

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1975 DETERMINATION INTO THE CIRCUMSTANCES OF THE DEATH OF LIU JIN WU

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS

INQUIRY (SCOTLAND) ACT 1976

Sheriffdom of Glasgow and Strathkelvin at Glasgow

Determination of Sheriff Totten

In the circumstances of

The death of LIU JIN WU, born 18/11/67

- Liu Jin Wu, date of birth 18 November 1967, formerly of 110 Comely Place, Falkirk, died on 5 May 2003 at 06.35 hours in cell 10, Letham Hall, Barlinnie Prison.
- The cause of death was hanging.

Note

[1] This inquiry looked into the circumstances of the tragic death of a 35 year old Chinese national who took his own life by hanging in Barlinnie Prison whilst on remand awaiting trial on a charge of attempted murder.

[2] The evidence highlighted a number of particular features and looked at how they might have affected the circumstances of his death and, more generally, the standard of his care by the prison authorities. The first of these was that despite having been in the United Kingdom for some years he spoke, for all practical purposes, no English whatsoever. The second important feature was his mental health which varied over the period prior to and during his remand. At times he appears to have been quite ill, mentally and at other times to have displayed no obvious signs of mental illness.

[3] The deceased had arrived in the UK some years before his death. He lived and worked for most of that time in England but had come to work in the Falkirk area in September 2002. Throughout the time until his arrest he lived and worked in the Chinese community. He was content to do so and made no effort to learn any English whatsoever. It would appear that he was not a well-educated man and his intelligence may have been somewhat limited. Following his arrest it was ascertained that he had the status of an illegal immigrant into this country and he would have faced likely deportation whatever the outcome of the criminal proceedings against him. His command of, and indeed interest in learning, English was in marked contrast to that of Miss Chin who gave evidence before me. She had first arrived in the UK just under two years before the inquiry but was able to testify in English.

[4] She met the deceased, who was not previously known to her, on her first day in this country. He gave her help as a fellow member of the Chinese community and they became good friends, maintaining daily contact. The deceased's wife and family continue to live in mainland China and were happy for Miss Chin to 'represent' them in these proceedings. She became aware of him acting abnormally and apparently suffering from delusions from about August 2002. After he went to work in Falkirk she kept in touch with him and continued to have concerns about his mental state. In January 2003 he returned to stay with her for Chinese New Year. He had lost weight and continued to have paranoid delusions. She wanted him to see a doctor and to return to live and work in Kent where he was apparently calmer. An appointment was fixed but he returned to Falkirk to work two weeks notice in March 2003.

[5] His behaviour continued to be irrational during March and culminated in him allegedly attacking and seriously injuring a work colleague in the kitchen where he was employed. Although his condition apparently fluctuated it is quite likely that his irrational behaviour up to and including the day of the alleged assault were due in whole or in part to mental illness.

[6] He was arrested and appeared on petition at Falkirk Sheriff Court on 17 March 2003 facing two charges of attempted murder. For purposes of interview the police employed a Chinese interpreter, Mr Chan. He was seen at court by Mr Dirom, a community psychiatric nurse, in the presence of the same interpreter. Mr Dirom made a thorough and careful assessment of him. With the assistance of the interpreter he was able to get an extensive history including information about the paranoia mentioned above. It was Mr Dirom's considered opinion that he was not suicidal, based on both what the patient said to him and his observations of him. He discussed his findings with Dr Nelson, a psychiatrist and a provisional diagnosis of paranoid psychosis was made. He also recorded the intermediate and long term risk of suicide or self-harm as low. In view of the language barrier and the diagnosis he both telephoned and faxed to Barlinnie prison the patient details prior to his arrival there.

[8] The now deceased was remanded to Barlinnie prison. Despite the advance notice there was no access to an interpreter either face to face or via telephone on his arrival. Accordingly the normal induction process was hampered. By very basic communication, the induction staff obtained some reassurance that the prisoner was not intending to commit suicide. A sensible decision was taken to admit him to the residential health care unit pending further assessment. The following day he was seen in the presence of an interpreter. He was observed to be low in mood during the following days in that unit. One problem which was ascertained was with the food, but the ongoing language barrier prevented more thorough enquiry into his well-being.

[9] Neither the nursing staff nor the prison officers saw anything which gave rise to a fear that he was at risk of suicide and he was transferred to Letham hall from the health care unit. However on 8 April his then cellmate in that hall reported that he was making suicide gestures. The prison staff reacted promptly by invoking the ACTS (act to care) procedures and he was transferred back to the RHCU.

