SHERIFFDOM of TAYSIDE CENTRAL and FIFE at PERTH

DETERMINATION

by

LINDSAY DAVID ROBERTSON FOULIS, Esquire, Sheriff of the Sheriffdom of Tayside Central and Fife at Perth following an INQUIRY held at Perth on 26th and 27th February and 15th April 2009 into the death of LEE RUSSELL, then an inmate at H M Prison, Perth.

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PERTH, 19th May 2009. The Sheriff, having considered all the evidence adduced, Determines:-

1. In terms of Section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, that Lee Russell died within Cell 1/14, B Hall, H M Prison Perth, 3, Edinburgh Road, Perth where he was a prisoner at approximately 5am on 26th March 2008.

2. In terms of Section 6(1)(b) of the said Act, that the cause of death of Lee Russell was suspension by the neck from a bedsheet ligature.

3. In terms of Section 6(1)(e) of the said Act, that the following were further facts relevant to the circumstances of the death namely, in the event of a person who is in custody being seen by a medical practitioner, the reasons for that person being seen by that practitioner and any treatment and medication received by that person should be passed on to other agencies into whose care that person is passed.

NOTE

Evidence was lead in this inquiry into the death of Lee Russell on 26th and 27th February and 15th April 2009. The Crown were represented by Miss Cole, Procurator Fiscal depute, Perth. Mr Rolfe, solicitor, Edinburgh initially represented the Scottish Prison Service, who were the only interested party to be represented at the inquiry. Due to secondment, his colleague, Miss Martin-Brown, appeared for the Service on the final day of the inquiry. The Crown led evidence from Messrs George Louden, Robert Aitken, Adam Quinn, Vernon Miles, John McBride, Robert Howkins, Mumtaz Husain, Colin Jack, M/s Amy Fox, Mrs Katrina Edmunson, Mrs Helen Watson, and Doctor Enrico Risso. In addition, the Crown led evidence in affidavit form from Doctor David Sadler and M/s Katharine Jackson. No other evidence was led.

From early on in the inquiry it became clear to me that the circumstances of Mr Russell's death had significant similarities to the death of Mr Clark Isard, another prisoner at H M Prison Perth, who had taken his own life in May 2007. I presided over a Fatal Accident Inquiry into his death in 2008 and issued a determination on 10th July 2008. A copy of my determination in that inquiry can be found on the Scottish Courts Website.

Having regard to the circumstances as disclosed in the evidence in the present inquiry there was rightly no dispute as to the conclusions reached with regard to section 6(1)(a) and (b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. It is quite clear that Mr Russell died within Cell 1/14, B Hall, H M Prison, Perth, 3, Edinburgh Road, Perth. Although he was pronounced dead at 7.25am on 26th March 2008, it is clear from the evidence of the prison officers who discovered Mr Russell that he was cold and rigor mortis had set in. All witnesses who had a degree of medical training expressed the opinion that he had probably died between two to four hours prior to his being discovered. I accordingly have determined that Mr Russell died at 5am on 26th March 2008. There is likewise no issue as to the cause of death, namely suspension by the neck from a bed sheet ligature.

I now turn to consider whether there are any reasonable precautions whereby Mr Russell's death could have been avoided, any defects in any system which contributed to his death, and finally any other facts relevant to the circumstances of the death.

Miss Cole for the Crown referred to the issue of information passing from the various agencies who deal with a prisoner from the date of his apprehension by police officers. Mr Russell had been prescribed medication whilst he was in police custody. It would appear that that information had not been passed on to the Reliance officers, who were responsible for Mr Russell when he was transferred from police custody to the cell area in Dundee Sheriff Court. Thereafter the information was not passed to staff at H M Prison Perth when Mr Russell was admitted, bail having been refused. She questioned whether this failure to pass information had had a role to play in Mr Russell's death. The police surgeon, Doctor Enrico Risso, had said in evidence that he would have continued to prescribe Mr Russell medication. She submitted that there should be a tighter system whereby such information is passed to the various agencies dealing with prisoners. It might be that in the event of prison medical staff being given access to the NHS database a solution would be achieved. There certainly appeared to be a gap in the provision of medication to a drug addict such as Mr Russell. Whilst his remand came as no surprise, Mr Russell's death occurred on the first night of a four week remand in custody. That period seemed to have been referred to by Mr Russell in his suicide note, Crown production number 5. She wondered whether there should be consideration for special provision to be made for prisoners on their first night in prison. A balance might require to be struck between the welfare and privacy of a prisoner.

