

SHERIFFDOM OF GLASGOW & STRATHKELVIN AT GLASGOW

[2023] FAI 23

GLW-B1406-22

DETERMINATION

BY

SUMMARY SHERIFF MARK McGUIRE SSC

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

into the death of

GEORGE SUTHERLAND MACKAY

GLASGOW, 2 June 2023

DETERMINATION

The Sheriff, having considered all of the evidence presented at the Inquiry and the submissions of parties, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths Etc. (Scotland) Act 2016 (hereinafter referred to as “the Act”) that:

- 1. In terms of section 26(2)(a) of the Act (when and where the death occurred):** At 1420 hours on 24 February 2021, George Sutherland MacKay, born 14 July 1951, died within Ward 5 of Glasgow Royal Infirmary, Castle Street, Glasgow.
- 2. In terms of section 26(2)(b) of the Act (when and where any accident resulting in the death occurred):** The death did not result from an accident.

3. **In terms of section 26(2)(c) of the Act (the cause or causes of death):** 1(a) Bronchopneumonia due to 1(b) Diffuse large B-cell lymphoma.
4. **In terms of section 26(2)(d) of the Act (the cause of any accident resulting in the death):** The death did not result from an accident.
5. **In terms of section 26(2)(e) of the Act (the taking of precautions):** There were no precautions which could reasonably have been taken that might realistically have resulted in the death being avoided.
6. **In terms of section 26(2)(f) of the Act (defects in any system of working):** There were no defects in any system of working which contributed to the death.
7. **In terms of section 26(2)(g) of the Act (any other facts relevant to the circumstances of death):** There were no other facts relevant to the circumstances of death.

RECOMMENDATIONS

In terms of section 26(1)(b) of the Act (recommendations): There are no recommendations to be made.

NOTE

1. Introduction

[1] This is an Inquiry into the death of George Sutherland MacKay, who died at Glasgow Royal Infirmary (GRI) on 24 February 2021. He was aged 69 years at the time

of his death. At the time of his death, Mr MacKay was a serving prisoner at Her Majesty's Prison (as it then was), Barlinnie. As such, this is a mandatory Inquiry in terms of section 2(4)(a) of the Act.

[2] A preliminary hearing was held on 9 December 2022. The Inquiry was conducted in person at Glasgow Sheriff Court on 27 March 2023. Save for one specific piece of evidence, all of the evidence was agreed by way of a Joint Minute of Agreement lodged on 27 February 2023. This included the provenance of the following documents:

- Crown Production 1: Post mortem report by Dr Esther Youd dated 06 April 2021;
- Crown Production 2: Prison records relating to Mr MacKay;
- Crown Production 3: Prison medical records relating to Mr MacKay;
- Crown Production 4: The Death in Prison Learning, Audit and Review (DIPLAR) report relating to Mr MacKay's death; and
- Crown Production 5: The Intimation of Death Form relating to Mr MacKay.

[3] The additional piece of evidence was information submitted on 12 April 2023 by the Scottish Prison Service (SPS) in respect of the reason why, on 21 February 2021 at GRI, GEOAmev took over supervision of Mr MacKay from the Scottish Prison Service.

[4] I have found that Mr MacKay died of natural causes and, on the evidence, there are no systemic defects arising or precautions that might have been taken to avoid the death.

[5] In respect of the spelling of Mr MacKay's surname, the documentation lodged in evidence is inconsistent. Some documents, including the indictment from 1975 charging him with murder (page 11 of Crown Production 2) and the DIPLAR report, specify his surname as, "McKay." However, the majority of the more recent documents, including most of the medical and prison records since 2010 (contained in Crown Productions 2 and 3) and the post-mortem report (Crown Production 1), all specify his surname as, "MacKay." It is clear that this spelling was predominantly used for the latter part of Mr MacKay's life. It is thus the spelling that I have used in this determination.

2. Legal framework

[6] This Inquiry was held under section 1 of the Act. It was a mandatory Inquiry in terms of section 2(4)(a) of the Act; although he died in hospital, Mr MacKay remained a serving prisoner and was in legal custody when he died.