[10] The language barrier caused some difficulties and delays in the normal ACTS procedure but ultimately the conclusion was that he was of low risk of suicide and he was transferred back to Letham hall. There was an unfortunate failure to bring the ACTS documentation to Letham hall with him. I shall return to that and to its effect but first I propose to look at the evidence of suicide risk prior to his death.

[11] Assessment of suicide risk depends to a large extent on information provided by the patient as well as assessment of his demeanour. Language difficulties can hamper that process. Those difficulties are compounded if there are delays in accessing an interpreter. However even taking those difficulties into account, apart from the 8 April incident, the overwhelming weight of the evidence points away from the now deceased being an obvious suicide risk. That includes Mr Dirom's assessment referred to in [7] above, the observations of the prison and medical staff prior to 8 April and the ACTS assessment following that report. He was in addition seen by several psychiatrists. He was seen by visiting psychiatrist Dr Liz Henderson on 19 March and again on 4 April. She found no overt thoughts or other signs of self-harm or suicide. On 14 April he was seen by Dr Ijomah from the State Hospital at Carstairs. The latter assessed him as clearly mentally ill at that stage to the extent that the doctor considered he should be transferred to hospital. Importantly, even then he was not apparently displaying signs of suicide risk. The most recent examination was by Dr Brown who saw him on 28 April. Somewhat to his surprise (since he had seen Dr Ijomah's report) he found that the patient was not suffering from any ongoing psychiatric illness. That may reflect the episodic nature of the now deceased's condition but, be that as it may, like others before him, he found no obvious suicide risk.

[12] To complete the picture, prison staff saw nothing between 8 April and 5 May to cause them concern. Despite the incident on 8 April there appears to have been widespread surprise among staff when Wu took his life. Likewise Miss Chin, who had been speaking to him regularly by telephone until just before his death did not expect this, but had found him rather brighter. The only exception was an opinion expressed by Derek Goh, who is based at Dungavel which deals with asylum seekers. He visited Barlinnie prior to Wu's suicide and remarked that the prisoner should be carefully observed. My impression was that Mr Goh's apprehension of possible suicide was based on a general experience of the reaction of Chinese nationals facing deportation rather than anything specific about the now deceased.

[13] It is impossible to say what exactly the 8 April incident was all about. It may have been a symptom of an episode of mental illness, a melodramatic way of complaining about the prison food or some other matter but it does not on balance appear to have been an actual suicide attempt or even to have suggested that he was intending suicide.

[14] As indicated in [10] above, there was an error when Wu was returned to Letham hall in that the ACTS procedure documentation did not accompany him. With the passage of time it was not possible to ascertain who, if anyone, was at fault for that. In addition the assessment of low suicide risk was entered in the computer system in a way in which, in the absence of the documentation, the hall staff were not alerted to the fact that he was subject to the ACTS procedure. Accordingly they were not aware of the requirement of hourly observations day and night nor did they arrange a

follow-up ACTS conference which should have taken place at an interval of no more than one week.

[15] On the whole I was favourably impressed by the ACTS procedures which are well designed to counter the risk of suicides and it is unfortunate that these errors occurred. The prison authorities did not shrink from the fact that these were errors which ought not to have occurred. I am entirely satisfied that appropriate investigation was made into them and effective steps taken to avoid a repetition and indeed to improve the operation nationally of these procedures. In closing submissions the procurator fiscal invited me to consider if the combination of omissions amounted to failure to take precautions which might have avoided the death. I am not satisfied that I should make such a finding. Letham hall is the high dependancy unit in the prison. I was impressed by the caring regime within it. I will come later to the steps taken by the officers within the hall to ease Wu's cultural and language difficulties there. Even without those, there is clearly a considerate atmosphere in the hall generally and, during the day time at least, observations would be as frequent as would have been required under the ACTS procedure. Given that fact, the absence of any evidence of suicide intent in the interim and the lapse of time between the return to Letham hall and the eventual death in my judgement it is not possible to draw any connection between the errors in the ACTS procedure and the death.

