SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT DUNDEE

[2025] FAI 10

DUN-B693-24

DETERMINATION

BY

SUMMARY SHERIFF MARK ALLAN

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

into the death of

MICHAEL MILNE TAYLOR

Dundee, 28 January 2025

Determination

The Sheriff, having considered the evidence presented at the Inquiry, determines in terms of Section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 ("the 2016 Act") (hereinafter referred to as "the Act") that:

1. **In terms of Section 26(2)(a) of the Act (when and where the death occurred):**

Michael Milne Taylor, born on 25 January 1950, died at 0710 hrs on 23 August 2021 at Strathcarron Hospice, Randolph Hill, Denny, FK6 5HJ.

2. **In terms of Section 26(2)(b) of the act (when and where any accident resulting in death occurred):**

The death did not result from an accident.

3. **In terms of Section 26(2)(c) of the Act (the cause or causes of death):**

The cause of death was 1a. Metastatic small cell tumour of the right lung.

4. **In terms of Section 26(2)(d) of the Act (the cause of any accident resulting in death):**

The death did not result from an accident.

5. **In terms of Section 26(2)(e) of the Act (the taking of precautions):**

There were no reasonable precautions which (i) could reasonably have been taken, and (ii) had they been taken, might realistically have resulted in death being avoided.

6. **In terms of Section 26(2)(f) of the Act (defects in any system of working):**

There were no defects in any system of working which contributed to the death.

7. **In terms of Section 26(2)(g) of the Act (other factors relevant to the circumstances of death):**

There were no other factors relevant to the circumstances of death.

Recommendations

The Sheriff, having considered the information presented at the Inquiry, makes no recommendations in terms of Section 26(1)(b) of the Act.

NOTE

The legal framework of the Inquiry

[1] This Inquiry was held under Section 1 of the Act. In terms of Section 1(3) of the Act, the purpose of an inquiry is to establish the circumstances of the death and to

consider what steps, if any, may be taken to prevent other deaths in similar circumstances. Section 26 requires the Sheriff to make a determination which in terms of Section 26(2), is to set out factors relevant to the circumstances of the death. These are (a) when and where the death occurred; (b) when and where any accident resulting in the death occurred; (c) the cause or causes of the death; (d) the cause or causes of any accident resulting in the death; (e) any precautions which could reasonably have been taken and if they had been taken might realistically have resulted in the death being avoided; (f) any defect in any system of working which contributed to the death or to the accident; and (g) any other facts which are relevant to the circumstances of the death.

[2] In terms of Section 26(1)(b) and 26(4), the inquiry is to make such recommendations (if any) as the Sheriff considers appropriate as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, and (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances. The Procurator Fiscal Depute represents the public interest. An Inquiry is an inquisitorial process. The determination must be based on the evidence presented at the inquiry. It is not the purpose of an inquiry to establish criminal or civil liability.

Introduction

[3] This determination is made following the Fatal Accident Inquiry held under the Act into the circumstances of the death of Michael Milne Taylor, born on 25 January 1950 (hereinafter referred to as "Mr Taylor"). This was a mandatory Fatal Accident Inquiry in

terms of Section 2(4)(a) of the 2016 Act as, at the time of his death, Mr Taylor was in legal custody.

[4] The Procurator Fiscal issued a notice of the Inquiry on 24 October 2024. A Preliminary Hearing was held on 11 December 2024 and the Inquiry was held on 23 January 2025 at the Justice Hub in Dundee. Two parties provided notification of an intention to participate in the Inquiry, namely Scottish Ministers acting through the Scottish Prison Service and Forth Valley Health Board. The Crown advised that intimation of the Inquiry had been made to the Taylor family. Jodie and Catherine Taylor attended and observed the Inquiry on 23 January 2025 but did not participate in the proceedings.

[5] At the Preliminary Hearing on 11 December 2024 the representatives for the Crown, Scottish Ministers and Forth Valley Health Board were all agreed that the evidence could proceed by way of Joint Minute of Agreement and a draft Joint Minute was provided to the court. The parties indicated that it was unlikely that any witness evidence would be led at the Inquiry.

[6] The Inquiry was held at the Justice Hub in Dundee on 23 January 2025. The following were participants to the Inquiry: Andrew Neilson, Procurator Fiscal Depute, represented the Crown. James Halley, Solicitor, represented the Scottish Ministers acting through the Scottish Prison Service and Caroline Watson, Solicitor, represented Forth Valley Health Board.

