

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2021] FAI 53

GLW-B1312-20

DETERMINATION

BY

SUMMARY SHERIFF PAUL BROWN

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

into the death of

PATRICK ANTHONY FLYNN

13 August 2021

DETERMINATION

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

- (1) In terms of section 26(2)(a) of the Act, Patrick Anthony Flynn, born 22 May 1970, then a prisoner in HMP Barlinnie, Lee Avenue, Glasgow, died there at 0152 hours on 27 October 2019 within his cell in Letham Hall.
- (2) In terms of section 26(2)(c) of the Act, the cause of death was cardiac enlargement and combined drug intoxication (methadone, etizolam, gabapentin, pregabalin and synthetic cannabinoid receptor agonist).
- (3) In terms of section 26(2)(b) and (d) of the Act, there was no accident resulting in the death.

(4) In terms of section 26(2)(e) of the Act, there are no precautions which (i) could reasonably have been taken; and (ii) had they been taken, might realistically have resulted in the death of Mr Flynn being avoided.

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

(6) In terms of section 26(2)(g) of the act, there are no other facts which are relevant to the circumstances of the death.

RECOMMENDATIONS

The Summary Sheriff, having considered the information presented at the inquiry, makes no recommendations in terms of section 26(1)(b) of the Act.

NOTE

Introduction

[1] This determination is made following the fatal accident inquiry held under the Act into the death of Patrick Anthony Flynn (referred to as “Mr Flynn”), who died on 27 October 2019, whilst in legal custody, at HMP Barlinnie in Glasgow.

[2] In this inquiry, the procurator fiscal (referred to as “the procurator fiscal”) was represented by Mr Hill, procurator fiscal depute; Mr Smith, solicitor, appeared on behalf of the Scottish Prison Service (referred to as “SPS”); Ms Paton, solicitor, appeared on behalf of Greater Glasgow Health Board, NHS; and Mr Rodger, solicitor, appeared on

behalf of the Scottish Prison Officer's Association. Mr Flynn's family did not participate in the inquiry. I am grateful to those appearing for their respective contributions, and for the assistance they gave to me during the course of the inquiry.

[3] Mr Flynn's death was reported to the procurator fiscal on 28 October 2019. A notice of an inquiry was given by the procurator fiscal under section 15(1) on 27 October 2020. I pronounced a first order on 23 November 2020 assigning a preliminary hearing. Preliminary hearings took place on 5 January; 16 February; 22 March; 31 March; 14 May; and 18 May 2021. Parties had indicated in notes submitted in terms of rule 3.7 of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (referred to as "the rules") that they intended to invite the court to make a determination in terms of section 26(2)(a) and (c) of the Act and did not intend to invite the court to make a determination in relation to section 26 (2)(b), (d), (e), (f) and (g). At those hearings the participants indicated that they wished to present the information in this case by way of joint minute of agreement and affidavits submitted by the procurator fiscal and SPS and that there would be no requirement for oral evidence. In order to establish the nature and complexity of the inquiry, the state of preparedness of the participants and to consider how information should be presented to the inquiry, I indicated to the participants that there were a number of matters that required to be addressed before we could move to the stage of the inquiry without oral evidence. I invited participants to address six issues, namely, (i) Mr Flynn's progress to a part of the prison with less restrictions known as the "National Top End" (referred to as the "NTE") shortly before his death, (ii) Mr Flynn's exercising "Special Escorted Leave" (referred to as "SEL") shortly before his death,

(iii) whether toxicology could assist in determining when Mr Flynn ingested the drugs found in his body at post mortem with a view to establishing whether they had been ingested in prison or whilst on SEL, (iv) the arrangements for the administration of prescription medication within the prison environment, (v) the measures taken by the SPS to prevent drugs entering the prison environment and (vi) what was known about the illicit drug market within the prison environment. When the relevant information had been ingathered and addressed in the proposed joint minute of agreement and affidavits and I was satisfied that the purpose of the preliminary hearing stage was fulfilled and that the inquiry could proceed without oral evidence, I fixed an inquiry for 23 June 2021 at Glasgow Sheriff Court.

