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 7th and 8th April and 9th June 2008 into the death of CLARK JAMES ISARD, then in legal custody at HM Prison, Perth.

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PERTH, 10th July 2008. 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 the said Clark James Isard died within cell 2-16 of D Hall at H M Prison Perth where he was a prisoner on 30th May 2007 at approximately 6am.

2. In terms of Section 6(1)(b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that the cause of death of the said Clark James Isard was suspension by his neck from a bedsheet ligature.

NOTE

Evidence in this fatal accident inquiry into the death of Clark Isard at H M Prison, Perth was heard on 7th and 8th April and 9th June 2008. The Crown were represented by Mrs Bell, Procurator Fiscal

Perth. Miss Martin-Brown, solicitor, Edinburgh represented the Scottish Prison Service and Mr Anderson, solicitor, Glasgow represented the Prison Officers Association. Miss Julie Turpie, the former partner of Mr Isard, appeared on her own behalf.

Miss Turpie gave evidence, having been called as a witness by the Crown. The Crown led further evidence from Detective Constable Raymond Barnett, Police Contstable Paul Bastianelli, Messrs Martin Lorimer, Robert Wilson, Gary Watkinson, Patrick Drummond, Kevin Sclater, John Jack, Ian Duncan, David Younger, Colin Young, Paul Laing, Kevin Bannon, Doctors Tomas Schayna and Ahmos Ghally, and Mrs Helen Watson. No other witnesses were called. A Joint Minute of Admissions agreed the post mortem report and death certificate as accurate and that certain Crown labels were recovered from the prison. It was further agreed in that document that Mr Isard made a telephone call from the prison in the evening of 29th May 2007.

In light of the evidence led in the inquiry there was rightly no dispute as to the content of the determination I should make in respect of section 6(1)(a) and (b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. I have accordingly set out these in my determination. Insofar as the time of death, the death certificate records this as 9am on 30th May 2007. This was when Doctor Schayna examined Mr Isard. It is clear, however, that he had been dead for some time and Doctor Schayna considered that he had died between 5am and 6am that morning.

Turning to the other subsections, Mrs Bell for the Crown submitted that there was no conclusion which could be reached in respect of sections 6(1)(c) or (d). There were no reasonable precautions which could have prevented Mr Isard's death and no defects in any system of working which contributed to his death. She did, however, observe that when considering section 6(1)(e) there seemed to be a considerable amount of paperwork relating to a prisoner from the time that person was taken into police custody until finally transferred to prison if remanded. All agencies, police, prisoner escorts, and prison completed different documents. Mrs Bell submitted that the agencies should strive towards a one document system whereby each agency did not receive a prisoner without paperwork which detailed all information regarding that prisoner whilst in preceding agencies' hands.

Miss Turpie observed that Mr Isard was a drug addict. He had been prescribed drugs to deal with his withdrawal when he was in police custody. The last drug prescribed to deal with this had been taken

by him at 8am on the day of his court appearance, 29th May 2007. In the circumstances, the twenty four hour period which Mr Isard required to wait for further medication, constituted too long a delay. He had been on medication to counter withdrawal for four days, since 26th May 2007. He was withdrawing. She further questioned whether Mrs Helen Watson, the prison nurse, had missed certain pointers when interviewing Mr Isard on his admission. There appeared to be some doubt as to whether the information concerning Mr Isard having been prescribed medication by the police doctor was passed on to the prison authorities. She suggested that Mr Isard, being a drug addict with a history or mental health problems, should have been checked throughout the night. He had had the opportunity to give out his property to other inmates as he received tea and coffee from other inmates. He accordingly must have been seen by other inmates on his admission. He would not have told staff if he was suicidal.

Miss Martin-Brown submitted that I should only make formal findings. She agreed with the Crown that there was no evidence of precautions or defects which were relevant to the inquiry. Mr Isard had been frequently in custody and was well known to prison staff. The staff were trained and they had not detected any problem with Mr Isard when he was admitted. There was no evidence of his giving his property away and his telephone call to Mr Bannon gave no indication of any problem. The benefit of numerous forms being filled in was that a number of people checked the condition of a prisoner at different times and accordingly potentially could note a change in condition in that person. Information as to his condition should and was passed on. If Mr Isard had been suffering withdrawal he could have advised the prison nurse. If it had been extreme she would have noted this. She accepted that there might be some benefit for information regarding any prescribed medication to be passed on from agency to agency. She referred me to previous determinations, one into the death of Alice Bone by Sheriff Andrew Cubie dated 17th September 2007, the other into the death of Scott Currie by Sheriff Principal Sir Stephen Young dated 17th January 2006. In the former she referred me to paragraph 8. There was no evidence before me that the ACT assessments had been deficient or that Mr Isard should have been placed on ACT. In the later, she referred me to paragraphs 26 and 28. She submitted that Mr Isard had determined to take his life and no precautions could have prevented his doing so.

