

DETERMINATION UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY SCOTLAND ACT 1976 INTO THE DEATH OF ROBERT McKELLAR

SHERIFFDOM OF NORTH STRATHCLYDE AT PAISLEY

DETERMINATION

BY

Neil Douglas, Sheriff

In the inquiry into the circumstances of the death of

Robert McKellar

In terms of section 6 of

the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

Paisley 30th September 2005,

The sheriff having on 23rd, 24th, and 25th May and 12 July 2005 held an enquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 into the circumstances of the death of Robert McKellar and having considered the evidence and the submissions thereon at the Inquiry finds the following facts proved as follows:

- In the summer of 2004 a Mr Andrews and his wife decided to extend their house at 23 Broomlands Erskine. They had an architect draw up plans and these were submitted to the local authority for the necessary permissions. These permissions were granted.
- The Andrews looked to have the work on the extension to the property carried out. Initially, Mr Andrews approached a Mr Smith of C&N Properties Newbuild Limited to carry out all of the works. After looking at having one contractor carry out the works the Andrews decided that such a method was expensive. Mr Andrews is a car sales manager and from his contacts through work he decided that the work on the house would be carried out in three stages with three separate contractors carrying out the work. The three contracts were to be (a) the work to create the foundations (b) the stripping of the existing roof the erection of the new roof trusses and the construction of the extension kit to wind an water tight level and (c) the finishings.
- The Andrews placed the foundations contract with one contractor and in due course that work was carried out. They instructed C & N Properties Newbuild Limited to carry out part (b) of the works. Part (c) was to be carried out by yet another contractor.

- C & N Properties Newbuild Limited quoted for the works exclusive of the scaffolding necessary for the works. Mr Smith told Mr Andrews that he would have to procure scaffolding suitable to the works.
- Mr Andrews approached A & S Scaffolding Limited for a scaffold. Mr Andrews told Mr Smillie of that company that he required an eaves perimeter scaffold, and such a scaffold was provided by that company on or around the beginning of November 2004.
- The extension to be erected was of a design where the roof trusses of the original roof were to be replaced by redesigned trusses. These trusses were deeper and higher than the original trusses. The result was that the apex of the roof was to be positioned further to the rear of the property and at a slightly higher level.
- The means of carrying out the roof truss work was that the existing tiles of the roof was to be removed and the existing trusses taken off. The new trusses were then to be swung into position by use of a crane. Thereafter the trusses were to be clad with wooden sheeting and retiled.
- C & N Properties Newbuild Limited is a small company substantially owned by Mr Smith. At the time of the contract it had about five or six employees, although the construction side of Mr Smith's businesses employed about 12-15 people. C & N Properties Newbuild Limited was principally involved in small building works such as extensions of domestic properties and minor refurbishments of domestic and other properties. The contracts were normally carried out locally to the company's offices in North Lanarkshire and Mr Smith was normally on site or visited the sites during the contract works. The contract at Erskine was unusually far away from base.
- Robert McKellar was by trade a joiner. About five years before his death he had carried out some works for Mr Smith and he gradually came to do more works for him. Robert McKellar was at the time of his death self employed, being a labour only sub contractor in the construction industry. At the time of his death, for all practical purposes he worked full time for C & N Properties Newbuild Limited.
- Robert McKellar had more than thirty years experience of the construction industry. Mr Smith was not a time served tradesman and had limited practical experience of the construction industry. Robert McKellar and Mr Smith were close friends. Mr Smith looked to Robert McKellar for advice and guidance on technical construction matters. On every contract carried out by C & N Properties Newbuild Limited Robert McKellar was the person in charge of the job. He was the foreman and employees of C & N Properties Newbuild Limited on site took their instructions from him and other contractors on site consulted him as regards the works.
- On matters of health and safety Mr Smith obtained advice assistance from others and to Robert McKellar for guidance.
- C & N Properties Newbuild Limited only employed workmen who were known to and were friends of Mr Smith and who were known to be experienced workmen in their field. He did not send any of his workmen on Health and Safety courses because he considered that they would have had such training in the past.
- C & N Properties Newbuild Limited had a health and safety policy and risk assessments and method statements generally. Mr Smith had created these after consultation with a friend in the industry and adapted it from what he had been given.