The legal framework

[4] An inquiry was held under section 1 of the Act.

[5] Fatal accident inquiries are now governed by the terms of (a) the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (referred to as “the Act”); and (b) the rules. In this determination (and the appendix), unless otherwise stated, references to sections are to sections of the Act; and references to rules are to the rules.

[6] The form of determination required by rule 6.1 (i.e. Form 6.1) stipulates the inclusion of the legal framework in terms of which the inquiry proceeds. In this determination, I have set out much of the legal framework in the Appendix. The present inquiry was a mandatory one in terms of sections 2(1)(a) and (4)(a), Mr Flynn having been in legal custody at the time of his death.

[7] The procurator fiscal represents the public interest in a fatal accident inquiry.

The inquiry is an inquisitorial process and it is not the purpose of an inquiry to establish civil or criminal liability.

Summary

Presentation of information

[8] At the inquiry Mr Hill read the joint minute of agreement entered into by the participants in terms of rule 4.10. The relevant terms of the joint minute are reflected in this determination. Affidavits from Detective Constable Kenny Foy and Deputy Governor of HMP Barlinnie, Lorraine Roughan, were presented to the court by the procurator fiscal and the SPS respectively. Participants had also lodged a number of productions which I was invited to consider.

The history of Mr Flynn's incarceration

[9] Mr Flynn was born on 22 May 1970. He was sentenced to detention for life, with effect from 5 September 1988, having been convicted of murder at the High Court of Justiciary. Following the enactment of the Convention Rights (Compliance)(Scotland) Act 2001, the Scottish Ministers referred Mr Flynn's case to the High Court of Justiciary which made an order specifying the punishment part of his sentence as 15 years. The punishment part of his sentence expired on 4 September 2003. He was last subject to a Life Prisoner Tribunal on 24 September 2019 at which time the board did not direct his release.

[10] During his time in prison, he had been subject to numerous misconduct reports and had undergone mandatory drug tests producing “positive” results in the past. However, his last recorded guilty “orderly room” verdict and his last “positive” mandatory drug test was on 20 January 2017. He had undergone a number of mandatory drug tests since that time up until a few weeks before his death which had produced a “negative” result on each occasion. The only drug identified in the post mortem report that would have been detected by these drug tests would have been methadone although, since 1 March 2021, the mandatory drug test regime now also tests for gabapentin and pregabalin. The drugs test is based on the Scottish Prison Service’s analysis of the drugs recovered from the prison environment.

[11] Mr Flynn had been prescribed methadone as an opiate replacement by the Prison Healthcare Addiction Team. On 16 September 2019 he was reviewed by this team and had indicated no current concerns regarding addiction. He said he felt stable on his dose of methadone. He had also approached the team with a view to reducing his dosage of methadone to nil.

[12] During his incarceration he had spent time at a number of different prisons. At the time of his death he was in legal custody at HMP Barlinnie, Glasgow. He was in “Letham Hall” which is a part of the prison known as the NTE. The NTE is an area where there is less supervision and prisoners have greater freedom of movement and control over their own daily routine. The purpose of this relaxed regime is to assist with preparing prisoners for release.

Progress to the NTE and SEL

[13] The responsibility for deciding whether Mr Flynn should progress to the NTE fell to a "Risk Management Team" (referred to as the "RMT"). The RMT carried out an assessment on 7 November 2018 at which stage it was considered that a "Risk of Serious Harm Assessment" should be performed before making a decision. This was done and the resulting assessment was that he did not pose an imminent risk of serious harm and a number of "protective factors" were identified. On 29 January 2019 it was agreed that he should be progressed to the NTE.

