that bacterial endocarditis is a particularly difficult diagnosis to make, and that no out-of-

hospital tests or investigations would be able to confirm this diagnosis. He was clearly of the opinion, given that Mr Molloy did not respond even to intravenous antibiotics when treated aggressively with them in hospital, and that surgery was not an option for him, that having been thoroughly investigated, even to the unusual extent of having Doctor McArthur (a particularly eminent expert in that field) attend to examine him, his condition was not survivable, and Doctor Northcote, whose evidence I accepted, was of the opinion that Doctor Vickers had explored all possibilities to save Mr Molloy's life, and he agreed with the decisions of the cardiac surgeons who were consulted that an operation was not possible. Doctor Northcote was of the opinion that the treatment of Mr Molloy was reasonable in all the circumstances of the case, and in fact, he went beyond that to say the treatment was timeous and excellent. In his opinion there were no precautions which would have prevented this death, and even with frequent outpatient surveillance, his disease process would not have been detected earlier. I accepted his evidence in this regard.

[17] Ms McCann had also criticised the consultation carried out in the prison on 30 October 2017, when the deceased had mentioned that he thought he was suffering from endocarditis symptoms, and submitted that it was unreasonable thereafter to wait ten days for a routine GP appointment. All the medical experts who gave evidence pointed out the difficulties of self-diagnosing endocarditis and Dr Northcote pointed out that it simply could not be done. Given the evidence of both Doctor Vickers and Doctor Northcote, I am firmly of the view that, even had there been a G.P. appointment at an

earlier stage, it would have made no difference. To quote Sheriff Principal Lockhart in the Rosepark Inquiry Determination of 20 April 2011:

> "The question of reasonableness is directed to the precaution which is identified. The issue is not whether an individual or an organisation behaved in a reasonable or an unreasonable way, but whether or not there is a precaution which is a reasonable one which might have made a difference."

There would have been no difference in this case, and therefore, in my view, there are no precautions which could have (i) reasonably been taken and (ii) had they been taken might realistically have resulted in this death being avoided. The expert medical evidence is to the contrary.

Ms McCann's submissions under 26(2)(f)

[18] Again in relation to Section 26(2)(f), neither the Crown, the solicitor for the Scottish Prison Service, nor the solicitor for Lanarkshire Health Board sought that any findings be made. Once again Ms McCann asked me to find that there were defects in the system of working which contributed to the death of Anthony Francis Molloy. I accept Ms McCann's submission that I would have to be satisfied that the defect in question did in fact cause or contribute to the death, and that I would have to be satisfied on a balance of probabilities of a cause or link between the system, or a lack of system, and the death in question.

[19] The first area of concern highlighted by Ms McCann was whether or not the cardiac follow up care was adequate following the deceased's surgery in London on 20 January 2015. There was a gap after surgery of around four months before the

deceased saw Doctor Vickers for a follow-up appointment and during that period his family, and also the prison authorities, had been pressing for an appointment. I heard from Doctor Vickers and Doctor Northcote that there were no guidelines under the TAVI procedure for the period for a follow-up consultation, as it was such a new procedure, but that in an ideal world, a follow-up appointment within around two months would have been more appropriate or desirable. We do not however live in an ideal world, and there is a shortage of doctors and consultants, which mean that appointments take considerably longer to get. Doctor Vickers pointed out that his normal waiting time was around six or seven months. In any event, when seen, the deceased was well and I am satisfied that an earlier appointment would have made no material difference to the outcome as stated by both Doctor Vickers and Doctor Northcote.