Miss Martin-Brown submitted that apart from the formal determination to be made in relation to section 6(1)(a) and (b), there should be no other determination made in respect of paragraphs (c) to (e). It, however, might be appropriate for observations to be made. There was no evidence that the fact that Mr Russell was placed in a single call contributed to his death. She accepted that the circumstances surrounding the death of Mr Russell bore a striking similarity to those surrounding the death of Mr Isard. It might be helpful if the information regarding medication given to a prisoner when in police custody was passed on to the other agencies into whose care such a person passes. She did not consider any criticism could be laid at the door of Mrs Katrina Edmundson, the nurse who had seen Mr Russell on his admission. She had not considered that his withdrawal symptoms were bad at that time. Mr Russell had asked for neither medication nor examination by a doctor.

There was no evidence which gave any indication to anyone that Mr Russell was likely to take his own life. He was in police custody for about twenty four hours prior to being transferred to the cells in Dundee Sheriff Court. When questioned by Police Sergeant George Louden, Mr

Russell had denied any inclination to self harm or commit suicide. The officer himself had no such concerns. Mr Russell was assessed as highly vulnerable as he appeared to have taken heroin shortly prior to his apprehension. M/s Amy Fox, a solicitor with the firm instructed by Mr Russell, interviewed him in the cells in Dundee Sheriff Court. Mr Russell was advised *inter alia* that he was likely to be remanded in custody. He appeared calm and was well mannered. She had no concerned as to his welfare. Perhaps, her remark that Mr Russell said he was ashamed gives an insight into why he subsequently took his life. There may be indications of such feelings in the suicide note he left. I refer to that note later in this note. Whilst I make that observation, it is not to be construed as containing any hint of criticism of M/s Fox. I had no doubts about her evidence whatsoever.

Once Mr Russell was admitted to H M Prison Perth, the normal admission procedures were gone through. The ACT 2 Care procedure was followed. None of the responses given by Mr Russell suggested that he constituted a risk of suicide or self harm. Further, all prison personnel said that the manner in which he responded to questions and his general demeanour did not suggest that he constituted such a risk. In saying this, there are two observations that I would make.

Firstly, I had reservations about the evidence given by Prison Officer Robert Aitken. I formed the distinct impression that the manner in which he gave his evidence was a bit off hand. Of greater concern was one aspect of his evidence. The officer was the first member of staff involved with Mr Russell in relation to the ACT 2 Care procedure. In cross examination he said that he took between fifteen and twenty minutes to assess Mr Russell in accordance with the section of the ACT 2 Care procedure for which he was responsible. I noted from the ACT 2 Care form that Mr Russell was received at 16.15. Mr Aitken advised that that was the time Mr Russell was searched and this search took up to five minutes. Mr Aitken advised that the time at the foot of page 3 of the form was likely to indicate when his assessment in terms of the procedure was completed. The time recorded at the foot of page 3 is 16.20. When I pointed out to the officer that this might suggest that it took a total of five minutes to search Mr Russell and for the first part of the ACT 2 Care assessment to be completed, the officer appeared to me to be a little uncomfortable. In fairness to the officer, this matter was not fully explored further by the Crown or the representative of the Prison Service. Accordingly, the only observation I shall make is that I sincerely trust that the ACT 2 Care assessment is carried out with necessary diligence and is not just seen as a form which has to be filled in.

The second observation I would make is that the information given by prisoners may not necessarily be accurate. This may not be surprising in itself. A significant number of prisoners have addiction problems which may affect their recollection in some instances. Some may be reluctant to be completely truthful with members of the prison service. It is not unknown for persons in prison to have been less than frank with the authorities. On occasions, they may not be truthful if giving evidence. This inability to give accurate information, whatever the reason, may however be of significance in relation to their care and wellbeing. In the present case, Mr Russell was seen by a police surgeon on 24th March. However, in recording his answers to the questions on the nursing assessment form, Mrs Edmundson has written that the last time Mr Russell saw a doctor was 3/52. I think that it is a fair assumption to make that that indicates that he told her that he last saw a doctor three weeks ago. That reply is clearly wrong. Accordingly, I do not think that absolute reliance can be placed on the replies given by a prisoner when being assessed medically on admission. This seems to me to be of some significance in relation to the next matter I turn to consider.

