

Sheriffdom of Tayside and Central Fife at Perth.

Determination

of

Sheriff Michael John Fletcher, Sheriff of Tayside Central and Fife at Perth

in the cause of

Fatal Accident Inquiry in to the death of Gordon Love Robertson born 18th July 1964.

Perth, 2nd May, 2007

The Sheriff, having resumed consideration of the cause, determines:-

- 1) In terms of section 6(1)(b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that Gordon Love Robertson born 18th July 1964 and lately residing at 76 Burnside Road, Gorebridge, died as a result of an accident when fishing in the River Tummel downstream of the Tummel Power Station Tail Race on 17th July 2006 and was pronounced dead at 2pm that day.
- 2) In terms of section 6(1)(b) of the Act that the cause of death was fresh water drowning.
- 3) In terms of section 6(1)(b) that the cause of the accident bringing about the death was the increase in the flow of water in the river caused by the issue of water used for the generation of electricity from the Power Station.
- 4) In terms of section 6(1)(e) recommends that consideration be given by those responsible for the warning signs on the bank of the river adjacent to the Holiday Park as to whether it would be appropriate to include a sign warning users of the banks of the river adjacent to the Holiday Park of the dangers posed by the artificial fluctuation in the rate of flow of the river caused by the Operations of the Power Station.

NOTE

[1] The evidence in relation to the tragic circumstances relating to the death of Mr Robertson was clear and unchallenged. He had come to stay at Parkdean Holiday Par for a family holiday with his wife and stepchildren. He had made arrangements to go fishing with his son and a friend and his son. He was a person who enjoyed fishing and was not inexperienced. He had made arrangements to purchase fishing permits and had obtained them from the Holiday Park Office. A sample fishing permits was produced and was headed “Upper River Tummel fishing permit” and entitled the bearer to fish the South bank of the river from Kinloch Rannoch to Tempar Noticeboard and the north bank from Kinloch Rannoch to Tummel Bridge. The party had fished further up the river from quite early in the morning and around nine o’clock or so had reached the area of the river next to the Holiday Park. All other members of the party had gone off to do other things leaving Mr Robertson continuing to fish alone.

[2] For most of the time Mr Robertson had fished from the bank of the river although he was wearing chest waders but after the others had gone he had begun to wade into the water to fish and at the time of the accident he was some 15 or 18 feet out into the river. When he had begun to fish in that area which was approximately under a set of electricity wires carried by pylons across the river, he had waded into the river which was flowing calmly with the stones leading out from the banking fully exposed and the water was not deep. The current at that time caused no difficulty for a fisherman dressed as Mr Robertson was.

[3] Upstream from where Mr Robertson was fishing there is an electricity power station. The station has 700 square miles of water catchment area and consists of two turbines which are each culpable of generating 17 megawatts of electricity and is used to generate electricity at peak periods, that is to say intermittently. The turbines are powered by water collected in Loch Rannoch and ultimately fed in an open aqueduct to the Power Station. The system uses a large volume of water to generate the electricity and the water is discharged from the Power Station by a tail race into the River Tummel opposite the Holiday Park. When the system is generating electricity and water is being discharged into the river, the water of the river rises over a period of approximately half an hour so that stones which are

uncovered when the river is running normally are submerged completely and the speed of the current is markedly increased. A demonstration was carried out for the benefit of police officers investigating the death and the demonstration was filmed and shown on DVD during the inquiry. It was apparent from the film that the speed of the current and the power of the water in the river substantially increased over that period. The generating system uses approximately 1380 cubic feet of water per second to operate. It is not possible to make a finding as to how much higher the water actually was compared to the normal flow when the Power Station was not operating but at the time he was swept away the water was approximately chest high on Mr Robertson when he was standing in the current. As he continued to fish the water rose but he was apparently unaware that it was doing so until it was too late to be able to wade out.

[4] As the water rose Mr Robertson began to realise that it was doing so but by the time he did he could not safely wade out of the river. Witnesses became aware that he was in difficulties and attempted to help him by advising him to use his fishing rod as a brace to anchor him against the force of the current and Mr David Tilbury, Mr Byrne, two employees of the Holiday Park and Mr James Wilson and off duty Constable Philip Barbour and Mr Colin McGukin who were staying at the park or in a privately owned caravan at the site, tried to assist him by attempting to throw a life ring tied to a rope to him but were unable to do so because the force and depth of the flow swept Mr Robertson away. His boy was recovered some time later further down stream, Mr Robertson was wearing chest waders but he did not have a belt to prevent water entering the waders from the top.

