

SHERIFFDOM OF LoTHIAN AND BORDERS AT LIVINGSTON

FAI B148/14

2014FAI 33

*INQUIRY HELD UNDER
FATAL ACCIDENTS AND*

SUDDEN DEATHS

INQUIRY (SCOTLAND)

ACT 1976

SECTION 1(1)(a)

SECTION 1(1)(b)

DETERMINATION by Susan A Craig,
Solicitor Advocate, Sheriff of Lothian and
Borders at Livingston into an Inquiry held at
Livingston on THE NINTH DAY OF JULY
TWO THOUSAND AND FOURTEEN into the
circumstances of the death of
ROBERT DELLOW

Livingston 8 September 2014

The Sheriff, having resumed consideration of the Fatal Accident Inquiry into the death of Robert Dellow, determines in terms of Section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 as follows:

- (1) **In terms of section 6 (1) (a):** that Robert Dellow (date of birth 09.01.59) of
26 Beechwood Gardens, Lowestoft, NR33 9BJ died at 08:18 hours on 5 December 2013
on the A801 non-primary road between the Boghead and Heatherfield roundabouts,
near Bathgate, West Lothian.
- (2) **In terms of section 6 (1) (b):** that the cause of death was (1) (a) head, neck and chest
injuries; 1 (b) a road traffic collision; and (2) coronary artery atheroma.
- (3) **In terms of section 6 (1) (c):** that there were reasonable precautions whereby the
death might have been avoided:

First, given the well-publicised severe and adverse weather conditions on the morning of the death - exceptionally high winds and driving rain – the deceased should either (a) not have driven the HGV vehicle – AY58 AUF – with an empty trailer attached with its curtain sidings closed; or (b) if the deceased required to drive the vehicle to take it to a place of safety, to ensure that the curtain siding was tied back before driving; all until the severity of the weather conditions lessened.

Second, the deceased should have worn his seat belt.

(4) **In terms of section 6 (1) (d)**: that there were no defects in any system of working which contributed to the death.

(5) **In terms of section 6 (1) (e)**: the following guidance is issued to those driving HGV vehicles with a curtain sided trailer:

First, drivers are reminded that it is their responsibility to ensure that the driving conditions make it is safe to drive, both in respect of their own safety and that of other road users.

Second, that the curtains of curtain sided trailers are unlikely to provide stability to an unloaded trailer.

Third, that in the event of severe weather conditions, specifically in conditions of very high winds, unloaded trailers with curtain sidings should either not be driven until the severe conditions have lessened or, alternatively if absolutely necessary to drive to a place of safety, only to drive with the curtain sidings tied back.

Fourth, drivers are reminded that they are required to wear their safety belts at all times when driving.

NOTE

INTRODUCTION

[1] This Fatal Accident Inquiry called before me at Livingston Sheriff Court on 9 July 2014. It concerned the death on 5 December 2013 of Robert Dellow, late of 26 Beechwood Gardens, Lowestoft, NR33 9BJ.

[2] Mr Dellow was an HGV lorry driver employed by Lochace Ltd which traded as Neil Bomford Haulage. On the day of his death Mr Dellow was carrying out his driving duties in, *inter alia*, West Lothian. Shortly after 8 am that day he was involved in a road traffic accident on the A801 non-primary road between the Boghead and Heatherfield roundabouts, near Bathgate, West Lothian, and received fatal injuries. Although other vehicles were involved in that accident there were no other fatalities.

[3] As it appeared that Mr Dellow's death occurred in the course of his employment the Inquiry was held in terms of section 1(1) (a) (i) of the 1976 Act. That provides

"1 (1) Subject to the provisions of any enactment specified in Schedule 1 to this Act and subsection (2) below, where –

(a) in the case of a death to which this paragraph applies –

(i) it appears that the death has resulted from an accident occurring in Scotland while the person who has died, being an employee, was in the course of his employment or, being an employer or self-employed person, was engaged in his occupation as such;

.....

the procurator fiscal for the district with which the circumstances of the death appear to be most closely connected shall investigate those circumstances and apply to the sheriff for the holding of an inquiry under this Act into those circumstances."

