

DETERMINATION

of

SHERIFF JAMES A FARRELL

In Fatal Accident Inquiry in terms of the Fatal Accidents and Sudden Deaths

Inquiry (Scotland) Act 1976

Into the Death of IRENE MARGARET HOGG

Parties to the Inquiry:

Procurator Fiscal Depute: Mr Keane

Roger Hogg, brother of the deceased: Mr Hale, Solicitor

HM Inspectorate of Education: Mrs Wiseman, Solicitor

Scottish Borders Council: Mr Khurana, Advocate.

Jedburgh January 2010

The Sheriff, having resumed consideration, determines as follows:

1. Section 6(1)(a)

Irene Hogg died at Tow Ford, near Oxnan, between 08.35 hours on the 25 March 2008 and 23.45 hours on the 26 March 2008 as a result of being immersed in water and paracetamol toxicity.

2. Section 6(1)(b)

The cause of death was Immersion in Water and Paracetamol Toxicity.

3. Section 6(1)(c),(d) and (e)

There are no circumstances of the death to be set out in respect of these provisions.

NOTE

NOTE

My determination in this Inquiry is entirely formal, ie restricted to paragraphs (a) and (b) of 6(1) of the 1976 Act. Such determination is the course which the parties, with the exception of Mr Hale, Solicitor, for Mr Roger Hogg, the deceased's brother, invited me to follow.

I shall return to Mr Hale's submission shortly, but first I consider it desirable that I expand upon the contents of 6(1)(a) and (b) supra. The exact time of Irene Hogg's death is not capable of precise ascertainment as is evident from the lengthy span, something in excess of 40 hours, during which I have determined death must have occurred. CCTV footage showed Irene Hogg, at about 08.15 on Tuesday 25 March 2008, delivering an item at the letter box of Scottish Borders Council's Headquarters at New Town, St Boswells. Thereafter the film apparently showed her driving off in her car. That was the last time, on the evidence before me, when Irene Hogg was seen alive. At about midday on the 25 March 2008 PC Smale, was sent to Irene Hogg's cottage at Bowden on account on her having failed to attend for work without explanation at Glendinning Primary School, Galashiels. In the cottage he found a note, number 9 of the Crown productions, on a work surface. The note was undated but signed by Irene Hogg, and addressed to her parents and her brother. Its contents indicated an intention to self-harm. Police Constable Roper spoke to finding Irene Hogg's car at about 18.30 on Wednesday 26 March 2008 parked near a cattle grid on the single track road at Tow Ford. From the Scottish Borders Council's Headquarters it is a drive of about 20 minutes to the place at which the car was found at Tow Ford. In the unlocked car Police found two empty paracetamol blister packs. The packs would have held 16 tablets. Vomit was found over the steering wheel and the driver's seat. Number 10 is a copy of Tuesday 25 March 2008 edition of the Daily Mail newspaper and was found in the car. There are some manuscript writings on the newspaper and the signature "Irene". The nature of these writings was also consistent with an intention to self-harm. At about 21.45 hours on the 26 March 2008 Irene Hogg was found partially submerged in a stream or burn at Tow Ford, approximately

100 metres from her parked car. Life was pronounced extinct at the scene at 23.45 on the 26 March 2008.

Tow Ford is located on the edge of the Cheviot Hills. It is a remote location, the only nearby habitation being a farm house of the same name. Irene Hogg was found in the middle of the stream, where it is about 3 metres wide, and at a point about 10 metres from the roadside. From the road to the stream edge the grassy banking is steep and rough. Irene Hogg was lying on her back in about a depth of 15 inches of water. The small of her back was arched over a small submerged boulder, her head and upper torso and her lower limbs being submerged. Her head was pointed upstream. Subsequently her coat and car keys were found on the bank near the waters edge. One or both sleeves of the coat had been turned inside out. There were mud marks on the coat consistent with the wearer of the coat having slipped.

