DETERMINATION UNDER THE FATAL ACCIDENT AND INQUIRIES ACT IN THE CASE OF TRAN QUANG TUNG

DETERMINATION

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY

(SCOTLAND) ACT 1976

BY

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SHERIFF PRINCIPAL OF

SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY

INTO THE DEATH OF

TRAN QUANG TUNG

Held at HAMILTON from 3 May - 10 May and 28 June 2005

HAMILTON: 22 September 2005

- Tran Quang Tung, whose real name was Pham Kim Hoan or Houan, was born in Vietnam. It is not known why he chose to be called by the former name. The order in which his name was recorded on official documents varied. I shall refer to him as "Tran Quang". There is some uncertainty about his place and date of birth. His sister, Pham Thi Kim Hoan, said that he was born in Haiphong in 1969. Soon after his arrival at Dover on 19 April 2004, in the course of interviews and on a form in Vietnamese, he gave his date of birth as 10 September 1980 and his place of birth as An Giang, Vietnam. His sister's evidence on that matter is more likely to be correct. I find that he was born in Haiphong in 1969 and that at the date of his death he was probably aged 34 or 35.
- **Tran Quang Tung died at Dungavel Immigration Removal Centre ("Dungavel") at about 9.50 pm on 23 July 2004. His death was caused by hanging. There were no reasonable precautions that could have been taken which might have prevented his tragic death. However there are aspects of the systems in use in relation to him and to others in a similar position to him, which may contribute to the death of others and which may have made a contribution, albeit minor, to his death.**
- Tran Quang had secured a belt in the form of a noose to the crossbar above the door to a toilet close to the room in which he slept. No other person was involved in his death. As soon as staff got to him the belt was cut and his body lowered to the ground. There were no signs of life. Attempts were made to resuscitate him within the toilet, in the ambulance and on his arrival at

Hairmyres Hospital, East Kilbride. His life was pronounced extinct at Hairmyres Hospital, East Kilbride at 11.35 pm that day. The only injuries which he had were consistent with death by asphyxiation caused by hanging. Blood-stained fluid in his stomach and airways was consistent with the attempts which were made to resuscitate him.

- **Having regard to the evidence led at this Inquiry it is recommended that:**

  Persons who are detained by the authorities and who do not speak or have a good understanding of English should have access to an interpreter on any occasion on which (a) they are being interviewed in a context in which either their right to remain in the United Kingdom or their liberty, either short or long term, is in issue and (b) when an important decision about them or their future is being communicated to them. If, in the absence of an interpreter, that communication is in the form of a document, the document should be translated into a language which they can understand. When the physical or mental health of such a person is being assessed by a doctor or nurse there should be interpretation facilities available and they should be used whenever the person being assessed does not have sufficient ability in English to enable a reliable assessment to be made.

- **Failure to facilitate communication between non-English speaking detainees and the authorities detaining them is likely to lead to wrong assessments being made, wrong decisions being taken, risks to the physical or mental health of such detainees and to injustice to at least some of them. Their inability to speak English should not be permitted to deprive them of information which English speakers would be given nor of the opportunity to provide relevant information and to challenge decisions which may be made about their future. In short, they should not be in a worse position than those who speak and understand English. Persons who are deprived of their liberty without knowing or being able to find out why nor for how long they will be detained are likely to be particularly vulnerable.**
- **It is further recommended that:**

  Protocols or guidance should be provided to ensure consistency in the availability and use of interpreters and the translation of documents. The difficulties in providing interpreters and translation should not be underestimated, nor should the cost. It is not possible to predict when and where a non-English speaking immigrant or asylum seeker will be detained nor what language that person will be able to speak. In the case of Dungavel, which can accommodate up to 194 people, the numbers of detainees who will require the services of an interpreter at any given time will almost always be very limited or may be nil.

- **Because of the possible difficulty obtaining the services of a suitable interpreter at short notice, it is recommended that:**

  Consideration should be given to the preparation of improved questionnaires for use by nurses and doctors when assessing detainees.

Suggestions for improvement are set out later in this determination. Consideration should also be given to translating the questions in such questionnaires into languages likely to be spoken by non-English speaking detainees, and, if they prove useful and successful, into other languages.

