

INQUIRY UNDER THE FATAL ACCIDENTS AND INQUIRY (SCOTLAND) LTD INTO THE SUDDEN DEATH OF DEREK IAN CROOK

Sheriffdom of Tayside Central and Fife at Perth.

Determination

by

Sheriff Michael John Fletcher, Sheriff of Tayside Central and Fife at Perth

in the Fatal Accident Inquiry into the death of

Derek Ian Crook.

Perth, 26th April, 2006.

The sheriff, having resumed consideration of the cause, Determines:-

(1) that Derek Ian Crook died at 7.45 a.m. on 22nd December 2004 at HM Prison Castle Huntly, Longforgan. That at the time of his death he was in legal custody having been imprisoned by the High Court of Justiciary on 22nd February 2001 for a total period including an Extension period of 10 years.

(2) that the cause of death was self suspension from a bedsheet ligature (hanging).

Note.

[1] Procedurally this Inquiry took an unusual turn in that at the commencement of the Inquiry the family of the late Mr Crook intimated that they did not intend to take part in the Inquiry nor did they wish to be represented. The Crown were represented by Miss H. Kennedy, the Scottish Ministers were represented by Mrs C. Cullen on the first day and by Mr Stewart on subsequent days and the Prison Officers' Association were represented by Mr A. Gillies solicitor. However at lunchtime on the first day on 14th July, 2005 I was informed that members of Mr Cook' s family wished to take part in the Inquiry or be represented because of what they had heard in evidence so far. It was intimated that they wished to challenge some of the evidence given by one of the witnesses Mr Colin McShannon, who was Deputy Governor at Castle Huntly prison. They indicated that they would probably want to recall him and they now wished time to consult a solicitor. I decided that the Inquiry should be adjourned to allow legal advice to be obtained and to fix a preliminary hearing in due course to allow discussions to take place as to whether it was appropriate to recall Mr McShannon and if so upon what conditions.

[2] That preliminary hearing took place on 23rd January 2006 when the family of Mr Crook were represented by Mrs F. Munn solicitor. She moved the court to allow Mr David Crook, Margaret McGinley, Stacey Crook and Sonia Crook to give evidence.

There was no opposition and I granted the motion and the Inquiry was continued until 13th February 2006 for the purpose of hearing the rest of the evidence. On that day and the day following the Crown called the rest of their evidence and Mrs Munn called a number of witnesses without objection although they did not correspond with the list she applied for at the preliminary hearing. On 13th February 2006 Mrs Munn explained that she had intended to call Mr Samuel Shankly who was a witness on the list of witnesses intended to be called by the Crown but he had not turned up. She felt that he would add useful information to the Inquiry and she asked me to grant letters of second diligence to force him to come. These were granted and the Inquiry was adjourned until the next day. The following day Mrs Munn explained that she had not been able to trace the witness and did not intend to take the matter any further.

[3] Mr Stewart for the Scottish Prison Service moved to recall Mr McShannon and there was no objection so I allowed him to be recalled. Mr Stewart led one further witness and the evidence was then closed. I should say that in the event there did not appear to be any controversy over the evidence of Mr McShannon and he was not cross-examined to any substantial extent.

[4] Mr Crook was sent to prison for assault and robbery and assault to severe injury in the High Court on 22nd February 2001. In about June 2003 he was transferred to HM Prison Noranside which is an open prison and on 22nd July, 2004 he went to Castle Huntly Prison. Unfortunately Mr Crook had a history which included attempted suicide. The warrant for his imprisonment in relation to the assault and robbery contained a manuscript note saying "NB This man is a suicide risk" which is highlighted in blue. Officers working in Castle Huntly prison were also aware that there had been previous incidents relating to attempted suicide. Mr Crook's son had died some time before his transfer to Castle Huntly and there was information that he had attempted to kill himself at that time which was possibly in about 1999.