It cannot be disputed that a significant number of persons admitted to prison are addicted to drugs. A person is asked questions *inter alia* regarding drugs when taken into police custody. These questions are again asked of a prisoner when admitted to prison. Further in the Cell Sharing Assessment Form completed on a prisoner's admission, one of the questions is directed to whether the prisoner is suffering from drug withdrawal to the extent that he could present a danger to others. Prison staff, accordingly, are well aware of the potential for drug addiction issues including withdrawal when dealing with the admission of prisoners. Mrs Edmundson said that she had lots of contact with persons withdrawing. Mrs Watson likewise said that she regularly saw prisoners experiencing withdrawal. Mrs Edmundson noted that Mr Russell was an intravenous drug abuser. He had told her that he had taken drugs the day before although he did not tell her what he had taken. There was no discussion as to whether he had been given medication in police custody. Indeed, Mr Russell's response to the inquiry as to when he had last seen a doctor would have suggested to Mrs Edmundson that he had not been given any medication when in police custody. The only signs that he might be suffering from withdrawal was that he was sniffing. He had a running nose. She had no concerns about these withdrawal symptoms. She did not consider that these symptoms warranted any medication at the time of Mr Russell's admission. He did not ask her for any medication. If his symptoms had warranted his receiving some medication, she would have made contact with a doctor. She also gave evidence

as to her knowledge of the various symptoms of drug withdrawal and the period over which they affect an individual.

From the evidence led before me in this inquiry, if the assessment made by the nurse on admission is that a prisoner is not exhibiting any withdrawal symptoms which cause concern and the prisoner makes no mention of wishing medication, then the first time the prisoner sees a doctor is the day after his admission. There is no routine medical care available overnight although a doctor can obviously be called out if a need arises. A urine sample is taken on admission and dependent upon the results of the analysis of that sample, a prisoner may receive medication suitable for detox once he has seen a doctor. Mr John McBride, one of the prison officers, also indicated that once a new admission is put in a cell in a hall, that prisoner remains there until he is seen by a doctor the following day. Accordingly, a new admission may be in a cell for a significant period before he is seen by a doctor. For example, Mr Russell would appear to have been transferred to B Hall sometime after 5.45pm when Mrs Edmundson finished her assessment. She said that Mr Russell would not have been seen by a doctor until sometime after 9 am on 26th March.

Unlike Mr Clark Isard, Mr Russell gave an indication as to why he took his life. A note was discovered in his cell. The note is addressed firstly to Shona and says 'I love u more than u know I feel I was totally screwed. 4 weeks I am rattling big time and its only the first night. I love the kids but know I've blew it. No point. SORRY.' The note then continues 'MUM, I've let u down all my life no more SORRY LEE RIP.' It seems it is quite reasonable to infer from the note that Mr Russell was suffering from withdrawal. He also seems to have expressed some shame for his actions. In addition, it seems to me reasonable to infer that reference to four weeks relates to the period he is remanded. He appeared in Dundee Sheriff Court on 25th March 2008 and sentence was deferred until 22nd April 2008. Reference to it being the first night seems to me to suggest that Mr Russell is focusing on the fact that he has a significant period in custody during which he might have to endure what he was experiencing that night. Mr Russell took his life during the night. His television was on in his cell when his body was discovered. Mr Miles said that if a prisoner can't sleep they often switch on the television. It is present in the cell and it seems to me that that would be a natural reaction. Anyone who has had difficulty getting to sleep in the middle of the night knows that things can also appear out of proportion at that time.

Aside from the note left by Mr Russell, there is other evidence which suggests that he was suffering withdrawal symptoms. He was apprehended about 11am on 24th March 2008. Mr Louden considered that he appeared under the influence of drugs. He told the officer that he had taken 0.2 grammes of heroin not long before his arrest. Perusal of the charges Mr Russell faced in Dundee Sheriff Court suggests that he had taken heroin shortly before his arrest. He pled guilty to the charges. His previous convictions indicate four previous contraventions of section 5(2) of the Misuse of Drugs Act 1971. The three most recent all were in respect of heroin.