[14] He moved to the NTE in Letham Hall, HMP Barlinnie on 11 July 2019. On 16 August 2019, as part of his case management plan, the RMT agreed that he would be permitted to participate in SEL to his family home and another place of interest to meet family members. SEL means that the prisoner is escorted by a prison officer or an officer of an appropriate agency such as "GeoAmey." The role of the escorting officer is observational. The officer remains with the prisoner and observes him throughout SEL. If a prisoner attends an area where he will be alone (such as the toilet), the officer will carry out a visual search of the area. Prisoners undergo a "rub down" search on leaving the prison. The procedure for re-entry to the prison is the same as that for any other prisoner entering the prison and includes the use of various detection machines and body searches and he would have been accompanied by the escorting officer throughout. Mr Flynn had been allowed SEL in the past and there had been no issues arising.

[15] He was last allowed SEL on 24 October 2019 and left the prison for a short period returning around 12 noon. None of the reception officers on duty have any recollection of him coming back into the prison. If any reception officer identifies that a prisoner is under the influence of a substance during admission, the prisoner is placed under the management of an offender at risk due to any substance (MORS) policy. This may involve, for example, the prisoner being placed under observations. No such record of any concern exists for Mr Flynn's readmission to the prison.

Circumstances immediately surrounding death

[16] On the day before his death, 26 October 2019, Mr Flynn was back in the NTE. Prison officers do not supervise the NTE during the night. When the prison officers secured the NTE for the evening and left at 1730 hours, they observed him to be well and in good spirits. This was the last time Mr Flynn was seen alive.

[17] At 0100 hours, on 27 October 2019, another prisoner observed Mr Flynn to be lying on the floor of his cell. He appeared to be unresponsive. Prison officers were contacted using the telephone communication system and they attended immediately. They found Mr Flynn to have no pulse. CPR was attempted by both the prison officers and by paramedics upon their arrival. These attempts were unsuccessful and life was pronounced extinct at 0152 hours on 27 October 2019.

[18] Mr Flynn's cell was searched by police officers. Thirteen white etizolam tablets were recovered from his bed. The value of these tablets was £6.50 with a resale value of up to £36.

Post mortem and toxicology

[19] A post mortem examination was carried out at the Queen Elizabeth University Hospital on 8 November 2019. The cause of death was noted as, “1a) Cardiac enlargement and combined drug intoxication (methadone, etizolam, gabapentin, pregabalin and synthetic cannabinoid receptor agonist).” The post mortem report was lodged as a production by the procurator fiscal. An analysis of the toxicology report arising from the post mortem was carried out by Doctor Hazel Torrance, Head of the Toxicology Service at the University of Glasgow. She had been specifically asked to address the question of whether a timescale could be given for Mr Flynn’s ingestion of the various drugs found in his body. This was to try and cast some light on whether Mr Flynn had ingested the substances whilst he was on SEL or since his return to the prison environment. She formed the following opinion regarding the various drugs detected in Mr Flynn’s system:

“[a] **Etizolam** is a benzidiazepine which is frequently present in drug deaths in Scotland. The concentration found in Mr Flynn’s system was considered to be on average with other deaths of this nature. Etizolam has a half-life of 7-15 hours and depending on the number and size of doses it can be detected in blood for several days after last use. The concentration found in Mr Flynn’s blood would suggest more recent ingestion within 61 hours of his death.

[b] **Gabapentin** is also frequently present in drug deaths in Scotland. The concentration in Mr Flynn’s blood was higher than would normally be expected through prescribed use of this substance and is consistent with a concentration found in non-prescribed use of this drug. It has a half-life of 5-9 hours and would be expected to be eliminated from the body within 61 hours of use. It is likely that this drug was ingested by Mr Flynn within 24-48 hours of his death.

[c] **Pregabalin** was present in Mr Flynn's system at a low concentration. It has a half-life of 5-11 hours and can be detected several days after use. It is possible that this drug was consumed 61 hours prior to death however the levels would also be consistent with a smaller quantity being consumed closer to death.

[d] **4F-MDMB-BINACA** is a Synthetic Cannabinoid Receptor Agonist and is a relatively new drug. As such there is little detail in the literature regarding blood concentrations found and detection windows. Current understanding of these drugs and others in the same drug group is that they break down very quickly in the blood, but chemically they are a very diverse group so the half-life can range from hours to days. Analysis of Mr Flynn's blood detected the drug itself rather than just the metabolite which indicates recent use. The drug is likely to have been ingested within 24 hours of death.