- C & N Properties Newbuild Limited had a risk assessment and method statement for the contract with the Andrews. The assessment and method statement did not address the matter of scaffolding or working at height.
- Mr Smith and Mr McKellar had a good working relationship and understanding. In working with Mr McKellar, Mr Smith had told him that if any issue arose on site that he should contact him. Mr McKellar always did so, and left it to Mr Smith to deal with the issue. This had been their working relationship for years and had operated satisfactorily. At the time of the accident and in the event that something required to be done by some other party such as another contractor, Mr McKellar knew that he could and should ask Mr Smith to arrange matters in the knowledge that his request would be dealt with. no specific arrangement had been made between Mr Smith and Mr McKellar about such matters on the contract, but specific arrangements were unnecessary having regard to the informal and close relationship between them.
- In these circumstances it was unnecessary for Mr Smith to give specific written or verbal instructions to Mr McKellar for the contract because (a) Mr McKellar had the experience and skill of the senior employee of the company and had the authority of the company in that connection (b) from working with him, Mr Smith had knowledge and experience that Mr McKellar followed Mr Smith's instructions and did in fact consult him appropriately and (c) the contract was the normal sort of contract that the company had undertaken often in the past.
- Mr McKellar and Mr Smith discussed general aspects of the contract on the Sunday prior to the 16th November and no particular issues were raised about the contract.
- Over the course of its existence, C & N Properties Newbuild Limited had its own tower type scaffolding and had worked with quick fit scaffolding before. At times in the past when C & N Properties Newbuild Limited erected its own scaffolding they had in their employment a person who had a scaffolding erection qualification. In the past there had been occasions when Robert McKellar and employees of the C & N Properties Newbuild Limited had modified scaffolding on sites to meet their requirements. Mr Smith had been on sites when this had been done.
- Mr Smith had visited the site at 23 Broomlands Gardens in early November 2004 to assist Robert McKellar in nailing together the extension kit.
- After the erection of the scaffolding by A&S Scaffolding the work on the roof commenced on 15 November 2004. On the first day those working on the contract stripped the roof and removed the existing trusses. On the second day the new trusses were swung into place and secured. The work of cladding the new trusses with sheeting began.
- As part of the scaffolding, the A&S scaffolders had erected a platform at eaves height running the length of the wall at the right hand side of the building. As the right side of the building contained a gable end which was higher than the lowest level of the roof, they had also installed a platform or lift above the eaves height platform. This platform was at a height of 4.5 metres. It was put there to allow workmen safe access to the higher parts of the roof on the gable end. It was fully fenced with guard rails and toe boards. In order to access parts of the new roof trusses, it was necessary for that upper platform to be extended towards the rear of the building by the insertion of an additional bay to the platform.

- At lunchtime on 16 November 2004 Robert McKellar asked the employees of C & N Properties Newbuild Limited to assist him in modifying the scaffold on the right hand gable.
- The modification was the addition of an additional upper level bay or lift at a height of 4.5 metres. The creation of the lift was instructed and directed by Robert McKellar and included the insertion of a working platform known as a hop up at a level 500 mm above the floor of the lift on the inner aspect of the lift. Robert McKellar had the hop up placed facing inboard rather than outboard. The normal practice is to have a hop up face outwards (towards the building) from the inner aspect of the platform.
- An inboard hop up restricts the working area of the lift and reduces the efficacy of the guard rails of the lift. The scaffolding lift instructed by Robert McKellar was incomplete. There were no guard rails or toe boards inserted on the outer aspect of the lift. These rails are normally inserted horizontally at 500mm and 1 metre above the floor of the lift. The type of scaffolding used had flanges at these levels for the insertion of such rails. A toe board is a board fixed horizontally across the vertical scaffold poles at the level of the floor of the lift to restrict foot movement beyond the edge of the platform. It would have taken little time and would have required little expertise to insert such guard rails and toe board. As a result of the absence of such guard rails and toe board the lift was incomplete and unsafe for use as a work platform.
- Shortly after the erection of the new lift and while working on the lift in co-operation with a Mr Locke, Robert McKellar fell from the scaffold to the ground and there sustained the injuries which resulted in his death.