Doctor Risso was called to see Mr Russell between 10pm and midnight on 24th March 2008. He was suffering withdrawal symptoms from heroin and benzodiazepines. Mr Russell had a running nose, his skin was clammy, and his pupils were dilated. He was agitated and made loud bowel sounds. He was beginning to display fine tremors. He said that the next stage of withdrawal would have been vomiting and diarrhoea. As a result the doctor prescribed sixty milligrammes of dihydrocodeine and ten milligrammes of diazepam. The former stopped the symptoms of heroin withdrawal for eight to ten hours. It was to be taken when the doctor saw Mr Russell and another dose was to be taken at 8 am the following morning. The latter was only to be taken at 8 am. The doctor further observed that the sweating would affect a person's sleeping. The prescription of this medication covered the period Mr Russell would be in police custody. Shortly after 8 am on 25th March 2008 he would have been transferred to Reliance staff in the cells of Dundee Sheriff Court and thus was no longer the responsibility of the police. Doctor Risso indicated that if Mr Russell had been in police custody for more than one night, he would have prescribed sufficient medication to cover the total period he was in police custody. However, having been transferred from police custody, by the early hours of 26th March 2008, Mr Russell had had no medication to counter any symptoms of withdrawal for approximately twenty hours. Doctor Risso indicated that by the early hours of 26th March 2008, Mr Russell could have been suffering severe opiate withdrawal and benzodiazepine withdrawal based on his observations of Mr Russell in the police cells and the lack of medication received after 8 am on 25th March 2008.

In light of the content of the note, Doctor Risso's evidence, Mr Russell's history of drug misuse, and indeed the evidence from Mrs Edmundson, I am in little doubt that Mr Russell was suffering withdrawal when in his cell overnight between 25th and 26th March. I further have little difficulty in concluding that, on the face of it, these symptoms could have been alleviated by giving Mr Russell, at the time of his admission, medication such as that prescribed by Doctor Risso. Mrs Watson confirmed that inmates are prescribed dihydrocodeine for opiate withdrawal and

diazepam for benzodiazepine withdrawal in prison. There was no suggestion that these drugs were not accessible at the time of Mr Russell's admission.

Against that background, I return to the circumstances covered by section 6(1)(c) to (e) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. Dealing firstly with section 6(1)(c) directed to any reasonable precautions whereby Mr Russell's death might be avoided, I was tempted to make a determination in terms of this subsection that the transmission of information that Doctor Risso had prescribed medication might have avoided the death of Mr Russell. If that information had been passed to the prison authorities, they would have been aware that he had been prescribed medication for drug withdrawal. Mrs Edmundson, however, was quite clear that even if she had been given that information it would not have made any difference to her treatment of Mr Russell. She was not challenged on her stance in this regard. She came across in her evidence as pretty frank and in light of her evidence I do not consider that it is appropriate to make any determination in terms of section 6(1)(c). I do not consider that section 6(1)(d) has any bearing to the circumstances surrounding Mr Russell's death.

Turning to section 6(1)(e), I do consider that in the event of a person in custody being seen by a medical practitioner, the reasons for such a person being seen by that practitioner and any treatment and medication received should be passed on to the other agencies into whose care the prisoner is passed. In particular, if prison staff are made aware on admission that a prisoner has been given medication for drug withdrawal whilst in police custody, it seems to me that these facts would be useful for prison staff to know when carrying out any assessment at that time. I appreciate that Mrs Edmundson said that the provision of such information would not have caused her to change her mind. That may be the case. However, if the information was in fact provided, she might not be as definite. At very least it would provide staff, such as herself, with a fuller background for the purposes of making any assessment. My remarks regarding the accuracy of responses given by prisoners to questions have also to be borne in mind. Doctor Risso did refer to any treatment given to a person in police custody being recorded on the National Health Service database. Accordingly, anyone with access to that database could access that information. That is all fine in theory but requires prison staff to have such access. In evidence this was not apparent. More importantly, it requires someone as a matter of routine to access the database when a prisoner is admitted. This might take time or there might be other reasons why the database might not be checked. If the information is actually provided, then nothing further is required to bring matters to the attention of prison staff.

I made observations to that effect in my determination following the death of Mr Isard but did not at that stage make any specific recommendation. The reason for that was that there was no actual indication as to the reason why Mr Isard took his own life. That is not the case here. Mr Russell left a note as I have said. It does seem to me that his suffering drug withdrawal was at least a factor in his suicide.

In light of the circumstances of Mr Russell's death, there is an initial attraction in also suggesting that if a prisoner is on medication at the time of admission, this should continue until he is seen by a prison doctor. However, this matter was not investigated in evidence. There might be good reason as to why it would be considered inappropriate to automatically continue medication. I accordingly do not consider that it is appropriate to go further than I have.

Turning to the suggestion by Miss Cole regarding special provision to be made for prisoners on their first night in prison, I do not consider that there was any evidence which supported the need for this.

I conclude by expressing my condolences to Mr Russell's family and friends.