How Tran Quang came to be in Dungavel

- His sister said that Tran Quang left Vietnam for Hong Kong in 1987, where he was detained in a detention centre. Some time later he returned to live in Vietnam. He made his way to Europe, although when he left Vietnam for Europe is not known. The first European country in which he is known to have arrived was Germany. He claimed asylum there in about October 2003. He was fingerprinted there. The authorities in Germany released him.
- On the morning of 19 April 2004 he was detected, along with others, concealed in the back of a lorry which had arrived at the Port of Dover from France. At Dover he claimed asylum in the United Kingdom. He was interviewed through an interpreter, fingerprinted and photographed. When interviewed he said that he did not suffer from any medical condition. He was regarded as an illegal immigrant. He was served with a notice for clandestine illegal entry on 19 April, his entry to the United Kingdom appearing to have involved the commission of offences under the Immigration Act 1971. His fingerprints were found to match those which had been taken from him in Germany earlier. At interview he was very uncooperative and evasive, particularly after he was told that he had been in Germany on a date prior to the date on which he claimed to have left Vietnam.
- He was initially served with a notice of his detention on 19 April by means of form IS91R. The terms of that document should have been interpreted for him but it was not completed in such a way as to indicate that it was in fact interpreted. It may well have been interpreted for him. As has already been noted, he was interviewed there that day through an interpreter.
- On 19 April there was not sufficient space for him to be detained in the accommodation available for the detention of illegal immigrants. If he had given his girlfriend's address at that stage, he could have been released to her address. But he did not do so. He was found emergency accommodation at the Cliff Court Hotel, Dover. He was released and was instructed to stay at that hotel. He was required to report to the Folkestone police on a given date. By 29 April he had left the hotel and had absconded. His whereabouts were then unknown to the immigration authorities.
- He went to live with his girlfriend, Nguyen Kim Phuong, at Flat 1, Linale House, Murray Grove, London. He had first met her six or seven years earlier. He met her again in Haiphong about two years before his death, while she was visiting Vietnam. While he was living at her address he instructed a firm of solicitors, Nathaniel & Co, to act as his legal representatives in relation to his asylum application. They wrote to the appropriate unit at Dover on 4 June 2004 giving his address. A letter (in English) dated 22 June was sent to him at that address, authorising his temporary admission to the United Kingdom subject to various conditions, including a condition that he report to Communications House, 210 Old Street, London on 22 July and on the 22nd of each month thereafter. A similar letter had been sent to him the day before by a different department,

requiring him to report to Communications House on 5 July. He failed to appear there on 5 July. His girlfriend has a limited understanding of English but her son, who lives with her, has a better command of the language.

- He was traced to his girlfriend's address on 18 July 2004 and was detained there at about 6.30 am. He was taken to Islington Police Station. He was later transferred to Harmondsworth Immigration Removal Centre. It is operated on behalf of the Home Office by UKDS. He arrived at Harmondsworth at 1.03 am on 19 July. He remained at Harmondsworth until about 2.00 am on 21 July. He and about 59 other detainees were then transferred in two buses to Dungavel. He arrived there at about 11.15 am that day. These detainees were removed to Dungavel because there had been a disturbance at Harmondsworth following a suicide. It is very unusual for Dungavel to have to admit 60 detainees in one day. Many of the detainees who arrived there that day came without their documentation. Dungavel is operated by Premier Detention Services Ltd on behalf of the Home Office.

Tran Quang's status

- Because his first point of entry into the European Union was Berlin, any asylum application by Tran Quang had to be made to the authorities of that country in terms of the EC Council Regulation Dublin II. He was sent a letter (in English) dated 22 April, which he probably did not receive because he had absconded. That standard letter informed him that his application for asylum was being considered in terms of which state was responsible for considering his claim. That letter, which has been translated into 20 languages (not including Vietnamese), is now to be translated into all languages.
- After his arrival in the United Kingdom, his presence here was notified to the German authorities who agreed to accept his transfer to Germany. Had he been deported to Germany his asylum application would have been considered there.
- If his first point of entry had been the United Kingdom, he would not have been eligible for asylum. He did not meet the criteria for asylum here. In the course of the interviews through an interpreter he made it clear that his primary reason for entering the United Kingdom was to seek a better life. He did not advance a case for asylum in the United Kingdom based on a well founded fear of persecution in Vietnam for reasons of race, religion, nationality, membership of a particular social group or political opinion. In the course of these interviews he said that he was not seeking asylum anywhere and did not have a problem in Vietnam, though he did comment that there was less freedom there.
- He was refused asylum on 22 June because he had previously made an application for asylum in Germany and it was a matter for the German authorities to consider. A letter dated 22 June (in English) was prepared explaining why asylum had been refused and telling him how and when he could appeal. That letter was served on him on 18 July when he was detained, probably while he was at Islington Police Station, along with a notice of the order for his detention and information relating to his future transfer to Germany. The acceptance letter from Germany was in German. An interpreter on Language Line was able to explain these to him while he was at the Police Station. He was interviewed there. He indicated at that time that he did not suffer from any medical or mental health condition and had never tried to harm himself. He said of Germany: "I was just registered there".