[e] **Methadone** concentration was found at a slightly higher level than might be expected considering Mr Flynn's prescribed dose. However, "caution should be taken when comparing concentrations in post-mortem blood with reference plasma and serum ranges, as the distribution of a drug may vary widely between these sample types... there is a large overlap between methadone blood concentrations in maintenance patients and victims of overdose."

[20] It was likely that Mr Flynn ingested these substances within the prison after his return from SEL.

Prescribed drugs

[21] Mr Flynn had been prescribed a number of different drugs at the time of his death. These included gabapentin and methadone. He was supervised by nursing staff when receiving methadone and gabapentin whereby steps were taken to ensure he had consumed his medication in their presence. Those responsible were not aware of any concerns regarding Mr Flynn taking his medication as prescribed whilst in HMP Barlinnie.

[22] With regard to the other drugs found in Mr Flynn's system, he had not been prescribed etizolam, pregabalin or synthetic cannabinoids. Synthetic cannabinoids and etizolam are not prescribed within HMP Barlinnie. Pregabalin and gabapentin are prescribed within HMP Barlinnie but not together. Mr Flynn was prescribed Gabapentin.

Prison policies and measures

[23] Lorraine Roughan, Deputy Governor of HMP Barlinnie, provided an affidavit on the policies of the SPS and measures taken by them on relevant issues.

[24] She provided a detailed description of the NTE and the process for attaining placement in the NTE as a prisoner. Ms Roughan describes a thorough and careful process of risk assessment carried out by the RMT which is comprised of a multi-disciplinary team. The process is regulated and certain criteria must be met for a prisoner to be eligible for a transfer to this facility. This includes consideration of the amount of time already spent in prison and the prisoner's history of misconduct and drugs tests. She also gave details of the management plan agreed for Mr Flynn at the time of his transfer which included drug testing and counselling. Ms Roughan expressed the opinion that the period of time Mr Flynn had spent in custody (the punishment part of his sentence having expired 16 years prior to this stage) coupled with his negative drug tests and engagement with addictions programmes would have been significant factors in him obtaining placement in the NTE. It was clear from her

affidavit evidence that she felt the progression to NTE for Mr Flynn would have been a reasonable step in these circumstances.

[25] Ms Roughan gave details of the extensive measures deployed by the SPS to prevent drugs being introduced to the prison environment. I noted a range of measures in terms of intelligence gathering, use of technology and traditional search measures. It was also clear that these measures are kept under review and adjusted to meet new challenges as they arise. She also confirmed that the NTE has the same drug prevention measures in place as the rest of the prison. Whilst there may be more opportunity to pass drugs from prisoner to prisoner due to the difference in the level of supervision, drugs are also less prevalent in the NTE as the prisoners have more to lose in terms of privileges and freedoms if they are caught. She emphasised that the purpose of the NTE is to rehabilitate prisoners and begin the process of re-integration back into society and it is clear that the loosening of restrictions is a key part of that process. It also gives prisoners an opportunity to evidence reduction in risk.

[26] With regard to the drugs found in Mr Flynn's system she pointed out the difficulties with detecting the synthetic cannabinoids. The qualities of this substance make it difficult to detect and she went into detail as to why that was the case.

[27] With regard to methadone she said it was a "supervised" prescribed medication and it was unlikely that methadone would be sourced illicitly in the prison environment. This could only be done by regurgitating the liquid after supervised consumption which is very uncommon and usually taken by prisoners with no access to other substances

(which was not the case with Mr Flynn). Similarly, gabapentin is also a “supervised” prescribed medication.

[28] She said that pregabalin and etizolam are drugs which can be sourced illicitly within the prison environment.