[5] On 20th December 2004 a phone call was received at the prison, from a person describing herself as a neighbour of Mr Crook's wife informing the prison that Mr Crook's wife had been found dead. It was not appropriate for the prison simply to accept such information without verifying it officially probably with local police officers and an attempt was made to obtain official confirmation of the news. It was regarded as essential to receive official confirmation before informing a prisoner of the death of a relative. In this case it took something in the region of an hour to obtain official confirmation because the police were still making investigations at the scene of the death. Unfortunately during this time Mr Crook himself had received the information direct from the outside world, probably by means of an unauthorised mobile phone or perhaps from another prisoner from the same area who had phoned home.

[6] As soon as official confirmation was received arrangements were made to inform Mr Cook officially but prison officers were immediately aware that he had already heard through the unauthorised source. Sensitive arrangements were made to summon Mr Crook to the supervisor's office so that he could be informed officially and so that an assessment could be made as to what further steps should be taken. Meantime Mr Crook had been told by another prisoner about the death and had made his way into the garden of the prison with other prisoners. Prison Officers sent

to bring him to the supervisor's office waited for a suitable period before asking him to come with them and he was then taken to the supervisor's office.

[7] The officers who went to collect him were John William Winter and William Murray. They found Mr Crook in the garden with another prisoner Paul McGuinness. They were aware that Mr Crook already knew about the death of his wife. These two officers saw Mr Crook and Paul McGuinness in the garden and waited for about 20 minutes to allow him to be with his friend. They were approached by Mr McGuinness who had with him a rope hidden under his jumper. He said to them something like "you are lucky I was here" and suggested that he had removed the rope from Mr Crook who had been intending to use it to commit suicide. Remarkably the officers did not remove the rope from Mr McGuinness nor was any search mounted to recover the rope at that stage. The officers told police officers about the rope incident later and "may have told" other prison officers about it. Mr Winter, who gave evidence personally, indicated that he took the rope incident seriously but he did not inform Mr McShannon or Mr Kelly about it at that time nor did he speak to Mr Crook about it. In his affidavit Mr Murray indicated that he had told Mr Kelly about the incident and that he had also seen the rope. The two officers were more concerned about the state of Mr Crook and were anxious that he should go to the supervisor's office. He was obviously in a distressed state of mind.

[8] At the supervisor's office Mr Crook was seen by Mr McShannon who was the Deputy Governor and who had known him for about two years prior to the incident. He first met him at Noranside prison where he had previously worked and Mr Crook had previously been incarcerated and then renewed the acquaintanceship when Mr Crook came to Castle Huntly. He had formed a good working relationship with Mr Crook and in the witness box Mr McShannon was visibly upset when talking about his death which had obviously been unexpected and had affected him. Mr McShannon found Mr Crook in a very upset state and crying. Mr Crook had obviously taken the news very badly. It was necessary for Mr McShannon formally to go through the procedure of informing Mr Crook of the information they had about the death of his wife and he found that a difficult process. Mr McShannon was aware that there was a history that when Mr Crook had lost his son he had attempted to commit suicide and so he was on the alert for a possible repetition.

[9] Prior to the information about Mr Crook's wife's death becoming available arrangements had been made for Mr Crook to have home leave. The process of granting home leave includes obtaining a report from the local social work department about the suitability or otherwise of the accommodation at which the prisoner was to stay while on home leave. That process had been completed in relation to Mr Crook's home address but unfortunately that was the place of the death of his wife which was being treated as a crime scene while investigations into the death were completed. Thus it was no longer possible for Mr Crook to be released to that address and no other address had been vetted. He would not be able to be released overnight on home leave until that process had been completed and it normally takes about three to four weeks for a report from the social work department to be obtained.