Following upon an autopsy examination and a toxicology report, the cause of death was stated to be Immersion in Water and Paracetamol Toxicity. Immersion in Water is not synonymous with drowning. There was no clear evidence of drowning in this case and some contrary evidence such as the absence of hyperinflation of the lungs was noticed. No Paracetamol was found in the deceased's stomach, but Paracetamol had been ingested and found in the bloodstream. The level of Paracetamol poisoning present would have caused liver failure and death within 3-5 days from the time of ingestion. The liver showed no sign of Paracetamol damage. The deceased's cardiac system was normal and nothing else was found on post-mortem examination which afforded positive conclusive evidence as to cause of death. The examining pathologist gave evidence and spoke to his report, no. 17 of the Crown productions. The level of Paracetamol poisoning which would ultimately have proved fatal had yet to take effect on the deceased at the time of her death, except to the extent that she would very likely have felt nauseous and dizzy as a result of the Paracetamol overdose. The cause of death was Immersion in Water. The pathologist, Dr BouHaidar, gave evidence to the effect that cold water being brought into sudden contact with the back of the throat may provoke a neurological response which in turn may trigger a fatal cardiac arrest which leaves no sign, or trace, at post-mortem examination. In my opinion, this was the most likely cause of Irene Hogg's death. Whilst I am satisfied from the fact that Irene Hogg took a lethal overdose of

Paracetamol, and from the terms of productions numbers 9 and 10, that Irene Hogg had decided to take her own life, I am not satisfied that Irene Hogg had decided to achieve that result by drowning herself in a 15 inch deep stream, and in the position in which she was found in that stream. I am further of the view that there is virtually no possibility of her having being aware that Immersion in Water could have resulted in causing her death in the way I have found it did. In short therefore, the essential circumstances which found the contents of 6(1)(a) and (b) are that Irene Hogg decided to take her own life by means of an overdose of Paracetamol, and having driven her car to the remote location at Tow Ford and left it there, and whilst experiencing nausea and dizziness as a result of the Paracetamol overdose, became immersed in the cold water of the stream, the precise manner of that immersion being unknown, suffered a cardiac arrest as a result and died.

I turn now to the submissions of Mr Hale on behalf of Mr Rodger Hogg. Mr Hale's submissions in respect of paragraphs (a) and (b) of section 6(1) are substantially as per the determination supra. In relation to paragraphs (c) and (d) Mr Hale did not invite me to make any findings. Paragraph (e) of section 6(1) refers to any other facts which are relevant to the circumstances of a death and is the most widely framed of the five paragraphs of the subsection. Under reference to this paragraph Mr Hale invited me to make five particular findings. Mr Hale's suggested findings related to events commencing around about the 7 September 2007 and concluding with the inspection of Glendinning Primary School, Galashiels, during the week commencing 17 March 2008. I pause here to cite a passage from the narrative of the petition "Irene Margaret Hogg, was at the time, the headteacher of Glendinning Primary School, Galashiels. The school had recently undergone an inspection". As narrated supra, the Crown at the conclusion of the Inquiry invited the court to issue a formal determination restricted to paragraphs (a) and (b) of section 6(1). Returning to the events of the events of 2007 and 2008 with which Mr Hale's submission was particularly concerned, Irene Hogg was the headteacher of Glendinning Primary School in September 2007 and had held that post for about 18 years. The pupil roll was about 105 including a nursery class, and the staff complement was six, including Irene Hogg. In September 2007, and for some time beforehand, Irene Hogg had been a teaching headteacher. That is to say that in addition to the management role of headteacher, which in recent years had become more diverse and demanding, Irene

Hogg also undertook class teacher duties two to three days per week. Moreover she had elected to teach a composite P6/7 class which had a roll in excess of the recommended maximum of 25 pupils. This amounted to an onerous teaching commitment. Accordingly, in 2007 and 2008 Irene Hogg had a very busy and challenging professional life which resulted in her routinely working evenings and at the weekend.

On 7 September 2007 Irene Hogg sent an email to Yvonne McCracken, Head of School Services, Scottish Borders Council. Yvonne McCracken was Irene Hogg's line manager. The email is Crown production number 2 and is in the following terms "I am deeply concerned about lots of issues in education and in particularly (sic) the sustainability of the job I am in. I would appreciate the time to talk about this with you. Many thanks Irene." Mrs McCracken sent an email in reply within 10 minutes and also telephoned Irene Hogg expressing her concern at the contents of Irene Hogg's email and proposing a meeting to discuss matters further. Irene Hogg apparently declined an offer to meet that same day and a meeting was arranged for the 24 September 2007. That meeting took place at the Langlee Centre, Galashiels, between Irene Hogg and Yvonne McCracken and lasted nearly three hours. During the course of the meeting they discussed education nationally and particular issues such as parental involvement. Also discussed were some issues relating to Glendinning School in particular and Irene Hogg presented to Yvonne McCracken as very self-critical. She stated that she had been in the school a long time. She felt that perhaps that she had been sometimes over protective of staff and perhaps ought to have challenged them more. At the same time she observed that she did not want to upset the staff. She also talked about herself, and Yvonne McCracken remarked that in this respect Irene Hogg was more forthcoming than had previously been the case. She stated that she felt that she was losing her certainties about the job and on that account was finding decision making more difficult. Yvonne McCracken quoted one particular phrase which Irene Hogg had used to the effect that she was not "where I thought I would be at this time in my life.". Irene Hogg further went on to state to Yvonne McCracken that she considered that it might have been wiser to have allocated a smaller class to herself, than the composite P6/7, in her role as teaching headteacher. Yvonne McCracken's immediate, and short-term, response was to offer to provide another teacher to Glendinning to take responsibility for the P6/7

