

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2023] FAI 36

EDI-B602-23

DETERMINATION

BY

SHERIFF ALISTAIR W NOBLE

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

into the death of

ROBERT CHALMERS

EDINBURGH, 22 September 2023

The sheriff, having considered the information presented at an inquiry under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the Act”) determines:

1. in terms of section 26(2)(a) of the Act that Robert Chalmers, born on 6 April 1952, a prisoner held in legal custody at HMP Edinburgh, died at the Western General Hospital, Edinburgh, on 4 April 2022 at 0520 hours.
2. in terms of section 26(2)(c) of the Act that the cause of death was complications of lung carcinoma.
3. in respect of paragraphs (b) and (d) of section 26(2) of the Act, no accident took place.

4. in respect of paragraphs (e), (f) and (g) of section 26(2) of the Act, no findings fall to be made, and no recommendations fall to be made under section 26(1)(b) and (4) of the Act.

NOTE

Introduction

[1] This inquiry was held under section 1 of the Act. It was a mandatory inquiry in terms of section 2(1) and (4) of the Act as Mr Chalmers was in legal custody at the time of his death. The procurator fiscal lodged a notice of the inquiry on 17 May 2023. There was a preliminary hearing on 26 July 2023, and the inquiry itself took place on 20 September 2023.

[2] Three parties were represented at the inquiry. Mr Gregor, procurator fiscal depute, appeared for the Crown. Mr Holmes, solicitor, appeared for the Lothian Health Board. Mr Bell, solicitor, appeared for the Scottish Ministers acting through the Scottish Prison Service. Mr Chalmers' family took no part in the proceedings.

[3] No oral evidence was led at the inquiry. A joint minute was entered into by the parties, all of whom invited me to make only formal findings in terms of paragraphs (a) and (c) of section 26(2) of the Act.

Findings

[4] Robert Chalmers ("Mr Chalmers") was born on 6 April 1952.

[5] In 1974 Mr Chalmers was convicted of murder and given a sentence of life imprisonment.

[6] On 1 March 1983 Mr Chalmers was released on licence from custody.

[7] On 13 October 2009 Mr Chalmers was recalled to custody for breaching the terms of his licence.

[8] On 2 June 2011 Mr Chalmers was convicted of murder and attempting to defeat the ends of justice and given respectively a sentence of life imprisonment with a punishment part of 23 years and a concurrent sentence of six years.

[9] On 9 May 2014 Mr Chalmers' appeal against sentence was decided by a bench of five judges and partially allowed to the extent of backdating the sentence to Mr Chalmers' date of recall. Accordingly, Mr Chalmers could first have been considered for parole in October 2032.

[10] Mr Chalmers had a long-standing diagnosis of diabetes mellitus. He was placed on the diabetic register on 6 June 2014. He was tested every three months to determine how well his diabetes was being managed and received input from the diabetic out-patient clinic. In January 2021, Mr Chalmers' GP was not satisfied that he was taking his diabetic medication as prescribed and so he was transferred to receiving his medication under the supervision of nursing staff. This involved nurses observing Mr Chalmers as he tested his blood sugar level and thereafter administered insulin to himself. Mr Chalmers objected to this course of action and refused to engage. Healthcare staff then took the decision to return to providing Mr Chalmers with his own medication unsupervised in the hope he administered it correctly.

[11] Mr Chalmers also had a history of angina and was prescribed a glyceryl trinitrate (GTN) spray.

[12] On 13 February 2022 Mr Chalmers was taken to hospital complaining of chest pain. Chest x-rays showed a 66mm left lung mass and bilateral adrenal masses. This was highly suggestive of primary lung malignancy with metastatic disease. Further diagnostic tests were instructed for the following week as medical staff did not believe action was required immediately. Medical staff wished him to remain in hospital overnight for review, however Mr Chalmers refused and wished to return to HMP Edinburgh.

[13] On 16 February 2022 Mr Chalmers was provided with a differential diagnosis of cavitating pneumonia in relation to his condition although a tumour had not been excluded. A four-week course of antibiotics was prescribed with a further CT scan thereafter.

[14] On 27 February 2022 Mr Chalmers was taken to A&E complaining of chest pain. He was assessed on arrival and thereafter he refused to be admitted to a ward and was returned to HMP Edinburgh.