[29] She highlighted the scale of the challenge posed in deploying the various measures identified and indicated that “tireless” efforts were made by the SPS to keep up with innovative ways devised by organised criminals determined to introduce drugs into the prison environment. Ultimately, she indicated that whilst every effort was made it was, “impossible to stop all drugs, all of the time.”

Illicit drugs in prison

[30] Detective Constable Kenny Foy gave evidence by way of affidavit and a report. He was a police officer with 27 years’ service and extensive experience of drug related crime and had received additional training in this area. He was a member of the Drug Expert Witness Evaluation Association, a professional association of drug experts within law enforcement across the UK. His daily work was drug based and he provided statements of opinion to Crown Office & Procurator Fiscal Service, other officers and partner agencies with regard to drug evidence and procedures.

[31] He was asked to provide an overview of the several different types of drugs in this case and their use or misuse and prevalence in the illicit drugs market.

[32] With regard to Synthetic Cannabinoids, he provided an overview of the history of the drug.

[33] For present purposes, he stated that:

“The methods of smuggling the synthetic Cannabinoids into the prison estate is many fold and the perpetrators of this are limited only by their own imagination.”

[34] He stated that the vast majority of synthetic cannabinoids encountered by him in his work at present were recovered from the prison environs. He went into detail as to how the nature and characteristics of these drugs pose problems for detection.

[35] With regard to etizolam, he again provided an overview and history. In essence, this is a depressant type drug. When used illegally users report that it assists with symptoms of depression, anxiety and panic disorders. He observed that 1mg of etizolam is equivalent to around 10mg of Diazepam, so it is known to be a powerful drug but its effects are short acting in comparison with other Benzodiazepines. He explained that etizolam was commonly mis-sold as “Valium” at street level and that Police Scotland reported a significant increase in etizolam drug related deaths as well as a large increase in drug driving offences where etizolam was either identified or admitted. Mr Foy was of the opinion that etizolam was having a considerable impact on the communities of Scotland.

[36] Mr Foy then provided some further background information on methadone, pregabalin and gabapentin.

[37] He concluded by stating the opinion that synthetic cannabinoids are predominantly found in prisons and that etizolam tablets are commonly available

throughout the prison environs. He went on to say that gabapentin and pregabalin have over the last three years become more prevalent within the illicit drugs market.

Submissions

[38] All parties invited the court to make a formal finding in terms of section 26(2)(a) and (c) of the Act and submitted that no further findings should be made.

[39] It was submitted by the Crown that the decision to place Mr Flynn in NTE and to allow him to participate in SEL was appropriate in the circumstances and that it was likely that Mr Flynn consumed the drugs found in his system in the 24 hours prior to his death. This meant they were consumed whilst within Letham Hall, HMP Barlinnie. The Crown submitted that there were no reasonable precautions which might have prevented the death, there were no defects in any system of working which contributed to the death and there was no evidence before the inquiry which gave rise to any such recommendations in that regard.

[40] Mr Smith, for the SPS, submitted that the evidence before the inquiry focused on three main issues: (i) the appropriateness of the decision to move Mr Flynn to the NTE; (ii) whether Mr Flynn consumed the drugs whilst on SEL; and (iii) the drug prevention measures in place at the NTE. He dealt with each of these issues in turn.

[41] With regard to the NTE he argued that there was a fundamental need for a less secure environment such as the NTE and this played a key role in a prisoner's rehabilitation and reintegration into society. He submitted it was appropriate for Mr Flynn to be progressed to the NTE and that the NTE decision making process was

thorough, substantial, and robust and carried out by appropriately qualified experts with regard to all relevant factors. He submitted there was no evidence before the Inquiry to suggest that there was any defect in this system.

[42] Mr Smith then pointed out that the drug prevention measures in place in the NTE were very similar to those in place in the closed environment. Therefore, there was no causal link between the moving of Mr Flynn to the NTE and him obtaining access to the drugs and nor was this fact “relevant” to the death itself.