On the basis of the findings in fact determines as follows:-

- Robert McKellar who was born on 28 March 1954 and who resided at 334 Lanark Road, Auchenheth, Lanark, died at the Royal Alexandra Hospital Paisley at 15.43 hours on 16 November 2004. His death was as a result of an accident which occurred at shortly after 2p.m. on 16 November 2004 outside a house at 23 Broomlands Gardens Erskine, Renfrewshire owned by Mr and Mrs Andrews.
- The cause of death was head and neck injuries further to a fall from height in the course of his occupation, being a fall from a scaffold platform at a height of about 4.5metres above the ground to the ground.
- A reasonable precaution whereby the accident might have been prevented would have been for the deceased, when he decided to modify scaffolding, to make sure that guard rails and toe boards were in place, and the hop up was appropriately sited on the modified scaffold before he used the scaffold as a place of work.
- There are no defects in any systems of working which contributed to the death or any accident resulting in the death.
- The deceased's own conduct contributed to his death, and included, (a) the erection of scaffolding without being ticketed;(b) the failure to complete the scaffold; (c) the erection of a hop up facing inwards giving rise to safety dangers; (d) the conscious decision to work from a manifestly incomplete and inappropriately set up scaffold. There are no other facts which are relevant to the circumstances of the death.

NOTE:

At the end of the evidence, I was addressed for the Procurator Fiscal by Mr Quigley, for the widow of the deceased by Ms Bennett, solicitor; for the scaffolding company AS Scaffolding Limited by Ms Geekie, solicitor; and for C & N Properties Newbuild Limited by Mr Gallagher, advocate.

Each of them made submissions about whether I should include in this determination findings under sections 6(1)(c)(d) and (e) of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976. They differed as to what these should be.

I consider that the foregoing determination is appropriate in the circumstances. However, out of deference to the submissions and because this is a public inquiry I shall list them and deal with them. Before doing so, it is appropriate to set out something of the background.

General issues

There was little dispute of fact at this enquiry. There was however, some difference in the evidence of Mr Andrews, Mr Smith and Mr Smillie on the matter who said what to whom about what scaffolding was required. On that issue I found the evidence of Mr Smith and Mr Smillie to be more reliable than the evidence of Mr Andrews, where it conflicted. On the evidence, A&S Scaffolding met their obligations under their contract and did what was required of them, namely the erection of a safe scaffold in accordance with Mr Andrews instructions. On the evidence that I accept, Mr Smith told Mr Andrews that he would need an appropriate scaffold and left it to him to arrange the scaffold.

Before turning to sections 6(1)(c,d,and e) there were certain matters raised in relation to the circumstances of 6(1)(a and b).

There was no evidence from which to establish the cause of the fall because no one saw the fall. While there was evidence that the deceased had had a heart attack at some time in the past there was no evidence that heart disease or symptoms of heart disease, or any illness or momentary failure of health was a cause or a contributory factor to the fall. On the day of his death and immediately prior to his fall, Mr Robert McKellar appeared to be well.

There were submissions that the deceased's fall was from the hop up rather than from the floor of the lift. While there was some evidence that the deceased had been standing on the hop up, there was also evidence that he was using it as a saw bench. The evidence was not sufficiently clear or specific to be able to say from which part of the lift the deceased fell.

I now turn to the other submissions.

Section 6(1)(c)

The Procurator Fiscal's submissions

(a) Had C&N Properties Newbuild taken such reasonable precautions as to ensure the deceased had worked only from scaffolding properly erected and on which only appropriate modifications had been made then the accident and therefore the death might have been prevented.

(b) Had C&N Properties Newbuild told the deceased that in no circumstances would it be appropriate for him to carry out his own modifications on the scaffolding nor to erect scaffolding without alerting Mr Smith of C&N Properties Newbuild to the fact that additional scaffolding was required, then the accident and therefore the death might have been prevented.

(c) C&N Properties Newbuild should have provided personal protective equipment to the deceased and ensured that the provided equipment was worn at all times.

Miss Bennett's submissions

(a) It would have been a reasonable precaution for C&N Properties Newbuild to communicate to the deceased that under no circumstances should he modify the scaffolding and that in the event that scaffolding required to be altered the deceased should contact Mr Smith, the director of C&N Properties Newbuild.

(b) It would be a reasonable precaution that whoever modified the scaffolding that the modification of the scaffolding should have been completed before the deceased worked on it.

M/s Geekie's submissions

It would be obvious to a workman of the deceased's experience that he should not modify scaffolding without being a qualified scaffolder, and therefore it could not be a reasonable precaution for the deceased to be involved with modification of the scaffold at all. Also, C&N Properties Newbuild should have ensured that safe practices on site were observed.