[7] In terms of section 1(3) of the Act, the purpose of an Inquiry is to establish the circumstances of the death and to consider what steps, if any, may be taken to prevent any other deaths in similar circumstances. Section 26 requires the Sheriff to make a Determination which, in terms of section 26(2), is to set out factors relevant to the circumstances of the death, insofar as they have been established to his or her satisfaction. These are:

- (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 could reasonably have been taken and if they had been taken might realistically have resulted in the death being avoided;
- (f) any defect in any system of working which contributed to the death or to the accident; and
- (g) any other facts which are relevant to the circumstances of the death.

[8] In terms of 26 (1) (b) and 26 (4), the Inquiry is to make such recommendations (if any) as the Sheriff considers appropriate as to:

- (h) the taking of reasonable precautions;
- (i) the making of improvements to any system of working;
- (j) the introduction of a system of working, and
- (k) the taking of any other steps which might realistically prevent other deaths in similar circumstances.

[9] The Procurator Fiscal represents the public interest and her Depute, Mr Ali, appeared. The Scottish Prison Service was represented by Mr Considine, Solicitor.

An Inquiry is an inquisitorial process and the manner in which evidence is presented is not restricted. The Determination must be based on the evidence presented at the Inquiry. It is not the purpose of an Inquiry to establish criminal or civil liability (section 1(4) of the Act).

3. Background and Mr MacKay's status as a prisoner

[10] Mr MacKay was born on 14 July 1951. He was aged 69 years as at the date of his death on 24 February 2021.

[11] On 1 May 1975, at the High Court of Justiciary at Glasgow, Mr MacKay was convicted of theft by housebreaking, murder and attempting to pervert the course of justice. He was sentenced to imprisonment for three months, life and two years respectively. On 4 March 1999, Mr MacKay was released on licence and was subsequently recalled on 29 February 2002.

[12] On 10 May 2007, Mr MacKay absconded whilst on leave from HMP Castle Huntly. He was remanded in custody to HMP Lewes following an allegation of assault on 15 February 2008. On 21 October 2008, at Lewes Crown Court, Mr MacKay was convicted of wounding with intent to do grievous bodily harm. He was sentenced to imprisonment for seven years, such sentence to be served concurrently to his existing life sentence.

[13] On 5 November 2008, Mr MacKay was returned to HMP Castle Huntly. On 11 November 2008, he was convicted of attempting to defeat the ends of justice, sentenced to ten months' imprisonment and conveyed to HMP Perth. Mr MacKay was later transferred to HMP Low Moss and, on 28 June 2018, from there to HMP Barlinnie, of which establishment he remained a prisoner until his death on 24 February 2021.

[14] Mr MacKay was accordingly in legal custody at the time of his death.

4. Provision of healthcare to prisoners

[15] On 1 November 2011, the responsibility for the provision of healthcare to prisoners transferred from the Scottish Prison Service (SPS) to the National Health Service (NHS). Since then, individual NHS health boards have been responsible for the delivery of health care services within prisons in Scotland that fall within their geographical ambit for the provision of medical care. Since 1 November 2011, the SPS has been responsible for the provision of personal and social care for prisoners in Scottish prisons.

5. Medical history and treatment of Mr MacKay

[16] Mr MacKay was known to suffer from multiple long-term medical conditions including angina, pancreatitis and ischaemic heart disease. On various occasions between 2007 and 2020, Mr MacKay complained of a number of different symptoms and health issues, particularly chest pain. On each occasion, appropriate investigations were carried out by medical and healthcare staff both in the prison estate and at certain hospitals, including GRI (where he attended the cardiac clinic regularly and was under the care of a cardiac consultant) and the Golden Jubilee Hospital. Examinations carried out on Mr MacKay during that period included multiple coronary angiographies. There was nothing in the evidence before me to suggest that anything cancer-related was or could reasonably have been detected prior to April 2020. There was nothing in the evidence to suggest that the healthcare provided to Mr MacKay prior to April 2020 was anything other than appropriate.

[17] By April 2020, Mr MacKay had been transferred to HMP Barlinnie. On 28 April 2020, Mr MacKay complaint of chest pains and shortness of breath. He was conveyed by ambulance to GRI where, following investigations, he was diagnosed with Grade B Cell Lymphoma.

[18] On 7 May 2020, Mr MacKay started chemotherapy at the Beatson West of Scotland Cancer Centre. That treatment was completed in September 2020.