[43] Mr Smith then addressed the question of Mr Flynn’s SEL. It was submitted that this was a matter subject to further investigation by parties following concerns raised by the court at the Preliminary Hearing stage. It was said that Mr Flynn returned from SEL at around 12:00 hours on 24 October 2019. Around 61 hours later, he was found unresponsive (0100 hours on 27 October 2019). Dr Torrance’s opinion suggested later ingestion of each of the substances (i.e. in the period after he had returned from SEL). In addition, there were no reported concerns about Mr Flynn’s presentation during his readmission to HMP Barlinnie or the subsequent period leading up to his death.

[44] With regard to drug prevention measures in the prison, Mr Smith submitted that the prison had taken proper precautions to ensure the safe administration of prescription drugs and it was unlikely that the gabapentin and methadone were sourced illicitly as Mr Flynn had access to other substances. It was said the mandatory drug tests already in place were reasonable and any increase in the testing regime would not be reasonable given the resourcing and costs involved. The drugs tested for were kept under review in response to developing changes. It was submitted that the SPS

employed extensive and robust drug prevention measures throughout the prison estate and were continually reviewing and improving the measures in place to ensure their effectiveness in an ever changing landscape. It was said that the SPS did all they could within their resource and power to prevent drugs from entering the prison environment and in all the circumstances there was nothing the SPS could have done to prevent the death of Mr Flynn.

[45] Ms Paton, on behalf of Greater Glasgow Health Board, submitted that there was no evidence to indicate that there was an opportunity for the deceased to stockpile his medication and that the evidence demonstrated Mr Flynn's prescription drugs were ingested under supervision. It was submitted that no other findings were appropriate beyond findings in terms of section 26(2)(a) and (c).

[46] Mr Rodger, for the Scottish Prison Officer's Association, emphasised that whilst it was inevitable that drugs would find their way into prison, the SPS and officers implemented a variety of measures to combat illegal drug trafficking. My attention was drawn to the fact that there was no recorded concern regarding Mr Flynn on his return from SEL. The evidence suggested he consumed the drugs whilst in prison having returned to the NTE. It was submitted that no findings should be made beyond those invited.

Discussion and conclusions

[47] On the information before me, the supervision and care of the deceased by the prison staff and medical staff cannot be criticised.

[48] In the final analysis, it became clear that Mr Flynn's progression to the NTE and his exercising SEL were not relevant to his death. He was escorted by an officer on SEL. There were no concerns upon his return to prison from SEL and he was subjected to search procedures on his readmission. Two days later, he had been seen to be "well and in good spirits" on the evening of the night he died. The toxicology also demonstrated that he had likely ingested the drugs which led to his death after he returned from SEL. Mr Foy's evidence showed that the non-prescription drugs in his system were available in prison and, moreover, synthetic cannabinoids were predominantly a prison drug. Ms Roughan's evidence showed that the drug prevention measures in the NTE were the same as those in other parts of the prison. He was supervised in his consumption of the prescribed drugs found in his system. There was no evidence from which an inference could be drawn that there was a connection between his progression to the NTE, his exercise of SEL and his death.

[49] Having said that, whilst an examination of the process leading to his progression to the NTE and SEL are rendered irrelevant in these circumstances, I would observe that the information before me led me to the view that the process itself was, in any event, appropriate. These steps were an essential part of the attempt by the SPS to rehabilitate and reintegrate him back into society. This was especially so given the very lengthy period of time Mr Flynn had already spent in prison. Part of that process was a drug testing regime that would not have detected most of the drugs in Mr Flynn's system at that time. In terms of the drug testing regime, it is clear that the SPS are well aware that the illicit drugs market in prison is subject to change, often in response to the counter

measures put in place. The SPS keep their drug testing regime under review as was demonstrated by the recent addition of gabapentin and pregabalin as targeted substances. Any recommendation that tests should be carried out for a particular drug or drugs would not serve any useful purpose and would therefore not be reasonable as it could quickly become otiose with a changing drugs market. The present system already in place of monitoring and review is appropriate in these circumstances. Given the narrow time frame over which these drugs were taken, an expansion of the testing regime would not realistically have resulted in Mr Flynn's death being avoided. Even a regime of daily testing for every prisoner for every possible substance would not necessarily avert such deaths and in any event would not be reasonable.