[4] The purpose of an Inquiry is for a Sheriff to make a determination setting out the following circumstances of the death so far as they have been established to the Sheriff's satisfaction -

- (a) where and when the death and any accident resulting in the death took place [section 6 (1) (a)];
- (b) the cause or causes of such death and any accident resulting in the death [section 6 (1) (b)];
- (c) the reasonable precautions, if any, whereby the death and any accident resulting in the death may have been avoided [section 6 (1) (c)];
- (d) the defect, if any, in the system of working which contributed to the death or any accident resulting in the death [section 6 (1) (d)]; and
- (e) any other facts which are relevant to the circumstances of the death [section 6 (1) (e)].

[5] The court proceeds on the basis of the evidence placed before it. Although described as an inquiry the sheriff's powers do not go beyond making a determination in relation to the circumstances established to his or her satisfaction by such evidence led following investigation by the procurator fiscal and any other party, if so advised.

PARTIES TO THE INQUIRY

[6] At the Inquiry parties were ably represented as follows:

- The Crown: Ms F Caldwell, Procurator Fiscal Depute
- For Neil Bomford Haulage: Ms A Bonomy, Solicitor
- For West Lothian Council: R McPherson, Solicitor

I am grateful to all of them for their efficient conduct of the Inquiry and their careful, clear and helpful submissions.

THE EVIDENCE

[7] Much of the facts were agreed by the parties and incorporated into a Joint Minute which was read into the record in the course of the Inquiry. The following witnesses gave evidence, either by oral evidence in person or, by agreement with the Inquiry, by affidavit:

- Jonathon Campbell, a teacher, driver of one of the vehicles with which Mr Dellow's vehicle collided
- Police Constable Steven Tait, Police Scotland
- Police Constable Steven Quinn, Police Scotland
- Police Constable Michael Turner, Police Scotland
- Dr Robert Ainsworth, NHS Lothian University Hospitals Division, who carried out the post mortem examination

[8] Mr Dellow's partner, Christine Whitbread, provided a letter to the Inquiry advising that she did not feel strong enough to attend in person. I understood, and accepted, her reasons of not attending and so had regard to the contents of her letter in so far as relevant to the assisting with the matters for determination at the Inquiry. She, and her family, have the Inquiry's sympathy for their loss.

FINDINGS IN FACT

[9] Based on the evidence I find the following to be the facts either established or agreed which were relevant to the determination of the matters before me.

The fatal accident

[1] About 08.05 hours on Thursday 5 December 2013, on the A801 between the Boghead and Heatherfield roundabouts near Bathgate, a vehicle accident took place. A number of vehicles were involved.

[2] There was one fatality as a result of the accident, Robert William Dellow. Mr Dellow was driving a DAF heavy goods articulated tractor and trailer, registration number AY58 AUF which was owned and operated by Neil Bomford Haulage. At the time of the accident Mr Dellow was driving the vehicle in the course of his employment.

The deceased

[3] Mr Dellow was born on 9 January 1959. He resided at 26 Beechwood Gardens, Lowestoft, Suffolk, England with his partner Christine Whitbread. They met in 1978 and had remained together since then although they were not married. Ms Whitbread had three children (two boys and a girl) from a previous relationship; they were raised by Mr Dellow and Ms Whitbread together. The children thought of Mr Dellow as a father. One of the boys died in approximately 2005.

[4] Mr Dellow was born and brought up in Enfield, London and was the youngest of five children with three sisters and one brother.

[5] He was employed as a long distance HGV driver and worked for a number of years as an agency driver, before securing a position in around 2011 with Lochace Ltd trading as Neil Bomford Haulage.

[6] Mr Dellow was a registered patient with Dr I Yates, at the Victoria Road Medical Practice, Lowestoft since 11 August 2010. He was a moderate smoker and occasional drinker; he undertook light exercise.

[7] On 12 June 1990 Mr Dellow required to have the 2nd and 5th toes of his left foot amputated as a result of a crush injury. Until January 2012 he had no significant medical conditions but then sustained musculo-skeletal injuries during a road traffic collision in which the HGV he was driving overturned and, having unbuckled his seatbelt, he fell whilst attempting to exit his vehicle. He sustained injuries to his shoulder, back and chest. Although no significant injury was identified after an x-ray Mr Dellow received three physiotherapy appointments for a shoulder injury.