[19] On 18 May 2020, Mr MacKay was returned to HMP Barlinnie. Over the following months, he received post-chemotherapy treatment and medication within the prison. On reporting numbness in his fingers and a lack of saliva, Mr MacKay was advised that the former may be a side-effect of chemotherapy and a prescription request for synthetic saliva was made in respect of the latter. While there were some occasional minor disagreements from Mr MacKay regarding the personnel treating him or the location where such treatment was administered, there was nothing in the evidence to suggest that the treatment and care provided to Mr MacKay was anything other than reasonable and appropriate.

[20] On 3 December 2020, Mr MacKay's physical health deteriorated. He reported having felt unwell for the preceding two days. He indicated issues with both his bladder and bowels plus difficulty in moving around. He was found to have reduced tone and power in both lower limbs and complained of pain in his left shoulder, lower abdomen and back. There was no obvious injury which could have caused this. Mr MacKay was taken to GRI by ambulance.

[21] Following his admission to GRI on 3 December 2020, Mr MacKay was initially examined in the Emergency Department before being moved to Ward 56 and thereafter to Ward 5, where he remained until his death. Given his medical conditions and good demeanour with prison staff, Mr MacKay was not handcuffed at any time following his admission to GRI on 3 December 2020.

[22] Mr MacKay was initially quite settled in hospital, eating and drinking well. However, lymphoma progression was noted, as was a relapse of the lymphoma involving the central nervous system. Mr MacKay was treated with intravenous fluids and steroids. While he noticed an improvement in the numbness he had been feeling, Mr MacKay complained of an increase in pain.

[23] Oral chemotherapy was commenced on 18 December 2020. All sessions of radiotherapy were completed by 30 December 2020, though Mr MacKay was considered suitable for further sessions of radiotherapy while continuing on oral chemotherapy. Mr MacKay received regular support from physiotherapy in respect of the ongoing loss of function in his lower limbs.

[24] By 19 January 2021, Mr MacKay was considered fit for medical discharge. However, given his status as a serving prisoner, this would have to have been to HMP Barlinnie, which was not considered to be appropriate for a number of reasons, including his (a) need to use a catheter and wheelchair, (b) requirement to use a standing aid to mobilise, (c) need to use a commode, hoist and hospital bed and (d) requirement for carers to attend on multiple occasions each day. Medical staff at GRI

and the SPS were to liaise in order to identify a location to which Mr MacKay could be appropriately discharged.

[25] On 27 January 2021, a multi-disciplinary team (MDT) meeting took place to consider Mr MacKay's condition and discharge into the care of the SPS. The reasons in the preceding paragraph as to why discharge of Mr MacKay to HMP Barlinnie had not been considered appropriate were taken into account, as were issues concerning weakness in his lower limbs and his need for a pressure-relieving mattress and hospital bed. Consideration was also given to the fact that Mr MacKay had declined assistance which was thought may be beneficial, namely assistance in turning in his bed at night. In light of the needs of Mr MacKay and the lack of suitable cells in HMP Barlinnie to accommodate those needs, it was decided that an alternative establishment should be explored and that the Deputy Governor should consider the question of compassionate release.

[26] In early February 2021, Mr MacKay developed a severe chest infection. The prognosis was that his life expectancy was limited to six months. Mr MacKay was placed on palliative care.

[27] On 21 February 2021, it was considered that Mr MacKay was approaching the end of his life. As he was no longer in custody within a SPS establishment, responsibility for guarding Mr MacKay was transferred from SPS prison officers to staff from the prisoner escort agency, GeoAmey. Given the deterioration in Mr MacKay's health, the GeoAmey staff left his hospital room and thereafter conducted checks on him every thirty minutes.

[28] Mr MacKay continued to receive end of life care. On 22 and 23 February 2021, his condition deteriorated significantly. At approximately 1420 hours on 24 February 2021, medical staff confirmed that Mr MacKay had stopped breathing and had died. Mr MacKay's family were at his bedside when he died. Life was formally pronounced extinct by medical staff at 1501 hours on 24 February 2021.

6. Compassionate release request

[29] Prior to 9 February 2021, a tribunal review in respect of Mr MacKay was assigned for 18 March 2021 before the Parole Board. On 9 February 2021, in light of the prognosis that Mr MacKay's life expectancy was less than six months, the SPS gave early notification of an intention to seek a compassionate release.