[16] I wish to turn now to deal with the language problem during the now deceased's time in the prison and the evidence of the prison service's attitude to race matters generally. As noted above this was a somewhat unusual case of a prisoner who spoke, to all intents and purposes, no English whatsoever. That undoubtedly made life more difficult for him and those dealing with him. In particular at the induction process the normal induction could not take place and there was delay to await an interpreter to have any real communication until the following day. Similar difficulties were encountered when the ACTS procedure was activated. There were in addition difficulties of a more mundane nature in the every day dealings with him in the prison. For example it appears that he may have had difficulty understanding the procedure to enable him to buy snacks, etc from the prison canteen and he in turn had difficulty in conveying what he did or did not like to eat. On one occasion staff witnessed him banging his head on his cell wall. It was distressing both to him and to the staff that they could not communicate to find out what the problem was.

[17] The procurator fiscal invited me to consider that the better provision of translating facilities was a reasonable precaution which might have avoided this death. I am not satisfied that I can make such a finding. Particularly given his fluctuating mental health in my view I am unable to say that language difficulties had any part in his decision to take his life. As noted above he did have regular telephone contact with Miss Chin and she in turn, when required, then spoke to a prison officer if there were matters which he could not understand or perhaps wished to communicate to the prison officers. At the risk of repetition, she did not get the impression that he was particularly down because he of language problems, but rather thought that he was in a somewhat better frame of mind and she was shocked to learn he had taken his life.

[18] The stark picture of him spending weeks in a 'foreign' prison without the ability to communicate with anyone else or ready access to an interpreter is not really the whole picture, thanks in the main to steps taken by prison officers to help as much as they could. I was given the impression that the staff in the High Dependency Unit in Letham hall did what they could to help. That ranged from little things like allowing him to jump the queue for the telephone. Prison officer Mckinney particularly impressed me as someone who was concerned for Wu's welfare. He spoke to Miss Chin by telephone and made the very helpful suggestion that she provide written sheets with the English and Cantonese for common words and phrases he might need. In addition, after checking that they would be compatible, Wu and another Chinese prisoner were placed in a cell together, despite the fact that the latter was convicted and Wu was untried. Although they were not from the same part of China they could communicate to some extent and this was an excellent example of initiative to ease his situation. That cell-mate was liberated on 25 April but there is nothing to indicate that being left alone again was a factor in the suicide.

[19] One witness did describe -accurately in my view- as very unpleasant the idea that anyone might spend a protracted time in a foreign prison without the ability to communicate with others. In my view it is not possible to argue against the need to avoid where possible such a situation occurring within the Scottish Prison Service. It would perhaps be easy to overstate the extent of any such risk: witnesses confirmed for example that of the 1200 or so prisoners in Barlinnie it would be most unusual to find more than one or two with serious language difficulties. However my own experience of practice in this court and awareness of the influx of asylum seekers and others from parts of Eastern Europe and the Middle East suggests that this is a problem which is likely to grow. The translation facilities and response at the time Wu was in Barlinnie were far from ideal. On the evidence led before me it appears that at least two steps could be taken which should not involve unreasonable expense but would improve some 'frontline' communication with non-English speaking prisoners. I recommend that the prison look at introducing for issue to prisoners a more formalised set of cards, in various languages, with the sort of words and phrases which Mr Mckinney found helpful in Wu's case. They would hopefully provide at least some further means of two-way communication between staff and prisoners without involving an interpreter. Witnesses pointed out the limitations of such cards: they can not deal with anything but the simplest material, their use may be unhelpful if a prisoner does not possess literacy skills and they should not be relied upon to avoid the need for an interpreter. Secondly I was heard from various witnesses that the prison service are examining the costs and suitability of Language Line. I was not provided with a full costing but one witness indicated that a figure in the region of £600 would secure membership for the whole service and thereafter for a billing per minute of actual use there would be immediate access to a telephone translator. I recommend that the Scottish Prison Service do not delay in completing an assessment of the viability of introducing Language Line. I stop short of simply recommending it's immediate introduction lest there be some aspects of it's introduction which would be problematic. On the face of it Language Line would be a very helpful tool where access to translation is required without delay. I do however emphasise, as did a number of witnesses, that Language Line should be seen only as providing that kind of emergency translation. It is not as good as a face-to-face interpreter and should not be routinely used in place of that.

[20] In my view the prison service systems for dealing with the cultural and language problems which arose when the now deceased was a prisoner in Barlinnie were less than perfect. Fortunately the impact of that was very substantially mitigated by the caring approach and initiative of staff, both in the high dependency unit (which by its' very nature provides an impressive level of care) and in the health care unit. Wu also had the considerable assistance of Miss Chin, who was a good and loyal friend throughout. She kept in regular contact with him and was also able to assist prison staff who looked for ways to improve conditions for him. I have concluded on the evidence before me that there is nothing to indicate that this suicide was due to any cultural or language difficulties. But for the care of certain individuals it would have been tempting to infer that those difficulties might have contributed to the decision to kill himself.