Assessments of Tran Quang's health and his time at Dungavel

- When he was in Harmondsworth he was assessed by Nurse Gemi Dowers. She did not know what language he spoke. She thought it was Chinese and made a note that she was uncertain of that. She did not use an interpreter, though one could have been contacted. She thought that he was complaining of a headache and gave him medication. Despite the difficulty which she had communicating with him she ticked all the boxes on the form which she completed. It was necessary for her to do so so that he could be registered in the Centre. But her assessment could not be relied on because of the lack of communication between them. A danger inherent in this procedure is that the written record of the assessment may not indicate whether or not or how well the detainee understood what was being asked. The answers recorded may be treated later as if they were correct, when they may be quite wrong. A further danger is that the form will be completed, however inaccurately, because a completed form is required to enable the detainee to be processed further.
- On his arrival at Dungavel Tran Quang and the other detainees on the buses were welcomed by staff as they left their bus. They were searched briefly and given food and drink. They had their property logged and were booked in. It is now the practice to give new arrivals a guided tour of Dungavel soon after they arrive but that did not happen on that occasion.
- After the group arrived from Harmondsworth an African detainee made a speech of thanks for the respect and considerate treatment which they had received on their arrival. There are generally very good relationships between Dungavel staff and the detainees. Considering the circumstances of the detainees the evidence was that Dungavel is a happy place in which the detainees are treated with respect and humanity. Staff are encouraged to chat to detainees. Considerable attention is paid to meeting their needs. There is an ample complement of nursing and medical staff available or on call. A religious and activities manager is employed to ensure that the religious, cultural and dietary needs of detainees are met. For some time prior to June 2004 that person had been Mr Derek Goh. He travelled from Harmondsworth to Dungavel on one of the buses. Many detainees speak good English. A few do not. Sometimes one detainee will act as an interpreter for another. Translators are made available when possible so that the detainees can communicate in their own language.
- While he was in Dungavel Tran Quang was the only Vietnamese speaker detained there at that time. He spoke and understood very little English. He did not appear to speak nor to understand Cantonese or any other Chinese language to any significant degree. He appeared to be on friendly terms with other detainees. There was no evidence to suggest that anyone disliked him nor that there was any friction between him and any other person at Dungavel.
- A nurse's assessment is normally carried out within two hours of the arrival of a detainee at Dungavel. A physical and mental examination must be carried out by a doctor within 24 hours of the detainee's admission. Rule 34(1) of the Detention Centre Rules requires that to be done.
- Nurse Robb recorded details of her assessment of Tran Quang on a form provided by Premier Detention Services. She relied on Mr Derek Goh to interpret for her when she carried out her assessment of him. Mr Goh, who speaks six far eastern languages, including Mandarin and Cantonese, does not speak Vietnamese. He communicated with Tran Quang mainly in English with a

sprinkling of Cantonese but was not very successful in making himself understood. Nurse Robb thought that she had communicated sufficiently well with him through Mr Goh to be reasonably confident of the answers which she recorded. Among conditions from which she recorded that he did not suffer were sickle cell anaemia, heart and respiratory conditions and epilepsy. She recorded that he had no allergies and that he was not diabetic. Had Nurse Robb realised the limitations on Mr Goh's ability to interpret she would have used Language Line, which is available 24 hours a day. In the course of her assessment Nurse Robb recorded that Tran Quang told her that he was married with a wife in London. He appeared to her to be very calm.

- When conducting her examination of Tran Quang Dr Kathleen Morrison, who is a highly qualified general practitioner, did not have an interpreter; nor did she use Language Line or Global Language as she could have done. She thought that she had been discouraged from using Language Line in the past. She completed the form fully and ticked all the boxes. She relied to a large extent on Nurse Robb's assessment which she thought had been made with an interpreter. All the boxes relating to his past medical and psychiatric history were ticked "No". She was confident that there was sufficient communication between them, mainly by gestures. She considered that her own observations and the assessment by Nurse Robb enabled her to complete her assessment. She filled in the form which she was required to complete. Her ability to learn of his past medical history and of his feelings was inevitably compromised by the lack of an interpreter. He was not able to answer questions about his medical history. In so far as it constituted a risk assessment for self harm her assessment was substantially based on observation. But her conclusions in that respect would have been more reliable if it had been possible to ask questions through an interpreter to discover whether he had had any psychiatric history and to explore his feelings about self harm. In view of the difficulty which there was communicating with him the reliability of the assessments by both Nurse Robb and Dr Morrison was at best poor.
- When Morag MacDonald, who is an Immigration Officer, served the removal direction notice on Tran Quang on 23 July she did not have an interpreter. She thought that he understood the notice because he said: "Germany, No" to her. He was unable to communicate his feelings to her but he appeared to her to be calm. She may have told him that he could contact a solicitor if he wanted to. If she did say that, it is unlikely that he would have understood her. That document was a very important one so far as he was concerned. It is clearly intended that an interpreter will be used when the person on whom it is served does not have a good command of English. At the end of it there is a box to be completed by the person serving the notice. It is in the following terms:
  "The contents of this notice have been explained to you in English/..... by me/.....(*name of interpreter*)