[50] It was not possible to definitively establish from the evidence how Mr Flynn came to be in possession of the drugs found at post-mortem. However, the circumstances surrounding his death, taken with the affidavits of Lorraine Roughan and Kenny Foy, led me to the view that it was likely that the gabapentin and methadone in his system were prescribed medications (although he may have sourced additional gabapentin illicitly) and the etizolam, pregabalin and synthetic cannabinoids were sourced illicitly within the prison.

[51] Sadly, it was clear from the information before me that a determined prisoner can find ways to obtain drugs despite the best efforts of the SPS. As the measures are the same across the prison estate, it follows that the NTE and the mainstream prison environment would be no different in this regard. Ms Roughan captured the scale of the challenge facing the SPS in her affidavit when she said:

“Just as there is a demand for drugs in society, there is a demand in prisons. Organised and well-resourced criminal gangs are continually looking for new and inventive ways to get drugs into prisons. Every time one route is closed down another is exploited. We tirelessly work to prevent as many drugs as possible from entering the prison environment. We continuously commit resource and budget to dealing with this extremely challenging task. However, it is impossible to stop all drugs, all of the time.”

[52] In all of the circumstances of this case, with regard to all of the information before me, I am satisfied that I should make the findings already set out. There was nothing before me to suggest that there were any precautions which could reasonably have been taken and, had they been taken, might realistically have resulted in the death of Mr Flynn being avoided or that there were any defects in any system of working which contributed to the death. Similarly, there were no other facts which were relevant to the circumstances of the death.

[53] I offer my condolences to the family of the late Patrick Anthony Flynn for their loss.

APPENDIX

The legal framework

[A1] The purpose of a fatal accident inquiry is set out in section 1(3). It is to (a) establish the circumstances of the death or deaths; and (b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances. It is not the purpose of a fatal accident inquiry to establish civil or criminal liability (see section 1(4)). A fatal accident inquiry is inquisitorial, not adversarial (see rule 2.2.(1)).

[A2] Section 1(2) provides that an inquiry is to be conducted by a sheriff. In terms of section 3(5) of the Courts Reform (Scotland) 2014 Act, the sheriff principal of a sheriffdom may exercise in his or her sheriffdom the jurisdiction and powers that attach to the office of sheriff. Inquiries which raise issues of particular significance and those which may attract a significant degree of public interest are regularly presided over by sheriffs principal. The procedure at an inquiry is to be as ordered by the sheriff (see, in particular, rule 3.8.(1) and rule 5.1) or, in this case, the sheriff principal.

[A3] As soon as possible after the conclusion of the evidence and submissions in an inquiry, the presiding sheriff must make a determination setting out certain findings and such recommendations (if any) as the sheriff considers appropriate. A determination under section 26 is to be in Form 6.1 (see rule 6.1)

[A4] The findings the sheriff is required to make are set out in section 26(2), namely, (a) when and where the deaths occurred; (b) when and where any accident resulting in the deaths occurred; (c) the cause or causes of the deaths; (d) the cause or causes of any accident resulting in the deaths; (e) any precautions which (i) could reasonably have been taken; and (ii) had they been taken, might realistically have resulted in the deaths, or any accident resulting in the deaths, being avoided; (f) any defects in any system of working which contributed to the deaths or any accident resulting in the deaths; and (g) any other facts which are relevant to the circumstances of the deaths.

[A5] The making of recommendations is discretionary. The recommendations which the sheriff is entitled to make are set out in section 26(4). The recommendations must be directed towards (a) the taking of reasonable precautions; (b) the making of improvements to any system of working; (c) the introduction of a system of working; and (d) the taking of any other steps which might realistically prevent other deaths in similar circumstances. Recommendations may (but need not) be addressed to (i) a participant in the inquiry; or (ii) a body or office-holder appearing to the sheriff to have an interest in the prevention of deaths in similar circumstances.