[10] Taking into account the history set out above, and in particular Mr Crook's state of mind he was informed by Mr McShannon that he was to be sent back to Shotts

Prison under suicide observation. Shotts Prison was chosen because it was the prison from which he had been originally transferred to an open establishment. He was known at that prison and he knew some of the officers there so although Perth prison was closer Shotts was preferred for that reason. He was transferred there so that he arrived about 4 p.m. or so. Prior to leaving Castle Huntly the ACT procedure was implemented in relation to Mr Crook. That is a suicide risk management strategy more fully entitled ACT and CARE. The full document was lodged on behalf of the Prison Officers' Association Scotland. It is probably not necessary to describe the document in full but it sets out a strategy available to all officers if they think there is a danger of self harm by a prisoner. Basically the procedure can be set in motion by any one officer who detects what he or she considers to be a suicide risk. Once a prisoner is placed on the ACT procedure an assessment is made as to his risk and observation is commenced according to the degree of risk assessed. The form used to implement the ACT procedure is contained in production 4. In this case Mr Crook was assessed as High risk and observation was commenced every 15 minutes. However Castle Huntly prison, being an open prison does not have facilities for looking after a High risk prisoner and that was the reason for the transfer to Shotts. The officers who gave evidence were all familiar with the ACT procedure and had received training in its implementation.

[11] Mr McShannon, having implemented the ACT procedure, telephoned Shotts prison and spoke to Mr Phil Woodlock to advise him of the situation and the reason for the return of Mr Crook to Shotts so that they could set up in advance a suicide observation regime and get the ACT process in place down there. He told Mr Woodlock about the death of Mr Crook's wife and that there was an ongoing police investigation and that previously Mr Crook had attempted suicide when his son had died.

[12] Mr Crook was soon after transferred to Shotts prison and when he arrived he was quickly seen by Gail Gurses, Clinical Manager, who is a registered mental health nurse. Her purpose was to carry out an admission assessment for ACT. At that time she found him to be quite calm and his mental state was reasonably settled. He informed her that he felt fine and was not going to harm himself. She asked a number of questions designed to help her to assess whether he was at risk. She formed the impression that he was not presenting as someone who had just had a bereavement although he was calm and rational. He was placed on High risk. The following day a Case Conference was held to come to a conclusion as to whether he was at risk. It was emphasised that although a committee decision was to be made, any one member of the Conference could have come to the conclusion that Mr Crook was at risk and that would have been sufficient to retain him on the ACT procedure. Those present at the Case Conference included Jane Black, social worker HMP Shotts, Gail Gurses, Philip Woodlock, Unit Manager HMP Shotts, James Duffy, Health Care Manager, David Crook, brother of Mr Crook, Margaret McGinley, his sister, Margaret Ritchie Residential Manager HM Prison Shotts and of course Mr Crook himself.

[13] Those who attended the Case Conference gave their impression of what happened at the Conference. I do not think that it is necessary to detail each individual view in this note but generally it can be said that great care was taken to emphasise that the purpose of the Conference was to identify whether there was any

risk of self harm and if so whether it was High risk or Low risk or No Apparent risk and not to come to a conclusion relating to whether Mr Crook could receive home leave. All those attending were clear that the Conference was not for the purpose of discussing leave or being allowed home. It was emphasised that any decision on home leave would be made on Mr Crook's return to Castle Huntly. All those attending the Conference were given the opportunity to give their views. Mr Crook's history was known. Mr Woodlock raised the question of the rope incident and Mr Crook denied that any such incident happened. Mr Woodlock telephoned Castle Huntly to get information as to what had happened as far as the staff at Castle Huntly were concerned and was informed that the incident was not substantiated. In these circumstances he did not place as much weight on that allegation as he would have if the staff at Castle Huntly had indicated that they were satisfied that it had taken place but he did not feel it appropriate to discount it altogether and the Conference were informed about it. Mr Woodlock was not given the information that one of the officers at Castle Huntly had actually seen the rope and in fact those attending the meeting would not be clear where the information about the alleged rope incident had come from. Some of those attending the conference were of the opinion that Mr Crook was trying to keep his emotions very much under control because he thought that if he showed too much emotion he would not be returned to Castle Huntly and would have no chance of being given home leave. It was clear he wanted to get out to be with his family and particularly his children.