  That box was not completed. The form was signed by the Immigration officer.

- In the late morning of 23 July Mr Goh spoke to Tran Quang. He was then in the company of an African detainee. He had papers with him. Mr Goh arranged for him to see a solicitor, Mr McSherry. He was very grateful to Mr Goh for his help. Mr Goh did not detect anything in his behaviour or demeanour which would

cause concern at any time that he had contact with him. Later that day he met Mr McSherry to discuss his forthcoming removal. He mentioned his "wife" and gave Mr McSherry her address, work permit details and telephone number. Mr McSherry gave him some advice and said that he would see what he could do to help him. When they parted Tran Quang shook his hand effusively and seemed to be happy. Mr McSherry had no reason to suspect that he was contemplating suicide.

- On the evening of 23 July Tran Quang spent some time in the library and later in the Arts and Crafts Room in the company of two other detainees from about 7.30 pm for about 45 minutes. He did not attend a party that evening which was attended by some other detainees. He was reported as having left the Education area after 9.00 pm that day, shortly before he probably died. No one expressed concerned about him.
- While he was in Dungavel Tran Quang regularly spoke by telephone to his girlfriend in London and on three or four occasions to his sister, who lives in Norway. They both spoke to him after he had been served with his removal direction informing him that he was to be deported to Germany. He appeared to them to be very sad and upset at the prospect of having to leave the United Kingdom. He had hoped to be able to continue to live here with his girlfriend and perhaps to marry her. His girlfriend has been permitted to remain in the United Kingdom. He hoped that, if he were to marry her, he too would be permitted to reside permanently here. His girlfriend last spoke to him briefly at about 6.00 pm that day. She offered to travel to meet him in Germany. He gave no indication to his sister that he was contemplating taking his own life. She spoke to him for about 19 minutes about two hours before he died. Neither his sister nor his girlfriend suspected at that time that he was contemplating suicide.

The Nursing and Medical questionnaires

- When carrying out their assessments, Nurse Robb and Dr Morrison used the standard forms provided by Premier Detention Services for use in connection with the assessment of detainees. Neither found these forms to be satisfactory. They did not ask all the questions using the words printed on the forms. They did not ask the questions in the order set out on the forms. Some of the questions are not designed to elicit the most useful answers.
- The questionnaire used for the medical examination of detainees by Premier Detention Services is not well designed either in terms of the questions which are asked nor in the order in which they are asked. Many of the questions are closed questions, such as: "Do you suffer from asthma?" requiring a box to be ticked:

Asthma Yes

- The questionnaire used by UKDS at Harmondsworth is better formulated but its layout could be improved. The questions which are asked would be more effective if they were open questions, requiring a response from the detainee. Dr Morrison suggested, and I agree, that the questions would be better if they were set out in a template along the following lines and in a well thought out order:
- Have you any worries about your physical or mental health at present?
- Is there anything to do with your physical or mental health which you would like help with?

- When did you last see a doctor?
- What did you see the doctor about?
- Have you had any medical problems in the past with your:

  eyesight

  hearing

  chest

  heart ... etc

- Do you take any medication for anything?
- Are there any medicines which make you ill?
- Are you allergic to anything?

Questions designed to discover details of any history of mental illness and to assess the risk of self harm would have to be added or interpolated.

- If such a template could be agreed for use in all detention centres, consideration should be given to getting the questions translated into most or all of the languages encountered among detainees. Except for those detainees who cannot read, some response or at least reaction could be expected from them. It should then become apparent whether there is a need to use an interpreter to enable informed conclusions to be reached.
- Assessment forms completed by nurses and doctors might usefully include a comment on the level of comprehension of the person being assessed.
- The Red Cross have produced a book containing a list of questions relating to the health of a non-English speaker for use when no interpreter is available. The questions are in English on one page and on each of the other pages the same questions appear in a number of other languages. Provided that the person being interviewed can read and understand one of these languages, he or she will be able to respond to the question indicated. The questions in that book are not designed for use when assessing persons detained in a place like Dungavel. They are of more use when a non-English speaker attends a GP's surgery.