[15] On 17 March 2022 Mr Chalmers was taken to A&E complaining of chest pain. He was assessed and blood tests were conducted. Mr Chalmers self-discharged before the test results had been received. Later that evening, Dr Emily Pritchard from Edinburgh Royal Infirmary contacted HMP Edinburgh to advise that Mr Chalmers' blood results had returned as inconclusive and they would like him to re-attend A&E. This was conveyed to Mr Chalmers and he refused to return. Night patrol staff

monitored him at 30-minute intervals throughout the night until he was assessed again by a nurse the following morning. Prison healthcare staff placed Mr Chalmers on daily observations for blood pressure and general observations to monitor any changes.

[16] On 24 March 2022 Mr Chalmers had blood drawn in line with his regular testing. On 25 March 2022 these results were received and Nurse Amy Dunn noted his sodium levels were low and potassium levels were high. This was a deterioration from his previous blood results and he needed to attend hospital. Mr Chalmers reluctantly agreed to attend hospital and he was taken to the Western General Hospital, Edinburgh. Mr Chalmers was assessed at A&E and admitted on suspicion of sepsis and possible adrenal compromise. He was treated with antibiotic therapy, intravenous fluids, insulin and steroid therapies. A CT scan revealed that the known mass on his left lung had increased in size by 24mm to 90mm.

[17] On 26 March 2022 it was noted during ward rounds that Mr Chalmers' ongoing issues were low sodium levels and a cavitating left apical lung tumour. His treatment plan comprised a continuation to correct sodium levels via tablets and to check levels later that day.

[18] On 27 March 2022, adrenal compromise was ruled out after specialist review and treatment was continued in relation to Mr Chalmers' sodium levels.

[19] On 28 March 2022 Mr Chalmers had a hypoglycaemic episode which was treated with gluco-juice and long-acting carbohydrates. His sodium levels improved and the remaining issue being addressed was the cavitating left lung mass. A bronchoscopy was instructed. This procedure was then delayed due to Mr Chalmers stating that he had

haemophilia B and so haematological advice had to be sought. Blood tests were ordered to establish haemophilia as he was not known to haemophilia services in Edinburgh.

[20] On 31 March 2022 Mr Chalmers began to refuse all food and oral medication.

[21] On 1 April 2022 Dr Andrew Leitch received Mr Chalmers' haematological results which indicated that he did not have haemophilia. Upon further review, Mr Chalmers was not well enough for the bronchoscopy procedure to be carried out that day.

[22] Around 1845 hours Mr Chalmers declined further treatment. After discussions with Dr Leitch, who assessed him as competent to make this decision, agreement was reached to move to a palliative care plan only. Dr Leitch completed a DNACPR form on Mr Chalmers' behalf.

[23] Mr Chalmers' condition deteriorated over the following three days and on 4 April 2022 his life was pronounced extinct at 0520hrs by trainee Advanced Nurse Practitioner Ryan O'Neill.

[24] On 19 April 2022 a post-mortem examination was conducted by Dr Kerryanne Shearer, a consultant forensic pathologist. Dr Shearer concluded that the cause of death was 1a. complications of lung carcinoma. Each pleural cavity contained accumulation of fluid and there was lung congestion and oedema in addition to a large tumour in the lower lobe of the left lung. The tumour showed extensive necrosis and associated bronchopneumonia and diffuse alveolar damage.

Conclusions

[25] As set out in section 13 of the Act, the purpose of a fatal accident inquiry is to establish the circumstances of the death and consider what steps, if any, might be taken to prevent other deaths in similar circumstances. Section 26, set out fully in Mr Bell's written submissions, details the matters which the sheriff requires to consider relative to the circumstances of the death, and the issues to which the sheriff must have regard in considering whether to make a recommendation.

[26] In this case, the whole evidence took the form of an agreed joint minute, parts of which I have used to frame the findings in fact set out above. (I have not set out, although of course I accept, the more formal matters agreed in the joint minute.) The position of all the parties was that the only positive findings which could be made were those provided for in paragraphs (a) and (c) of section 26(2), respectively where and when the death occurred, and the cause or causes of death. I accept that submission. No other findings are warranted on the evidence. Mr Chalmers' death was due to natural causes, as set out in the post-mortem report. Mr Gregor, in his submissions, referred to a nurse's description of Mr Chalmers as "stubborn" (although the nurse also made clear that he was not abusive). That is reflected in the various occasions on which he refused treatment. At the end of his life, he elected to receive palliative care only, and agreed to a DNACPR being put in place. He died from complications of the lung carcinoma which first manifested itself within two months of the date of his death.

[27] All the parties at the inquiry expressed condolences to Mr Chalmers' family on their own behalf and on behalf of those whom they represented, and to these I add my own condolences.