[7] A Joint Minute of Agreement was formally entered into evidence at the inquiry on 23 January 2025. The following productions were lodged and referred to within the Joint Minute:

- Crown Production Number 1 - Intimation and Certification of Death form.
- Crown Production Number 2 - an autopsy report by Dr Ralph BouHaidar, Pathologist.
- Crown Production Number 3 - NHS and prison medical records maintained by NHS Forth Valley.
- Crown Production Number 4 - Death in Custody file of documentation and records held by the Scottish Prison Service.
- Crown Production Number 5 - Death in Prison, Learning, Audit and Review ("DIPLAR") Report.
- Crown Production Number 6 - an email from Dr Fraser Wood, Consultant Oncologist with NHS Forth Valley, concerning the clinical management of Mr Taylor from his discharge to Forth Valley Royal Hospital (FVRH) from the Beatson Cancer Clinic until his return to HMP Glenochil.
- Crown Production Number 7 - an email from Dr Sarah Miller, Consultant in Palliative Medicine at NHS Forth Valley concerning the clinical diagnosis, care and treatment of Mr Taylor during his admission to FVRH in August 2021, and the circumstances around his eventual transfer to hospice care.

[8] At the commencement of the Inquiry the Procurator Fiscal Depute read out the Joint Minute of Agreement. Written submissions had been provided in advance by all

three parties to the Inquiry. Parties read out their submissions at the Inquiry. A narrative of the established facts leading to the determination is provided below.

Narrative of the facts

Background

[9] On 1st November 2011, the responsibility for the provision of healthcare to prisoners transferred from the Scottish Prison Service to the National Health Service. Since then, individual regional NHS health boards have been responsible for the delivery of health care services within prisons in Scotland which fall within their geographical ambit for the provision of medical care.

[10] On 26 March 2021, Mr Taylor was sentenced to eight years imprisonment after being convicted at the High Court of Justiciary of various offences under the Sexual Offences (Scotland) Act 2009. His sentence began on 7 October 2020. His earliest date of liberation was 7 October 2028.

[11] Mr Taylor began his sentence at HMP Grampian before being transferred to HMP Glenochil on 15 April 2021.

Medical history, care and treatment

[12] In April 2021, Mr Taylor began complaining of shortness of breath, dizziness while standing, abdominal pain, and weight loss. In May 2021, following tests carried out at Forth Valley Royal Hospital, he was diagnosed with extensive stage small cell lung cancer with nodal and liver metastases.

[13] Mr Taylor underwent chemotherapy at FVRH throughout June and July 2021. He was also prescribed morphine to manage pain.

[14] On 27 July 2021, Mr Taylor was readmitted to FVRH following a deterioration in his condition, including increased pain, continued weight loss, and clinical signs suggestive of a possible recurrence of his metastatic plural effusion. On the same date, an application was submitted for compassionate release due to the terminal diagnosis. The medical notes show that the initial life expectancy of Mr Taylor had been estimated between two and eight months, but given the significant deterioration of his condition including aggressive weight loss, weakness, and difficulty in managing pain, the attending physician Dr Craig Sayers gave a prognosis of approximately three weeks.

[15] The compassionate release application was not successful due to the assessed high risk of reoffending, and there being no suitable location for Mr Taylor to reside with family members. It was identified that his condition was not manageable outside of a specialist care facility.

[16] Following a CT scan on 28 July 2021 which showed significant progression of his lung cancer as well as a spread to the thorax, it was decided to transfer Mr Taylor to NHS Greater Glasgow and Clyde, to receive treatment at the Beatson Cancer Clinic due to the increased risk of spinal cord compression due to the erosion of the thoracic vertebrae and for management of his pain. This transfer took place on 1 August 2021 and Mr Taylor was placed under the care of Dr Ben Fulton.

[17] Mr Taylor was treated using radiotherapy on 3 August 2021. The attending doctor advised that, despite his earlier chemotherapy treatment, the clinical diagnosis

had worsened and his life expectancy had shortened to weeks. It was identified at this time that the prison would be unable to provide the level of care required and that he would be better served in a palliative care hospice. However, neither Strathcarron Hospice or Roxburgh House Hospice had capacity at this time. It was decided that he should be transferred back to FVRH for ongoing symptom control and further consideration of a transfer to a hospice once that could be arranged.

[18] On 5 August 2021, Mr Taylor was handed into the care of NHS Forth Valley where he was admitted to Ward B31 at the FVRH. The consultant in palliative care, Dr Sarah Millar, noted that he was responding well to pain management on a 12-hour course of morphine, and at the time of transfer did not have any healthcare needs which required him to be moved to a specialist palliative care unit. His pain management was altered to a longer acting 24-hour morphine preparation to allow once daily dosing of his pain medication. Following this change, his pain continued to be well controlled. He no longer required hospital care. Discussions were held with a lung cancer specialist nurse (Sister Theresa Thomson) and the prison healthcare team who agreed that the prison could manage his care and treatment in the prison setting.