[8] In 2012 Mr Dellow was diagnosed with atrial fibrillation. He had a moderately dilated left atrium. Initially Mr Dellow was prescribed a course of Warfarin but later that was replaced with a once daily dose of 75mg of aspirin. His doctors considered that to be a minor heart condition that was easily manageable.

The locus

[9] The locus of the accident was the A801 non-primary road between the Boghead and Heatherfield roundabouts near Bathgate, West Lothian. It is a two-way, undivided carriageway with normal centre line markings and kerb-shy lines. The road is of tarmacadam construction and at the time of the accident was in a good state of repair.

[10] The road is a major route between the M8 and M9 motorways and is heavily used by heavy goods vehicles linking between the two. At the time of the accident the road was particularly busy with commuters and commercial traffic. The locus is surrounded on

all sides by farmland. The road is governed by a national speed limit of 60 miles per hour for cars and 40 miles per hour for heavy goods vehicles.

The severe weather conditions

[11] At the time of the accident the weather conditions were extremely poor. The Met Office had issued an Amber alert warning of high winds. The conditions included driving rain and gusting winds of up to 90 miles per hour recorded in the east of Scotland.

[12] The Amber warning advised:

"Be prepared. There is an increased likelihood of bad weather affecting you, which could potentially disrupt your plans and possibly cause travel delays, road and rail closures, interruption to power and the potential risk to life and property. An Amber Warning means you need to be prepared to change your plans to protect you, your family and community from the impacts of the severe weather based on the forecast from the Met Office."

[13] On the day of the accident the Met Office, Transport Scotland and the Environment Agency had issued a joint press release warning of high winds and significant disruption to the road network. This was widely reported by both the national and local news.

[14] Following the accident at 09.15 Hours on Thursday 5 December 2013 Police Scotland advised all drivers of high-sided vehicles to park up until the severity of the weather conditions abated.

The deceased's route

[15] On the day before the accident Mr Dellow had attended at the main office of Neil Bomford Haulage at Harleston, Norfolk where he commenced driving duties using the

HGV vehicle. His planned route was to take him to the premises of Harper Collins in Bishopbriggs, Glasgow where he was to make a delivery of books prior to attending at J&G Haulage, Bathgate, West Lothian to collect a new load to take south to Harleston.

Mr Dellow drove during that afternoon before stopping for an overnight rest believed to be at Abingdon service station.

[16] About 05.30 hours on Thursday 5 December 2013 Mr Dellow commenced his driving duties and attended at Harper Collins in Bishopbriggs, Glasgow where he made his delivery as planned. He thereafter drove the unladen trailer along the M8 motorway, leaving it at Junction 4, Bathgate and proceeded north on the A801 towards J&G Haulage, Bathgate.

[17] At the time of the accident Mr Dellow had been driving northbound on the A801 having left the Boghead roundabout. He was not wearing his seatbelt. The trailer drawn by the tractor unit was unladen with its side curtains closed.

The vehicle

[18] The vehicle driven by Mr Dellow comprised a tractor unit (which could be used to pull a variety of trailers) and a trailer unit. The trailer was of standard construction and comprised a ridged frame to which curtain sides are attached which can be either closed or rolled and stored away as appropriate (herein referred to as “open”). The trailer can be used with either the curtains open or closed.

[19] Curtain sidings are used to protect a load being carried on the trailer but, unless specifically designed for the purpose, do not provide load restraint. Their principle purpose is to protect loads against weather conditions and to provide a level of security.

Pulling an empty trailer with closed curtains in conditions of high wind can increase a trailer's instability and lead to a trailer tipping over.

[20] There are some within the HGV driving community that are of the view that empty trailers should always be driven with the curtain sidings closed, including when driving in poor weather conditions. That view is contrary to the advice of others, including HGV employer organisations and others responsible for issuing safety advice to HGV drivers. The view of the latter is the correct view – unloaded trailers should not be driven in conditions of high winds with the curtain sidings closed; they should instead remain open to minimise the risk of the unladen trailer being tipped over by high winds catching the side of the trailer.

The circumstances of the accident

[21] Jonathon Campbell, a teacher at a local secondary school, was driving his vehicle, a Fiat Punto registration number SJ05 ZRK, southbound on the opposite carriageway from Mr Dellow. He was driving at a low speed appropriate for the extremely poor weather conditions. Mr Campbell could feel his vehicle being buffeted by the strong winds.