composite class and this was welcomed by Irene Hogg. She also offered to provide some expert assistance in relation to some of the staff at Glendinning and this was in response to what Yvonne McCracken regarded as Irene Hogg's veiled comments in relation to some of the staff. In relation to Irene Hogg's remarks regarding decision making and loss of confidence and the potentially more complex issues underlying those remarks, Yvonne McCracken mentioned the availability of counselling provided by Scottish Borders Council. In fact Irene Hogg was already aware of the existence of such counselling for teaching staff having in the past herself drawn its existence to the attention of teachers who had sought guidance from her. On this occasion Yvonne McCracken raised the matter with Irene Hogg with some diffidence since she was well aware of Irene Hogg's reluctance to seek help of this sort, an aspect of her character spoken to by several witnesses. As expected Irene Hogg declined the offer of counselling. However, Yvonne McCracken went on to suggest another option. She asked Irene Hogg if she would like her, Yvonne McCracken, to explore the possibility of arranging four or five sessions with a specialist counsellor from an NHS background. Irene Hogg's response to this offer was ambivalent but she did not reject it out of hand. The facility proposed did not exist within Scottish Borders Council at that time. Yvonne McCracken's intention was to explore whether a unique support structure using such a resource could be devised for Irene Hogg and thereafter introduced as part of Scottish Borders Council's Continued Professional Development Programme. At the conclusion of the meeting Yvonne McCracken undertook to progress these two options. When they parted on 24 September 2007 Yvonne McCracken felt reassured as a result of her meeting with Irene Hogg. Two other matters had arisen during the course of the meeting of 24 September 2007. First, Irene Hogg had intimated that she was considering retiring in 2008 but had not yet reached a final decision, and second the two women had touched on the likelihood of an HM Inspectorate of Education inspection of Glendinning School. Such inspections occur usually at 7 year intervals and one was due at this time. In November 2007 Yvonne McCracken met Irene Hogg at a general meeting with teaching staff, and also at a meeting with her for the purpose of ascertaining whether the supply teacher provision to Glendinning had been helpful. It should be stressed that Irene Hogg did not wish to be relieved entirely of teaching duties. Teaching was the element of her job which she enjoyed most. She wished for a flexible arrangement to be in place enabling her to resume her teaching days whenever her management duties permitted.

This was the facility with which she had been provided and in November 2007 Irene Hogg confirmed to Yvonne McCracken that it had been of considerable assistance. When Irene Hogg failed to attend for work on Tuesday 25 March 2008, the week following upon the inspection, Yvonne McCracken was actively involved that day in the ongoing process of setting up the support structure described supra. Yvonne McCracken agreed that ideally that support would have commenced before the inspection.

Intimation of the inspection of Glendinning School was received by Irene Hogg and the staff about three weeks before the commencement date, viz 17 March 2008. Scottish Borders Council received intimation rather earlier and the allocated Quality Improvement Officer, Karen Gray, commenced Glendinning inspection preparation in January 2008. But even before that, in September 2007, because Glendinning was a school likely to be inspected in 2008, Karen Gray had met with Irene Hogg and discussed preparation for a possible inspection. Between January and February Karen Gray had a further five or so inspection preparation meetings with Irene Hogg. Number 4 of the Crown productions is the pre-inspection report produced by Karen Gray in respect of Glendinning School. It follows the format used in the HMIE inspection report and Irene Hogg received a copy. Irene Hogg expressed some disappointment with the conclusions of this report, especially the grading for learning and teaching. At no stage did Irene Hogg directly or indirectly raise possible postponement of the inspection as an issue.