[5] The river runs alongside the Holiday Park for a distance but the bank of the river for a distance of about 15 feet in width was owned by Dunalistair Estates who also owned the river and the fishing rights. The fishing permits were issued by amongst other the proprietors of the Holiday Park on behalf of Dunalistair Estates. Some of the lodges owned by the Holiday Park are situated close to the river and a children's playground and the reception area and restaurant are also close to the river. In some parts the edge of the river is fenced off from the surrounding land and in other it is not. On the land between the river and the Holiday Park there are signposts placed at regular intervals warning that there is a fast flowing river and prohibiting

bathing. There are also signs reminding persons that fishing is by permit only but no signs prohibit fishing in strict terms.

[6] The evidence was that the permits issued did not authorise fishing in the area between Tummel Bridge and Loch Tummel because of the danger posed by the extra water issued by the Power Station. I was satisfied that fishing was not permitted in that area but it was equally clear that there was room for some doubt in the minds of persons obtaining the permits as to whether fishing was prohibited entirely or whether it was prohibited without a permit. Permits were issued at the reception desk of the Holiday Park. The river ran very close to the edge of the Holiday Park and there were signs saying that fishing was prohibited except by permit. It seems to me that there is an implication there that permits might well be issued to fish in that area and if one bought a permit from reception at the Holiday Park one might be inclined to think that it covered the area of the river next to the Park. Further reason for thinking that there might be confusion was the evidence of Police Sergeant Watson, who had 24 years service in the police and who indicated that he thought that the fishing permit did cover the area where Mr Robertson was fishing because it specified the area between Kinloch Rannoch which was a village and Tummel Bridge which is also a village (not The Tummel Bridge). The use of the word 'the' would have distinguished the bridge itself from the village. If the permit had meant the bridge itself then the area where Mr Robertson was fishing would have been excluded but if the permit meant the village of Tummel Bridge then the area would have been included. Mr Roger Twigg, Manager of the Power Station was of the view that fishing was not permitted in that area as did Mr Gough, the manager of the Holiday Park and the expert witness Mr Alistair Gowans agreed. In these circumstances while I am satisfied that the evidence shows that fishing was not permitted downstream of the bridge I consider that it is possible that the sign indicating that fishing was by permit only could have led to confusion as to whether fishing was permitted.

[7] In this case I was asked to consider whether I should make a recommendation under In terms of section 6(1)(e) in relation to signposts. The suggestion first of all was that the existence of signposts indicating that fishing was by permit only could lead to the confusion discussed in the paragraph above and that it

would have been better to have a sign which simply prohibited fishing altogether in that stretch of the river. Secondly it was suggested that simply to have a sign saying that the river was fast flowing and dangerous might not be sufficient on the basis the persons seeing the sign and seeing the river in its benign state when there us no water coming from the Power Station, might form the impression that there was no danger caused by fast flowing water, without realising that there was a likelihood that the amount of water could quite rapidly be increased if generating began at the Power Station. In these circumstances the argument was that it would have been better to have had a sign warning about the fluctuation in the speed of flow of the river caused by the Power Station.

[8] In this case Mr Robertson acted in responsible fashion. He purchased a sufficient number of permits to cover the number of persons fishing. He commenced fishing within the area covered by the permits and he did so using appropriate equipment including chest waders. He and his friend took the business of fishing seriously and there was no reason to believe that he would have ignored a prohibition against fishing in any part of the river. In these circumstances I do not think that he would have continued to fish in the stretch of the river below the Power Station if he had realised that the permit did not cover that area. I think it can be inferred that it is more likely than not that if Mr Robertson had seen a sign prohibiting fishing because of the danger posed by the extra water coming from the Power Station or if he had been aware that the permit did not extend beyond the Tummel Bridge itself he would not have fished where the accident happened. In these circumstances it is not unreasonable to say that if there had been a sign prohibiting fishing in that area or if the permit had been clearer the death might have been avoided.

[9] I do not think that the wording of the permit could be said to be in any way responsible for Mr Robertson's death but the combination of what was said on the signposts relating to fishing, what is said on the permit and the fact that the permit is sold so close to that stretch of the river may have prevented Mr Robertson from realising he was then fishing outwith the permit area. Similarly it is fair to say that the signs erected do give warning to the danger posed by the river but I think some consideration should be given to emphasising the fluctuating nature of the flow of the river caused by the water coming from the Power Station because even if someone

ignores the signs and goes into the it is at least then possible that the would appreciate the significance of the increase in the of the river earlier than perhaps Mr Robertson did. In these circumstances I have come to the conclusion that is appropriate to make a recommendation that consideration may be given to the wording of the signs so that clearer warning can be given without the specific dangers created artificially by the existence and use of Power Station. That might be done by a sign prohibiting fishing as well as swimming because of the dangers of the fluctuating river flow, or by drawing attention to the likelihood of a change in the rate of flow caused by the power station.