  Could Tran Quang's intention to harm himself have been anticipated?

- Even if there had been questionnaires in use along the lines suggested above, the evidence suggested that it was unlikely that they would have led either Nurse Robb or Dr Morrison to suspect that Tran Quang was contemplating taking his own life. Even if either of them had used an interpreter on Language Line the evidence suggested that it was unlikely that he would have been assessed as a suicide risk.
- It is generally accepted that it is very difficult to predict suicide of a person who has not expressed suicidal thoughts or an intention to take his or her own life. If the person concerned is mentally ill it may be possible. A person who has taken the decision to end his or her life may be somewhat elated or may be careful to conceal his or her intention from others. Such decisions maybe taken shortly before the person commits suicide. The presentation of persons who intend to

commit suicide can vary from culture to culture e.g. as regards eye contact. An interpreter with an understanding of mental illness may detect nuances of behaviour which may be significant in the course of an interview, if the person concerned speaks little or no English. But an interpreter without that background may not.

- Premier Detention Services assess incoming detainees in various ways. They now assess with whom detainees should be housed, i.e. they assess the compatibility of detainees when allocating rooms. They assess detainees physically and mentally soon after their admission to Dungavel. They assess whether detainees are at risk of self harm. All staff are required to observe detainees with a view to identifying those who may be at risk of self harm, with particular reference to their demeanour and their reaction to the service on them of their removal direction notice. If any member of staff considers that a detainee may be at risk they complete a Self Harm At Risk Form (SHARF) reporting their concern. A supervisor will interview the detainee, request a health care assessment and arrange a case conference. A care plan will then be put in place which may include a suicide watch. No SHARF form was completed in respect of Tran Quang. On the evidence led at this Inquiry, apart from Tran Quang's evident sadness at the prospect of being sent to Germany, there was nothing to alert the staff to a risk that he would harm himself.
- After his removal direction notice was served on him a fellow detainee attempted to explain to him that he was to fly back to Germany. He was very unhappy about that. Other detainees noticed that he was unhappy, upset and crying. He clearly did not wish to be sent to Germany. Although his sadness was known to those responsible for his care no one thought he would harm himself. As has been noted his girlfriend and sister, Mr Goh and Mr McSherry, Nurse Robb and Dr Morrison had no reason to think that he might do so.
- When an immigration officer is about to serve a removal direction on one or more detainees a fax is now sent to health care and custody staff to inform them of that. Previously a fax was sent shortly after removal directions were served. Once a removal direction has been served the immigration officer reports to custody and health care staff the reaction of the detainee concerned. Photographs of all detainees who have had removal directions served but who have not yet been removed are e-mailed to staff.
- All officers carry cut down knives when on duty to enable them to cut down any detainee who attempts to commit suicide as quickly as possible. A defibrillator is available to assist in the resuscitation of any detainee who attempts to commit suicide. Staff are available who are trained in its use. The suicide of Tran Quang was the first to occur at Dungavel.
- Following his death arrangements were made for police officers to call at Miss Nguyen's flat at Linale House to inform her of what had happened as soon as possible, along with a Vietnamese interpreter. When they first called at 3.15 pm she was not in. On a second occasion, at 7.25 pm, she was not in. On their third visit at 10.00 pm she was at home.
- Tran Quang was a Buddhist. Shortly after his death an appropriate Buddhist ceremony took place at Dungavel.

Conclusion

- Tran Quang concealed from everyone his intention to take his own life. So far as the evidence led at the Inquiry is concerned no one was at fault for not detecting that there was a risk. There were no steps which could reasonably have been taken which would have prevented him from taking his own life, as he had made up his mind to do. I was not persuaded by the evidence led at this Inquiry that the failures in communication which I have described contributed in a significant way to his decision to take his own life. That said, the possibility that they did play some part in that decision cannot be eliminated. I am concerned that, unless these failures are constructively addressed, they may make a more substantial contribution in the suicide of others.
- It is highly desirable that important decisions relating to detainees, such as removal direction notices, should be communicated to them in a language they can understand. Tran Quang could not read nor understand documents written in English or German. He could not understand the import of these documents, even if they were explained to him in English. That was not always done in his case. The level of communication between him and the nurses and the doctor who assessed him was poor. Important assessments of detainees should not normally be made unless the person carrying out the assessment can communicate adequately with the person being assessed. However there will inevitably be times when what is desirable cannot be achieved.