Mr Gallagher's submissions

No finding should be made.

Section 6(1)(d)

The Procurator Fiscal's submissions

The Procurator Fiscal submitted and then withdrew the submission under this head.

Miss Bennett's submissions

C&N Properties Newbuild failed to bar the deceased from moving third party scaffolding (or any other scaffolding without the training he did not have(sic)).

M/s Geekie's submissions

None

Mr Gallagher's submissions

No findings should be made.

Section 6(1)(e)

The Procurator Fiscal's submissions

(a)The deceased's own conduct contributed to his death, and (a) included the erection of scaffolding without being ticketed;(b) the failure to complete the scaffold; (c) the erection of a hop up facing inwards giving rise to safety dangers; (d) the conscious decision to work from a manifestly incomplete scaffold.

Miss Bennett's submissions

- C&N Properties Newbuild had not addressed its health and safety responsibilities. They had a lack of awareness of their responsibilities on health and safety as employers.
- There had been a lack of interface among the parties to the build resulting in a lack of communication between parties. That lack of interface may have prevented the call to ask for that scaffold being modified by the scaffolding company being made.

M/s Geekie's submissions

She adopted the submissions of those going before her.

Mr Gallagher's submissions

None.

I now turn to address those issues.

Submissions on Section 6(1)(c)

The subsection reads:-

"the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided."

The accident which gave rise to the unfortunate death of Robert McKellar was brought about by his decision to modify the existing scaffold to create a larger upper bay of scaffolding and to use it himself to work at height when the scaffolding was incomplete by absence of guard rails and toe boards and where when working on a hop up which would tend to negate the efficacy of any such guard rails as were present and was therefore unsafe.

Mr McKellar was a very experienced member of the construction industry who had considerable experience of working at height on scaffolds. He was in charge of the

site and the other workmen present looked to him for instructions. He had a lot of experience of being in charge of sites. He was generally safety conscious, but, unfortunately, for whatever reason, on the day of his death he failed to maintain a safe working environment for himself. There was no evidence that this was because of any lack of competence, lack of training, lack of understanding or lack of experience.

The deceased was also significantly more experienced in the construction industry than was Mr Smith, and as between them that fact was recognised. There was a good working relationship between Mr Smith and Robert McKellar where, had Robert McKellar wanted something to be done he would not have hesitated to contact Mr Smith.

There was a chapter of hearsay evidence from Mr Warden, of the Health and Safety Executive that Mr Smith and the deceased had had in place a specific arrangement relating to lines of communication about scaffolding. Mr Smith spoke of general understandings. Overall, I find it more likely that there was no specific arrangement for communication about the scaffolding. Standing the size of the business and the working relationship between them I do not consider the absence of a specific arrangement or instruction to be significant.

Mr Smith's was a very small company where, as between the deceased and Mr Smith, Mr Smith relied on and trusted the experience of the deceased on the one hand, and the deceased was well aware that he was so trusted and could communicate with Mr. Smith when he needed to do so on the other hand.

The evidence showed that type of scaffolding erected by A&S Scaffolding was designed and manufactured for being speedily and simply erected. The deceased had erected and modified such scaffolding before without apparent incident, notwithstanding that he had no certification as a scaffolder. It would have been obvious to a person of the deceased's experience that the absence of the guard rail and toe board rendered the scaffold unsafe. Mr Anderson who was far less experienced was of that view. It would also have been obvious to a person of the deceased's experience that the hop up would restrict the width of the platform on which he was working and that to stand on a hop would reduce the efficacy of any guard rail. Correcting these matters would have been obvious to the deceased. They would also have been simple to correct procedurally and would have taken little time and effort. As neither of the guard rails nor the toe board were present, the reduced efficacy of the inboard hop up may or may not have had a part to play in the accident. But all these issues would have been obvious to the deceased.

Given that the lift was to be the deceased's working platform, he had made a personal choice in having the scaffold in that form at the time of his death. On that basis, apart from the obvious precautions of having guard rails toe boards and a normally located hop up, none of the precautions submitted might have prevented the accident.

The submission for the procurator fiscal referred to, "such reasonable precautions" and Miss Bennett mentioned specific precautions as reasonable.