[22] Mr Campbell became aware of the HGV vehicle being driven by Mr Dellow. He did not think that he had seen any other HGV vehicles that morning and was alarmed that a large vehicle was driving in such windy conditions.

[23] A BMW 320d registration number SM12 PNO, driven by an Aiden O'Reilly, was travelling behind Mr Campbell's vehicle, heading in the same direction.

[24] When Mr Campbell first noticed the HGV vehicle it was heading towards him, in his direction, and still on the correct (i.e. the northbound carriageway) side of the road. He then saw the HGV “wobble” as though it had been caught by a gust of wind, start tipping to its offside, and travel, continuing to tip over until it crossed the carriage way and collided with Mr Campbell's vehicle and the BMW.

[25] Both the HGV vehicle and the trailer ended up on their sides on the southbound carriageway, still facing north, with the trailer coming to rest on top of both cars. The edge of the rear door of the trailer ended up on top of the roof of both cars, with the Punto closest to the trailer and the BMW beside the Punto at the edge of the carriageway.

[26] There was no time for either Mr Campbell or Mr O'Reilly to take any evasive driving manoeuvres. Realising that there was going to be a collision, Mr Campbell let go of the steering wheel and lunged sideways, to his left, such that he was lying across the passenger seat of his vehicle when Mr Dellow's vehicle came to a rest on top of it. A combination of the superstructure of his vehicle and that of the trailer, together with the fact that the trailer was empty resulted in the passenger compartment of Mr Campbell's vehicle ending up within the void in the trailer. The top edge of the rear door of the trailer ended on top of the driver's side of the BMW.

[27] Both Mr Campbell and Mr O'Reilly were able to escape from their vehicles. Mr Campbell climbed through the passenger window of the Punto into the BMW and climbed out from there.

[28] Three other vehicles that had been travelling on the northbound carriageway were damaged as a result of the accident.

[29] Mr Dellow sustained fatal injuries. None of the drivers of the other vehicles sustained life threatening or altering injuries.

[30] At 08.18 hours on Thursday 5 December 2013 Mr Dellow's life was pronounced extinct by Paramedic Kenneth Bonnar from Livingston Ambulance Station.

[31] The cause of death was (1) (a) head, neck and chest injuries; 1 (b) a road traffic collision; and (2) coronary artery atheroma.

The deceased's experience and training

[32] Mr Dellow regularly drove the route. His employers considered him to be a reliable worker. No issues of concern were highlighted during the course of his employment with Neil Bomford Haulage.

[33] At the time of the accident Mr Dellow held a valid driving licence. There was a certificate of motor insurance in place insuring Mr Dellow to drive the vehicle. There were the appropriate MOT and Plate certificates in place in respect of the trailer attached to the HGV vehicle. Both were valid at the time of the accident.

[34] At the time of the accident the appropriate paperwork was in place confirming that Lochace Limited was the registered keeper of the HGV vehicle, as well as a full service record in relation to the trailer and the vehicle.

[35] Mr Dellow had had the Health and Safety training appropriate to his role. Neil Bomford Haulage had undertaken the appropriate risk assessments in relation to the various aspects of the role carried out by Mr Dellow. It had in place the appropriate Health and Safety policies.

The investigations and their conclusions

[36] A Collision Investigation was carried out by Alastair Bain, formerly a Police Constable with the Police Service of Scotland.

[37] Police Constables Stephen Quinn and Mick Turner carried out a vehicle examination on the motor cars involved in the accident.

[38] The HGV vehicle and trailer were examined by Gordon Montgomery, Vehicle Examiner, Vehicle and Operator Standards Agency (“VOSA”).

[39] The data downloaded from the vehicle’s tachograph was analysed by Clark Laidlaw, Traffic Examiner, VOSA.

[40] They each prepared appropriate reports.

[41] At the time of the accident none of the vehicles were travelling at an excessive or inappropriate speed.

[42] There were no weather conditions restricting road users’ visibility.

[43] There were no defects in the carriageway that contributed to the accident.

[44] There were no other pre-existing defects that caused or were a contributory factor to the accident.

[45] There were no defects in any of the vehicles that caused or contributed to the accident.