[30] Initially, the SPS Parole Unit decided to await the outcome of the tribunal review before the Parole Board on the basis that if the Board declined to release Mr MacKay, then compassionate release could be sought at that stage. However, on 17 February 2021, social workers advised the SPS Parole Unit that Mr MacKay was unlikely to live until the tribunal review on 18 March 2021 and a decision was made to accelerate the application for release on compassionate grounds. Mr MacKay was initially unsure about whether he wished for such an application to proceed, but he agreed to it shortly before his death.

[31] Early in the afternoon of 24 February 2021, following receipt of further information regarding Mr MacKay's deteriorating health, an application for release on compassionate grounds was submitted directly to the Cabinet Secretary for Justice.

Mr MacKay died before any decision in respect of that application was received from the Cabinet Secretary.

7. Cause of death

[32] On 16 March 2021, a Consultant Forensic Pathologist, Dr Esther Youd BM FRCPath FHEA MSc Med Ed FFMLM RCPATHME, conducted a post-mortem examination of Mr MacKay at the Queen Elizabeth University Hospital in Glasgow. The cause of death was recorded as, “1(a) Bronchopneumonia due to 1(b) Diffuse large B-cell lymphoma.”

[33] Dr Youd made the following conclusions in her report:

Summary of significant findings:

1. Bronchopneumonia.
2. Pulmonary oedema.
3. Coronary Artery Atheroma.
4. Complicated aortic atheroma.
5. Finely scarred kidneys.

This 69 year old with a medical history of diffuse large B-cell lymphoma, with good initial response to chemotherapy, suffered a relapse of lymphoma which involved the central nervous system. He was treated in hospital but with limited response, ultimately deteriorating further, was palliated and died, having developed a pneumonia.

At autopsy the presence of bronchopneumonia was confirmed. This is the immediate cause of death. Pneumonia is a common end point of many diseases, including cancers, as in this case, the underlying cause of death being the disseminated lymphoma (diffuse large B-cell lymphoma). There was fluid on the lungs (pulmonary oedema) which is associated with the presence of infection.

A swab for SARS-CoV-2 (the virus which causes coronavirus disease (COVID-19)) was negative. A bacteriology swab showed no significant growth. This may be due to antibiotic therapy.

Also seen was “furring up” of the arteries, which supply blood to the heart muscle wall, with critical narrowing of one of the three main arteries. There was “furring up” (atheroma) of the aorta (the main blood vessel in the body). There was scarring of the kidney, likely due to aortic atheroma and age.

8. Death in Prison Learning Audit & Review (DIPLAR)

[34] Following Mr MacKay’s death, a Death in Prison Learning Audit & Review (DIPLAR) was carried out by the SPS. While no learning points were identified, the Review highlighted elements of good practice, particularly the support provided to Mr MacKay’s family by the prison chaplain and the use of technology to facilitate Mr MacKay’s involvement in multidisciplinary meetings while he was in hospital.

9. Submissions

[35] Both the Procurator Fiscal Depute and the solicitor for the SPS submitted that formal findings should be made in terms of sections 26(2)(a) and 26 (2)(c) of the Act and that no other findings should be made.

10. Conclusions

[36] On the evidence, I am satisfied that it is appropriate to make the formal findings noted above in terms of sections 26(2)(a) and (c).

[37] I have not identified any substantive matter that would merit a finding or recommendation in terms of section 26, save for the aforesaid formal findings. There is nothing in the evidence to suggest that the medical and general treatment of Mr MacKay was anything other than reasonable and appropriate. Mr MacKay had suffered from a number of health issues for some considerable time. After he developed and was diagnosed with lymphoma, Mr MacKay was provided with all appropriate treatment and care. As can happen, while he initially responded well to that treatment, Mr MacKay suffered a relapse, which, despite timeous identification and further treatment, ultimately led to his death.

[38] There is, accordingly, no basis on which to make any substantive findings in terms of section 26 or to make any corresponding recommendations.

[39] Finally, in the course of their submissions, the parties to the inquiry expressed their sincere condolences to Mr MacKay's family and friends. The court respectfully joins the parties in the expression of such condolences.