In practical terms, these amount to an obligation on Mr Smith as the personification of the company, to tell Mr McKellar not to modify scaffolding and not to work on incomplete scaffolding. On the evidence it seems to me that Mr Smith had no reason to believe or suspect Mr McKellar would ever work on unsafe or incomplete scaffolding. I mention below Mr Smith's knowledge of modifying scaffolding on earlier jobs. Standing that the scaffolding was known by both Mr Smith and Mr McKellar to belong to another contractor, on the evidence Mr Smith had no reason to suspect or believe that Mr McKellar would move the scaffolding or, as mentioned, leave it incomplete.

The evidence showed that the deceased was well aware of all matters relevant to the accident. Because of his senior status with the company and his working relationship with Mr Smith, the deceased would have been well aware that the scaffold belonged to a scaffolding company. He would have been well aware that it was not his to move. While it is obvious that if the scaffold had not been modified the accident would not have happened, I do not consider that Mr Smith telling the deceased not to modify it, or giving him a general or specific instruction in writing to that effect, would have been likely to have made any difference. He was well aware that it was not his to modify, yet he went ahead and did so. The major defect was the incomplete nature of the scaffolding, although the inversion of the hop up could also have had a significant part to play.

Of course, it can always be said that, with hindsight, that reinforcing a message about duties and safety might have just altered the actions of the deceased and therefore has to be reasonable. However, on the whole evidence, Mr Smith acted reasonably in discussing the contract with Mr McKellar in the way that he did. The issue did not arise in Mr Smith's mind, and it is not obvious that it was necessary for him to think of it. In the circumstances it was unnecessary for Mr Smith for the company to give such instructions to Mr McKellar. That being the case, I do not consider that the general submission of the procurator fiscal or the detailed submissions of Miss Bennett are well founded on this point.

I do not ignore in this, or minimise, the importance of having ticketed scaffolders carry out modifications. But it did not appear to be a lack of expertise of scaffolding erection on the part of the deceased that contributed to the accident. I agree with Miss Geekie that where the scaffolding should have been altered only by her clients, any order by Mr McKellar to alter the scaffolding should not be described as a reasonable precaution. It also has to be said, though, that where the scaffolding was altered in the manner spoken of, it would have been a reasonable precaution to finish the job by completing the scaffolding. The determination does give effect to that issue.

The issue of personal protective clothing had no part to play as a precaution whereby the accident and the death might have been avoided. In particular, use of a hard hat is principally to prevent injury from objects falling from above and experience showed that hard hats usually fell off during a fall such as happened here and provided no protection from a fall.

Submissions on section 6(1)(d)

The subsection reads:

"the defects, if any, in any system of working which contributed to the death or any accident resulting in the death,"

Standing the relationship between the deceased and Mr Smith, the evidence does not support a finding that a failure by Mr Smith to ban the deceased from altering scaffolding, whether given by word of mouth or in writing generally or specifically, was a defect in a system of working which contributed to his death.

As a very experienced tradesman working on construction sites, the deceased was bound to have known that he should not change someone else's scaffolding and he had a technical expertise, experience, and control on site. The evidence showed that there was a close and informal relationship between Smith and the deceased. The size of C & N Properties Newbuild Limited at the time, its scale of operations at the time and the contract on which they were working would not have needed other than informal instructions to be given. Mr Warden, Chief Inspector of Health and Safety, alluded to the scale of operations and to informal working relationships in his evidence. Mr. McKellar was a valued and experienced worker who appeared to be a safety conscious worker. Subject to the issue mentioned below, it appears that it was reasonable for Mr Smith to give general verbal instructions to Mr McKellar.

The issue arises because of the evidence that scaffolding had been altered by Robert McKellar from time to time in the past. Now, whether and in what manner steps should be taken to stop something being done depends on the importance and frequency of what was being done.

I have to say that the evidence was not particularly clear or specific for determining the regularity and circumstances in which scaffolding was moved by employees of Mr Smith's companies. There was also evidence that at one time C & N Properties Newbuild Limited had a ticketed scaffolder employed and that they owned their own types of simplified scaffolding. Accordingly, while there was evidence that scaffolding was moved from time to time and that Mr Smith would know that, there was insufficient evidence to support the proposition that modification of other people's scaffolding was a practice of the company. Because the evidence was not clear on this matter, I do not consider the submission that there was a defect in a system of work by not telling workers not to engage in such a practice is supported by the evidence.

In these circumstances I do not consider that Miss Bennett's submission is well founded.