[19] On 12 August 2021 Mr Taylor was returned to HMP Glenochil. On his return to prison, accommodations were made for his condition, including a change in dietary requirements to a soft/chewable diet, with higher calories due to the deterioration in weight and to counteract the effects of the treatment which he was receiving.

Circumstances of Death

[20] On the 18 August 2021, Mr Taylor was visited by Staff Nurse Alexandra Johnstone following concerns raised by prison staff about his breathing. Following concerns raised by his daughter and in discussion with prison medical staff, a pathway was put in place, in the event that his condition worsened, to allow Mr Taylor to be transferred directly to a palliative care facility bypassing the need to attend at A&E first.

[21] Mr Taylor's pain levels were noted as decreased, but he was still suffering from difficulty breathing and in conjunction with the prison GP Dr Kildare, a "Do not attempt CPR" order was completed on 19 August 2021.

[22] On 19 August 2021, prison health care staff received a telephone call from Dr Sarah Miller. Mr Taylor's presentation and deterioration was discussed. Dr Miller confirmed that a hospice bed could now be looked for. There was no capacity at that time but she advised that she would continue to look and would inform HMP Glenochil once a bed became available.

[23] Dr Fulton consulted with the prison medical team following contact from Mr Taylor's daughter about concerns over the prison's ability to deliver care due to his complex medical needs and was advised that the steps had been taken to move Mr Taylor to Strathcarron Hospice at the earliest opportunity once a space had become available.

[24] On 21 August 2021, Mr Taylor was transferred to the Strathcarron Hospice in Denny for end-of-life palliative care as a vacancy had become available. Due to his

status as a serving prisoner, he was accompanied by guards throughout his stay at the hospice.

[25] On 23 August 2021, Mr Taylor's condition deteriorated further, and he passed away at approximately 0710 hours.

Pathology

[26] On 27 August 2021, a post-mortem examination was carried out by Dr Ralph BouHaidar, Consultant Forensic Pathologist. The cause of death was certified as:

1a: Metastatic small cell tumour of the right lung.

[27] Dr BouHaidar noted that there were significant adhesions to the inside of Mr Taylor's lungs, and a large (7cm diameter) grey tumour over the diaphragmatic aspect of the right lung. There was gross evidence of pneumonia in the lobes of both lungs but no evidence of pulmonary thromboembolism. There was also marked enlargement of the hilar lymph nodes, and a grey pallor to them. Mr Taylor's liver was also observed as having metastatic lesions ranging from 1-6cms. The subsequent histology revealed pneumonia and emphysematous changes to the lungs and confirmed the diagnosis of a non-squamous cell malignant carcinoma comprising nests of elongated and pleomorphic cells with focal necrosis and desmoplastic reaction which had also invaded the surrounding tissues and skeletal muscle. The liver also showed similar malformations. Toxicology showed therapeutic levels of Morphine and Midazolam in Mr Taylor's bloodstream consistent with his treatment. Considering all the facts presented, it is the conclusion of the pathologist that with the clinical symptoms

already diagnosed, as well as the pathology displayed, that Mr Taylor succumbed to his malignant lung disease with evidence of hepatic metastasis.

Submissions

[28] All parties submitted that formal findings only should be made in terms of sections 26(2)(a) and 26(2)(c) and that no findings should be made in respect of the other elements of the section.

Conclusion

[29] On the basis of the evidence presented at the Inquiry I am satisfied that I should make formal findings in terms of sections 26(2)(a) and (c) only. I have set out those formal findings above.

[30] On the available evidence at the Inquiry I have determined that Mr Taylor succumbed to terminal illness (lung cancer) on 23 August 2021 and that there are no systemic defects arising or precautions that might have been taken to avoid the death. In April 2021 Mr Taylor began complaining of and displaying signs of illness. In May 2021 Mr Taylor was diagnosed with a terminal illness and given a prognosis of months to live. Mr Taylor thereafter received the appropriate care and medical treatment he required in prison, in hospital and the hospice over the few short months which elapsed from diagnosis until he succumbed to his illness on 23 August 2021, aged 71 years.

[31] I have not identified any matter that would require a finding beyond the formal findings in terms of section 26(2)(a) and (c) of the Act.

[32] I am satisfied that it would not be appropriate to make any recommendations in terms of section 26(1)(b) of the Act.

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