[46] There was only one defect in the trailer - a seized brake calliper and excessively worn pad on the offside wheel of axle 3 of the tractor unit. That defect was highly unlikely to have been a contributory factor in the accident.

[47] There were no issues regarding Mr Dellow’s driving or driving rest periods during the day before or day of the accident.

The cause of the accident

[48] The accident occurred as a result of a gust of wind catching the curtain siding of the unladen trailer causing it to become unstable, wobble and then tip over. Had the curtain sidings been open and stored away it was unlikely that the trailer would have become unstable and tip over.

[49] Had the vehicle tipped over in any event had Mr Dellow been wearing his seat belt it is likely that would have survived the accident.

SUBMISSIONS

[10] Brief submissions were made by each of the parties to the Inquiry.

[11] For the Crown Ms Caldwell submitted that it was clear from the evidence that at the time of the accident the weather conditions were unusually bad. They were sufficiently bad that it should have been clear to anyone driving that precautions might be required to prevent the risk of accident. Given the size and nature of the vehicle Mr Dellow was driving and the fact that the trailer was unladen the first precaution, she submitted, would have been not to drive at all. Second, if driving was absolutely necessary, that anyone driving an unladen curtain sided trailer ought to have tied back the curtains. These were both reasonable precautions, submitted Ms Caldwell, and it was open to the Inquiry to make such a determination.

[12] The third precaution urged by Ms Caldwell was the wearing of a seatbelt. Had Mr Dellow worn his, while the accident would not have been prevented it would have prevented the severity of the outcome and thus the fatality.

[13] Finally, submitted Ms Caldwell, the Inquiry should give guidance to drivers of curtain sided trailers that they should not drive unladen trailers with their curtains closed in conditions of high and / or gusting winds.

[14] Beyond that, she submitted, there were no further measures that the Inquiry should recommend.

[15] Those submissions were largely adopted by both Ms Bonomy and Mr McPherson. They added that both the employer and the local authority had taken such reasonable precautions as they could to have prevented the accident.

DISCUSSION

[16] Based on the evidence before me at the Inquiry I was satisfied that I should make the determinations set out above.

[17] The evidence in relation to the time, place and cause of death were uncontroversial. Nor, for that matter, was there any controversy about the circumstances of the accident itself.

[18] In relation to the other areas of possible determination, I agree with the submissions made. In terms of section 6 (1) (c) the Inquiry is considering what reasonable precautions, if any, there may have been whereby the death and any accident resulting in the death might have been avoided. The test is whether there was a “real or lively possibility” of a reasonable precaution so doing. It was clear from the evidence that Mr Dellow, an experienced and thoroughly trained driver who was familiar with the route he was taking and fully aware that the trailer was unloaded, ought to have been alerted to the potential risks involved in driving a curtain sided trailer with the curtains closed in the adverse

weather conditions on that day. Those conditions were very well published and referred to in local and national weather forecasts. There was a real or lively possibility of an accident occurring by driving that vehicle in those conditions. The option of not to have driven at all (at least until the adverse weather had lessened) was open to Mr Dellow, as was the option of driving with the curtain sides open and tied away. I was satisfied on the evidence that had he taken either step there was a real possibility that the accident would not have happened.

[19] Had the accident still happened it was a real or lively possibility that Mr Dellow would not have been fatally injured had he been wearing his seatbelt (as of course he had a statutory obligation to). Accordingly that was also a reasonable precaution that had a real or lively possibility of preventing the death that occurred as a result of the accident. There was no evidence before the Inquiry to explain why he was not wearing his belt; one might speculate that it was because he had previously been injured following an accident where removing his belt caused him to fall. However, it would not be proper for me to speculate about such matters, and I do not do so.

[20] I was satisfied on the evidence that in terms of section 6 (1) (d) there were no defects in any system of working that contributed to the death or the accident resulting in the death. Therefore no determination is made under section 6 (1) (d).

[21] Turning to section 6 (1) (e) I agree that it would be in the public interest to remind drivers of curtain sided trailers of the importance of not driving an unladen trailer with the curtains closed in conditions of high winds and, if they must be driven, that that should be with the curtains tied back. I have made the appropriate findings.

[22] No further findings are necessary or appropriate in the circumstances as I found them established.

Sheriff Susan A Craig
Livingston
8 September 2014