During the lead up to the inspection, and during the first day, witnesses spoke to Irene Hogg displaying the levels of anxiety and stress which would normally be expected of most headteachers in that situation. However, on Tuesday 18 March 2008 a significant event occurred in the course of the inspection. On that day the HMIE inspection team comprised the Managing Inspector, an associate assessor and a lay member. Sometime previously an allegation had been made concerning an incident which might properly be classified as a care and protection issue. The substance of the alleged incident, on any view, was relatively minor. The allegation was reported to Irene Hogg without delay and she in turn dealt with it in a prompt and efficient manner. As a result of her investigation she concluded that the allegation was unfounded, a conclusion which has remained undisturbed to this day. In these

circumstances no further action required to be taken save that the headteacher ought to have recorded the allegation. Irene Hogg failed to record the allegation. On the 18 March 2008 the allegation was brought to the attention of the Managing Inspector. When the school assistant intimated this occurrence to Irene Hogg that same day her dejection was evident. On Friday 21 March 2008 the inspection team met with Irene Hogg for a feedback session. The feedback, which would form the basis of the HMIE report, was recorded by Karen Gray, the Quality Improvement Officer, and is number 8 of the Crown productions. Karen Gray had been in contact with Irene Hogg during the week of the inspection and on this last day sat beside her providing both professional and pastoral support. Irene Hogg was disappointed and visibly distressed by the feedback. The failure to record the allegation referred to supra resulted in a Care, Welfare and Development grading of “weak”, several grades below the “very good” accorded to this Quality Indicator in SBC’s pre-inspection report. I pause here to note that in the final HMIE report, issued posthumously, this Quality Indicator was upgraded to “adequate”. Overall the Managing Inspector described the report as not being a “strong” one. After the inspectors had departed the Quality Improvement Officer spent some 40 minutes with Irene Hogg stressing the Education Department’s commitment to providing assistance to her in those areas requiring improvement. She emphasised to Irene Hogg that this task would be a joint endeavour and that she would not be alone. At this stage, Irene Hogg mentioned to Karen Gray for the first time that during the preceding year, two of her uncles had died and that she had been involved in caring for them and arranging their funerals. She wondered aloud in Karen Gray’s presence whether she should have returned to work following these events.

By the end of the week Irene Hogg was visibly disappointed and depressed by the outcome of the inspection. Several of her friends and colleagues spoke to that fact, and also to offers to spend time with her. Irene Hogg declined these offers and without exception none of her friends or colleagues had the slightest suspicion that she might self-harm following the outcome of the inspection. Mary Ross, one of Irene Hogg’s closer friends, and a retired headteacher, spoke of contacting her on Monday 24 March 2008 which was Easter Monday and a school holiday. They discussed the outcome of the inspection and Mary Ross endeavoured to encourage and reassure Irene Hogg. Like the other witnesses she noted Irene Hogg’s mood but

her final position was that she had “no undue concerns. Irene had exhibited as I would have at the end of a disappointing inspection.”. I conclude this chapter by noting that the Inquiry heard medical evidence that Irene Hogg had excellent health and had never presented with mental health issues.

I now come to the last part of this determination where I shall consider how to respond to Mr Hale’s particular submissions. The first particular submission following on from the broad submission that I should find the inspection to be a fact relevant to the circumstances of the death of Irene Hogg was in the following terms “in circumstances where Scottish Borders Council suggests a course of counselling to an employee, arrangements should be put in place with the minimum of delay in order that an employee may attend such counselling if they so wish”. This submission rested upon the evidence of Yvonne McCracken regarding her proposal to tailor a specific counselling support “package” for Irene Hogg and the stage which the arrangements therefor had reached at the time of Irene Hogg’s death. In my opinion this submission proceeds upon a misapprehension as to the nature and purpose of the proposed counselling support package. I have already noted Yvonne McCracken’s evidence *ad longum* from which it is clear that this very specific support package was to be designed to address not some transitory difficulty, or problem, such as a likely forthcoming inspection, but rather a potentially deep seated problem peculiar to a particular individual at a particular time in her life and stage of her career. Such a counselling support package inevitably entailed a lengthy gestation period in order to ensure its fitness for purpose, and its acceptability to the intended recipient. In my opinion the progressing of arrangements in respect of this very special counselling support package was appropriate and accordingly I have declined to make Mr Hale’s proposed finding.

The next proposed finding advanced by Mr Hale was in the following terms “as soon as is reasonably practicable following upon receipt of notice of a HMIE inspection Scottish Borders Council should carry out a risk assessment for the purposes of ascertaining: (1) whether there are any circumstances justifying a request for postponement; and (2) whether there are any circumstances which merit additional support of any kind being provided to a school during the run up to an inspection or during the week of an inspection.”. In the course of dialogue with Mr Hale I

suggested that the words “carry out a risk assessment” be replaced by “having a formal procedure in place”. In either form I consider that it would not be appropriate to make such a finding. Having regard to the evidence to Karen Gray, Yvonne McCracken, Helen Ross and the Director of Scottish Borders Council Department of Education and Lifelong Learning, Glenn Rodger, I am satisfied that appropriate, and importantly suitably flexible, procedures were, and are, in place to achieve the results at which this proposed finding is directed. In this connection I refer to the first full paragraph at P7 *supra*.