[20] The second area of concern highlighted by Ms McCann was whether or not the deceased should have been admitted to hospital prior to 17 November 2015. I have already mentioned this in paragraphs (15) and (16) hereof. The deceased had on 9 November refused to go to hospital and although there was some discussion about his capacity to make such refusal I am perfectly satisfied that the nurses were entitled to conclude that he had capacity to make that decision. Referring also to an earlier stage on 30 October 2015, Ms McCann raised concerns about whether or not had the deceased been examined by a GP and had blood cultures been obtained, endocarditis would have been identified. I had heard a considerable amount of evidence from Doctor Vickers and Doctor Northcote and indeed from Doctor Morrison that endocarditis was an extremely

difficult condition to diagnose, and it was not possible for Mr Molloy, despite having had it on a previous occasion, to diagnose it in himself. The main symptom was elevation of temperature, which is also found in many other infections, such as those that Mr Molloy suffered with his leg ulcers. In any event, I am not satisfied on the basis of the evidence which I heard and which I accepted from both Doctor Vickers and Doctor Northcote that had the deceased been admitted to hospital earlier, that it would have made any difference. To quote Doctor Northcote, at page 9 of the report he prepared for the Inquiry:

> "On several occasions Mr Molloy presented with a very challenging and life threatening illness. His management in Wishaw General Hospital on both occasions was exemplary. No blame can be attached to the service in Wishaw or any of the clinical team there who explored every possible avenue for Mr Molloy on two separate admissions.
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> The clinical teams were challenged by an extremely ill patient with multi-system diseases, and, in my opinion, incurable SBE. No treatment whether it was surgical or otherwise could have prevented his death. The outcome would have been no different in any other service."

Both doctors were of the opinion that an earlier admission would have made no difference to Mr Molloy and Doctor Northcote gave his expert opinion that there were no defects in any system in the Prison, or at Wishaw General Hospital, which would have contributed to his death.

[21] It might have been the case that Doctor Khan could have endeavoured to have Mr Molloy admitted to hospital when he saw him on 10 November, but I heard evidence that by then the infection was probably already established in his aortic root and his condition was not, from the expert opinion I was given, curable. Given that Mr Malloy

apparently responded to Doctor Khan's treatment in any event, there was no reason for Doctor Khan to take any further steps at that stage.

[22] Ms McCann also raised the question of whether or not there was a delay in the diagnosis of endocarditis following the deceased's admission to hospital on 17 November 2015, but I have no evidence which would allow me to make such a finding. Even if I could so find, on the balance of probabilities, even if a diagnosis had been made on the day he was admitted, which was not reasonable, the outcome would have been the same.

[23] During the course of the enquiry I heard evidence from all of the expert witnesses concerned that Mr Molloy's care was indeed better than he would have expected to have received had he been at liberty. To quote Doctor Northcote, "In my opinion, Mr Molloy was treated with timeous excellent care by all involved." I accepted Doctor Northcote's evidence given that he had 25 years' experience as a consultant physician and cardiologist, with said experience relating to mostly to patients presenting with coronary artery disease, hypertension, cardiac failure, cardiomyopathy and collapse, with a special interest in interventional cardiology and almost 30 years' experience of coronary angiography, and 27 years' experience of coronary angioplasty. It is an area of expertise more pertinent to the particular circumstance of Mr Molloy's death, than that of Doctor Morrison, who although an expert in her own field, had an area of expertise principally in general medical practice. Doctor Morrison's report stated that it was her opinion that the actions of the nurses and doctors involved in his case

were reasonable in the circumstance of the case. To quote her report at page 35, paragraph, 9(2):

> "it seems to me that the medical care was of a reasonable standard in the prison. The medical care was not the cause of Anthony Molloy's death in my opinion. What I think contributed to his death was Anthony's background of neglect of himself, drug use and the consequent blood borne virus infections which affected his immune system, continuation to smoke thereby affecting ulcer healing, and his cardiac status."

I also heard evidence to the effect that Mr Molloy did not even take the aspirin medication, or indeed given that much medication was found in his cell after his death, a lot of the prescribed heart medication that he had been given. The expert evidence was to the effect that this would certainly not have assisted his predicament.

[24] In summary, therefore, given the expert evidence which the inquiry heard, on the balance of probabilities it is not possible to say that there were any defects in any system of working which contributed to Mr Molloy's death.

[25] In conclusion, I join with parties in offering my condolences to Mr Molloy's family for their loss.