[21] I was greatly reassured however by the steps the prison service are taking, or at least trying to take, to address race and language issues. For all of us there is a learning process in dealing well and fairly with people from different cultures and overcoming language barriers. As our society becomes more complex and welcomes others from different cultures and races it is incumbent upon all of us to embrace that. Indeed all of our lives will be enriched if we do so with enthusiasm and Scottish hospitality. On the other hand we will be judged if we fail to do so. This is particularly in our public services such as the prisons. The prison service have clearly since the time of Wu's death improved the operation of their Race Relations policy (in part it has to be said because of criticisms from the inspectorate). Thus the race relations manager is now a more senior grade and other dedicated staff have been employed. There is a system of regular, frequent meetings with an interpreter and other culturally appropriate activities. Food is likely to be of continuing importance. It may be helpful that the race relations manager in Barlinnie happens to be the catering manager. There was a suggestion in evidence that it would be appropriate to bring into the prison 'carry-out' food from, say, a Chinese restaurant. I do not make any recommendation to that effect. It seems to me that there may well be cost and security considerations in such a suggestion, as well as the practical difficulties if other prisoners perceived this as 'preferred treatment'. Much better would be to ensure that the kitchens in the establishments can provide a nutritious diet which meets the cultural and religious needs of all. Failure to do that could well amount to a breach of statutory obligations under Race Relations legislation.

[22] There were suggestions in the evidence that the prisons do not operate in practice as well as they state in policy, and that while the system for responding to complaints works well, the softer, proactive side is not as effective. On the evidence before me I cannot reach a concluded view if those criticisms are valid. They highlight the need for positive, enthusiastic action to ensure that from the hall floor upwards, all reasonable steps are taken to meet the particular problems which prisoners from different ethnic backgrounds may face. A helpful suggestion made was that the prison should proactively make contact with cultural organisations which may, for example, be prepared to visit inmates. I would echo that initiative although I recognise that such bodies may be reluctant to become regular prison visitors. On the whole I was left with the impression that the prison establishments, or at least some staff, are doing their best to improve their approach to race issues and their treatment of prisoners from different ethnic backgrounds.

[23] Finally another matter which was touched upon was the possible exchange of information between various psychiatrists who may see inmates. It emerged that there is no formal system for this at present. This means that a prisoner may be seen, for example, by a psychiatrist instructed by the crown and/or the defence, a visiting psychiatrist for the prison and another from a local hospital in the area of the prisoner's home but their reports are not necessarily disclosed to the prison medical authorities. I understand that the Procurator Fiscal has already reported this to Crown Office and I stop short of any formal recommendation but it may well be that some protocol to deal with this can be developed. I anticipate that Crown Office and the Scottish Prison Service will wish to take this up with Dr Baird, the very experienced and senior visiting psychiatrist for Barlinnie.

[24] In summary I came in this case, without much difficulty, to the conclusion that Liu Jin Wu's decision to take his life was unexpected and was likely to have been in some way due to his fluctuating mental health rather than any defects, failures to take reasonable precautions or any other aspect of the cultural and language difficulties encountered while he was in Barlinnie prison. Any errors or imperfections in the systems for dealing with him were substantially mitigated by the care and initiative of individuals who dealt with him. His case does highlight the difficulties potentially presented for non-English speaking prisoners and those from different ethnic or cultural backgrounds. Overcoming those difficulties can be complex and is certainly not easy but there exists in the prison service a desire to do so and a commitment to improve the methods of doing so. In my view it is important that those aims are carried through. I have made modest suggestions for improvement but more importantly I am reassured that the Scottish Prison Service will continue to address Race Relations and will, I believe proactively improve their systems in these and other ways. On any view this case illustrates that there can be no room for complacency in ensuring that the best practices and procedures are carried out in dealing with prisoners from different ethnic backgrounds, particularly where language barriers exist.

[25] As a postscript I wish to reiterate my thanks for the professional, skilful and helpful way in which each of the lawyers in this case presented and examined the evidence. For my part I apologise for the delay in issuing this determination. I had hoped to issue it some time ago but was prevented by pressures of other business and periods away from my desk. I hope that the delay has not been too inconvenient for those awaiting the determination.

Sheriff WJ Totten

Glasgow

August 2004