Separately, the evidence does not support a finding that failure to give the deceased, (a person on whose expertise the company relied for technical matters), an instruction to observe the safe practices (which he would have been involved in formulating and implementing for the company) contributed to the accident and contributed to his death. On the evidence, such an exhortation or direction or order in such general terms was unnecessary having regard to Mr Smith's knowledge of Mr McKellar's experience, work record, attention to safety matters, and faithful execution of instructions given to him in the past.

Submissions on section 6(1)(e)

The subsection reads:

"any other facts which are relevant to the circumstances of the death."

There was reference to Robert McKellar's own involvement in bringing about the circumstances which resulted in a fatal accident. That was obvious and does not need repeating here. I have included this in the determination.

It was submitted that by reason of the method of setting up the building works with three separate contractors, (four with the scaffolding contract), there had been a lack of interface among the parties. The import of the submission was that by the instruction of the works piecemeal, the totality of the appropriate health and safety regime may well have been diminished in some way

The evidence showed that this was a small domestic construction contract and the contractual arrangements appear to be not unusual for such a small contract. The evidence also showed that the Andrews had taken on the role of main contractor or project manager with no experience and no real appreciation that they were taking on that role. Neither of the Andrews was actively involved on site.

In such circumstances, it is understandable therefore that issues could arise from time to time. In this case the issue referred to in submission was the need for alteration of the scaffolding, and the absence of any arrangement specifically in place to anticipate and deal with it. The line of the submission was that had the moving of the scaffold been anticipated it could have been factored into the instructions and arrangements made. The manner in which this would have been dealt with was not explored.

It would seem one of the likely methods of proceeding in that event would have been for Mr Andrews to tell Mr Smith to tell Mr McKellar to ask for the scaffolding to be moved when it needed to be moved. It is of course always possible that had this been done Mr McKellar would have done so. However, on the evidence, I do not consider that giving such an instruction was likely to have altered what Mr McKellar did.

Accordingly, on the evidence, this issue had only a peripheral part to play in the circumstances that occurred. By that I mean that it was the sort of matter that could well have arisen in any event on such a contract and was a matter that would normally have been dealt with as a matter of course. I do not consider that the lack of anticipation or planning was likely to have altered to position. It is not obvious, therefore, that lack of interface had a relevant part to play in the circumstances of Robert McKellar's death.

As I understood Miss Bennett's submission on the lack of interface between the parties, there was floated a possibility that Mr Smith and C & N Properties Newbuild Limited might have recognised the inexperience of the Andrews. In that circumstance they might have covered that inexperience and, by implication, been

involved in more of the main contractor's/project manager's role assumed by the Andrews.

It has to be recognised that C & N Properties Newbuild Limited offered for the job as main contractor and did not get it. They were appointed only as a contractor, just like the scaffolding contractor and just like the foundations contractor, to carry out specific work.

It would be unreasonable in such circumstances to expect a contractor to be landed with such a role simply because the role was not being performed elsewhere. Indeed, to accept such a role would have been problematic for a contractor such as C & N Properties Newbuild Limited since it would have had the likely effect of blurring contractual relationships and responsibilities. There was evidence, in any event, that the Andrews had professional architectural assistance, although the Andrews did not seem to be clear on the extent of that contracted assistance. In these circumstances, I do not accept that any contractor should have enquired further about these aspects of the Andrews' role in the project.

Finally, Miss Bennett drew my attention to some issues which may well have been relevant had a different accident occurred involving others on site rather than the deceased. However, that is not the case. These issues were peripheral to the main issue which was that a very experienced worker in charge of a site chose to work from an incomplete scaffold which he himself had caused to be erected for his own workplace and where what was needed to make the scaffold safe was simple and straightforward but was not in place.

Given that this is a public enquiry, the question arises as to whether, nevertheless, these peripheral issues should be addressed. I understand that C&N Properties Newbuild are no longer engaged in this form of construction work so that there would be little point in going into matters for them for the future. The issues raised in this public enquiry related to this particular small building contract and the performance of that contract by workmen on that particular site. They have no obvious wider application to health and safety in the workplace or in the wider public interest. It seems to me therefore that there is no purpose to go into them further.

By all accounts Mr McKellar was a well liked, normally competent and careful tradesman of many years experience and it is very unfortunate that he should have lost his life in the way he did.

I am grateful to all those representing various interests in this case for their preparation for and input at this enquiry.