Mr Anderson agreed with the Crown's position regarding section 6(1)(a) to (d). No prison officer was open to criticism. Mr Isard neither gave nor exhibited any cues or clues that he constituted a risk of suicide. The fact that he suffered drug or mental health problems did not constitute a reason for

his being placed on the ACT scheme. He was his normal self on admission. Mr Bannon had no concerns when Mr Isard telephoned him. Indeed, Mr Isard had commented about money which suggested that he was thinking ahead. He associated himself with Miss Martin-Brown's comments regarded the separate documents. There was no evidence that any delay in Mr Isard not receiving medication to counter withdrawal contributed to his suicide.

Turning to whether any reasonable precautions could have been taken to avoid Mr Isard's death, every witness who had contact with him from the time of his apprehension on 25th May 2007 until his death observed that there were no indications in his behaviour or demeanour which caused concern that he might commit suicide. Those that had previous dealings with Mr Isard all said that he was as he had been in the past. There was no difference in his behaviour or demeanour. It also has to be borne in mind that Mr Isard was not someone who was experiencing custody for the first time. He had been imprisoned before. He knew what to expect and also the procedures. As an example of this when he was asked by Prison Nurse Helen Watson as to whether he was going to kill himself, Mr Isard replied 'If I was going to kill myself, I would not tell you about it.' He had said this on previous occasions. Nurse Watson sought to clarify this remark however. Mr Isard replied that he would not kill or self harm himself.

When apprehended, the necessary Tayside Police custody forms were completed correctly. Mr Isard answered all the questions put to him in terms of the form in a truthful and appropriate manner. He was considered constituting a 'special risk' because he had a known drug dependency and had a history of carrying weapons. There was no suggestion in the forms that he constituted a risk of suicide. Persons in custody, when questioned for the purpose of the completion of the forms, are advised that the purpose of the questions is for their care. Accordingly, it is in their interests to be truthful in their answers. When he suffered from withdrawal symptoms, a doctor was called to see him and he was prescribed medication which was sufficient to cover the period until the morning he was due to appear in court.

When Mr Isard was transferred on 29th May 2007 into the hands of Reliance in the cells at Dundee Sheriff Court, the escort form was completed. Again, no indication was recorded on the form that Mr Isard displayed any indication of suicide. If there had been a change in his behaviour or demeanour, Mr Lorimer, one of the Reliance officers, said that that would have been recorded. This evidence was not challenged. Likewise, Mr Wilson, another Reliance officer, said that turnkeys, such as

himself, were trained to assess the prisoners and their moods. Again this was not challenged. Accordingly, there is no evidence to suggest that the Reliance staff did not act appropriately.

Once Mr Isard was remanded and transferred to H M Prison, Perth, Prison Officer Younger filled the sections 1 and 2 of the ACT form. In particular, the officer assessed Mr Isard's demeanour. The second part of section 2 of the ACT form specifically directed the officer's attention to Mr Isard's demeanour. All questions in that section were answered in the negative suggesting that there was nothing in Mr Isard's demeanour to cause concern. He chatted with him for fifteen minutes. Mr Isard chatted and joked. The officer had dealt with him previously and he noted no difference in him with the exception of Mr Isard having lost weight. Mr Younger also indicated that if a prisoner raises any issue regarding medication or other medical issue he would tell the prisoner to raise it with the prison nurse.

Mr Isard passed from Mr Younger to Prison Nurse Helen Watson on admission. She completed the Health Care Risk Assessment part of the ACT 2 form. She assessed Mr Isard as not constituting any apparent risk. She noted that Mr Isard did not refer to any suicidal ideation. He had previously been in prison and stated that he had no problems or worries. He had had previous psychiatric and psychological input and she arranged for a referral to the mental health team. Nurse Watson remarked very fairly that these factors did not by themselves indicate that Mr Isard constituted a risk of self harm. Many prisoners have mental health and/or drug problems.

Again, Mr Isard appeared no different from the way he had been when she had dealt with him previously. She had no reason to doubt the answers he gave to her questions. Her assessment lasted about twenty minutes. He did not appear to be suffering drug withdrawal. Both Officer Younger and Prison Nurse Watson received training regarding the ACT 2 Suicide Risk Management Strategy. There was no evidence to suggest, in my opinion, that the assessment made by Nurse Watson was flawed. There was a suggestion from Gary Laing, an inmate in D Hall, that some prisoners thought Mr Isard did not look himself when he came into the hall but he noticed nothing out of the ordinary when he saw him, albeit that was for a brief period. Prison Officer Patrick Drummond, however, took Mr Isard to his cell. He knew him and noted no difference in Mr Isard's behaviour or demeanour. He had received training in ACT 2. He could place a prisoner on ACT 2 and would have done so if he had had any concerns. He had done so before with other prisoners. Again, Mr Bannon was telephoned by Mr Isard at 7.19pm on 29th May. Whilst at points during the call Mr Bannon

thought that Mr Isard was gibbering incoherently, the latter referred to getting matters sorted out, was asking for money to be put in his property, and said that he would telephone the next day. Mr Bannon was not worried about Mr Isard when the call ended. He was surprised when he learnt of his friend's death. He considered that there was no indication of suicide from Mr Isard in this telephone call.