Mr Hale’s next submission was in the following terms “in circumstances where a headteacher is visibly distressed during or following the feedback received at the conclusion of a HMIE inspection, Scottish Borders Council should ascertain from that headteacher as soon as is reasonably practicable to do so, whether the headteacher requires additional support of any kind from the Council including but not limited to professional counselling.”. Again, as with the previous submission, I have declined to make the finding proposed since in my opinion it is unnecessary having regard to the procedures and practices which were, and are, in place at Scottish Borders Council. In this connection I refer to the evidence of Karen Gray, the Quality Improvement Officer, Eileen Paterson and to the contents of Crown production number 16. This four page document is a summary of the headteacher support provided by Scottish Borders Council and I refer in particular to the sections headed “management of risk, stress management, staff welfare” and “the HMIE inspection process”.

The terms of Mr Hogg’s final particular submission were as follows “that guidelines should be prepared by HMIE: (1) setting out the means by which, and the timescales in which, a local authority is able to request a postponement of a HMIE inspection of a particular school; and (2) providing an illustrative, but not exhaustive, list of circumstances in which a request for postponement might be appropriate.”. Germane to this submission was the evidence of Yvonne McCracken, Karen Gray, Glenn Rodger, and from HMIE the evidence of the Managing Inspector, the evidence of the District Inspector and that of Chief Inspector Chris McIlroy. Mr McIlroy confirmed that application might be made to have inspections postponed and that the possibility of the postponement of inspection was well known within the teaching profession and within the Education Department, a fact confirmed by *inter alia*, Mr Rodger. Three

percent of inspections are postponed on application, according to Mr McIlroy, mostly on account of illness of key school personnel. No exhaustive list exists of the reasons which may result in an application to have a postponement of inspection being successful. In each case the application is considered on its merits. In my opinion this flexibility of approach and practice is highly desirable. Accordingly I have declined to make the proposed finding.

I return to Mr Hale's general submission, within which the particular submissions are effectively subsumed, "the HMIE inspection which took place at Glendinning Terrace Primary School Galashiels between 17-21 March 2008 is a fact relevant to the circumstances of the death of Irene Hogg". In order to ascertain the meaning of "relevant" in the above context one must have regard to the overarching and governing principle in inquiries of this sort. That principle is to be found in the words of the petition "and it appears to the Lord Advocate to be expedient in the public interest that an inquiry under the said Act should be held into the circumstances of said death.". There may be many facts relevant in a general sense to the circumstances of a death, but all such facts are not necessarily relevant for the purpose of expediting the public interest. There can be no doubt that Irene Hogg's death is inextricably linked to the outcome of the Glendinning School inspection on March 2008. Had I acceded to any one of Mr Hale's particular submissions then the test of expediting the public interest would have been met and I would also have sustained his general submission. In the event of course, and for the reasons stated, I have declined to give effect to any of the particular submissions and accordingly, the general submission being thus without any relevant content, falls to be rejected.

For completeness in so far as the review of the evidence is concerned, two matters should be noted. First, the post of teaching headteacher in Scottish Borders Council no longer exists. The demands of that role had been recognised for some time and steps to bring about its discontinuance had commenced prior to March 2008. Second, HMIE in 2006 began a process of review regarding school inspections. The Inspectorate had been, and is, well aware of the burden of inspections and the opportunity cost involved. A new model of school inspection was introduced as a pilot in August 2008. The procedure has been slimmed down in several respects and

a shift of emphasis from inspection of the school to inspection with the school has been attempted.

A final observation is appropriate in this case. Much of the evidence at the inquiry was concerned with the inspection and its format including, as it did, a wide range of “quality indicators” against which the school, and inevitably its teachers and headteacher were rated. The educational merits of school inspections in general, and this one in particular, were no part of the remit of this inquiry. What did shine through the mass of evidence however, and was spoken to by witness after witness, was the fact that Glendinning Primary School was a school with a happy, family atmosphere. The headteacher, Irene Hogg, was respected and held in high esteem by her staff and by parents and loved by the many children who over the years were fortunate to have been in her care. By virtue of these achievements Irene Hogg proved herself to be an outstanding headteacher.