Accordingly, on the basis of the evidence led at the inquiry, I cannot determine that there were any reasonable precautions which, if taken, could have avoided Mr Isard taking his life. Likewise for the same reasons, I do not consider that there were any defects in any system of working which contributed to his death. Quite simply there were no indications at any time that Mr Isard was going to take his own life.

Turning to the provisions of section 6(1)(e) relating to other facts which are relevant to the circumstances of Mr Isard's death, I do not consider that I can make any determination under this subsection. Apart from the fact that Mr Isard died by hanging himself in his cell on the morning of 30th May 2007, there is no evidence which gives any hint as to why he did it. From the evidence of Prison Officers Sclater and Jack it would appear that Mr Isard had not slept in his bed during the night. Mr Sclater said that the television in the cell was on, Mr Jack thought the opposite. For what it is worth, I prefer the evidence of the former. He was the officer who discovered Mr Isard. He was clearer in his evidence and I suspect as the officer who found Mr Isard, it is more likely that he would recall these matters. I might speculate that Mr Isard had not slept and had watched television. What caused him to take his own life is pure speculation and it is not for me to do so.

There are, however, two matters that I would wish to make observations upon.

Mrs Bell raised the question of a one document system. Certainly there seemed to be questions as to whether the Tayside Police custody form accompanies a prisoner to prison. The distinct impression I gained for the evidence from Prison Officer Younger and Prison Nurse Watson was that neither had seen that form. It seems to me that the questionnaire in the police form covers at least some different areas to that on the ACT 2 form completed when someone is admitted to prison. Accordingly, it might be of assistance to prison staff in making an assessment when a prisoner is admitted to have a copy of the police custody form. The form also gives details as to whether the prisoner was seen by a

doctor whilst in police custody. It seems to me that consideration should be given to ensuring a copy of that form accompany a prisoner to prison.

This leads nicely on to my second observation. Doctor Ghally, a police surgeon was called to see Mr Isard in police custody on Saturday 26th May. Mr Isard was suffering drug withdrawal. Doctor Ghally gave him medication to alleviate these symptoms. Mr Isard told Doctor Ghally that he had last taken heroin more than twenty four hours before and was a bit agitated. He was sweating, suffering from stomach cramps, was cold and clammy, and his knees were shaking. Doctor Ghally accordingly supplied sufficient medication to alleviate these symptoms until the morning of the day Mr Isard appeared in court, namely Tuesday 29th May. The medication was placed in separate bags, the medication in one bag to be given at the prescribed intervals. This medication was given as directed by the doctor. Once the prisoner was transferred to the custody of Reliance staff, any medical treatment was no longer his responsibility but rather that of the doctor on duty at that time, hence the medication only covered the period to the morning of the prisoner's court appearance.

Considering the evidence, there are considerable doubts as to whether the fact that Mr Isard had been seen by Doctor Ghally, the reason for his visit, and the medication given was passed on firstly to Reliance staff and then to H M Prison Perth. Mr Wilson, who was on duty as turnkey in the cells at Dundee Sheriff Court on 29th May 2007, did not recall having been told that Mr Isard had been given medication although he was normally given this information. Prison Officer Younger had not seen the prisoner prescribing record, Crown Production number 13, which Doctor Ghally had prepared and detailed the medication given to Mr Isard when in police custody. Mr Younger said that the nurse would normally be informed of this. Prison Nurse Helen Watson, however, did not seem to have been informed of the medication given by Doctor Ghally and the reason for his visit. The significance of this is that in cross examination, Prison Officer Sclater said that one reason for placing a prisoner on observation was if he was suffering drug or alcohol withdrawal. If a member of the prison staff had been aware that Mr Isard had 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 on a prisoner's admission. Apart from anything else, Prison Nurse Watson has the facility to contact a duty doctor if she had any concern about a prisoner. Accordingly, it seems to me that the fact a prisoner was seen in police custody, the reason for such a visit, and any medication given should be passed to each agency as the prisoner passes from one to the other. I cannot say that this apparent failure was relevant to the death of Mr Isard. Nurse Watson

said that he did not appear to be suffering withdrawal when she saw him. That seems to me quite possible for two reasons. Firstly, Mr Isard had been given medication at 8am that morning. Although on the previous two days he had been given medication at 2pm and then again at 10pm, the fact that he had not received medication at 2pm on 29th May may not have had an appreciable effect on Mr Isard by 7.45pm when Nurse Watson saw him. Further, when he had been seen by Doctor Ghally he said that he had not had any heroin for more than twenty four hours. It, however, may have been different after Mr Isard was placed in his cell. I cannot speculate but do consider that method by which such information is passed from one agency to another should be looked at by the appropriate persons. As has already been observed, a significant number of the persons taken into police custody and thereafter taken to prison are drug addicts. Accordingly, there is always the potential on admission for a prisoner to be suffering from withdrawal.

I conclude by offering my condolences to Mr Isard's family and friends.