[14] The Conference was also given the result of the doctor's examination but Mr Woodlock explained that the information from the doctor was not given any greater importance than any other piece of information available to the Conference and it was not unusual for the doctor's report to be, if not actually ignored, at least not given effect to. He indicated that the Conference went more deeply into the incident. It has to be said that in view of the relatively short time taken by the doctor in examining Mr Crook it would have been difficult for the Conference not to have done so. Mr Woodlock indicated that he thought that Mr Crook might have been giving answers which he thought Mr Woodlock wanted to hear rather than telling the whole truth and that was why he spent most of the morning and a good deal of the afternoon with Mr Crook and it was also why he invited members of the family into the Conference in the hope that it would be more difficult for Mr Crook to mislead the Conference if they were there. He conceded that he might have put the incident relating to the rope in Castle Huntly more forcefully to Mr Crook if he had known that an officer had seen the rope but in the end he came to the conclusion that Mr Crook was in fact telling the truth because of the positive way he spoke about the future. Mr Woodlock noticed as did other officers that he was indicating that he would be required by the family in the future and was making good eye contact and seemed to be taking part in the Conference in an appropriate way although of course he was visibly upset.

[15] In the end everyone were of the view that he should be classed as "of No Apparent risk" except perhaps Jane Black who wondered if he should be classed as Low risk. In these circumstances it was decided to return him to Castle Huntly so that he could be given the opportunity of being able to be released to be with his family. Mr Crook suggested that his brother should follow him to Castle Huntly in order to be able to give him a lift home if he were released. Both were firmly told that his brother should not follow back because it was unlikely he would be released that night. Mr Crook was therefore transferred back to Castle Huntly on the basis that a decision

on release would be made there and it was unlikely that the release would be that night.. He was driven back to Castle Huntly and arrived there at about 4.20 pm. When he arrived back at Castle Huntly he was seen by the custody manager at Castle Huntly who was Gordon Webster. He spoke to him for a while and Mr Crook asked to see Mr McShannon who then spoke to him for some time. The discussion centred on the arrangements for Mr Crook to be allowed home to be with his family. The difficulty relating to his wife's house was explained and he was informed that it would be necessary to make arrangements for him to have a day release pass allowing him to go home for the day but not to stay overnight. It was open to the Governor to grant such a pass but he could not grant overnight home leave without having accommodation vetted. Mr McShannon also arranged for an officer to accompany him when he went out, not as an escort but simply to lend any support that was necessary and he asked the officer concerned to attend the meeting with him to make sure that everyone understood what was expected of them. That visit would have taken place the following day.

[16] Mr McShannon was of the view that Mr Crook was satisfied with, or at least prepared to accept, the decision that he would be allowed home one day release the following day. Mr McShannon accepted that Mr Crook would have preferred to have been released there and then but was prepared to go along with the decision. Mr McShannon came to the view that Mr Crook was being positive about matters, discussing his future arrangements and expressing the view that it was important that he should be there for "the lassies" and his grandchildren. Mr Crook was returned to his own room with the caveat that two prisoners who were his friends had indicated that they would keep an eye on him and prison officers were also detailed to keep a special eye on him. There were no facilities in Castle Huntly for any special monitoring of a prisoner. The rooms in which Mr Crook was accommodated were not locked from the outside individually and indeed the prisoners themselves had a key to enable them to be locked from the inside. The external door to the group of rooms was able to be locked by prison officers but prisoners could come out of the rooms themselves to speak to each other even during the night. Mr Crook was checked by prison officers later in the evening and found to be in bed but not necessarily asleep.

[17] The following morning when it was time to waken prisoners the door to Mr Crook's room was found to be locked. Mr Crook had left a key in the door and so it was not possible to open it. At that time it was possible for prisoners in an open prison such as Castle Huntly to lock their own door and if they left the key in the lock it would be not possible for officers unlock it from the outside. For reasons unconnected with this case that situation had changed between Mr Crook's death and the date of Inquiry. With great difficulty prison officers managed to break their way into the room through a wooden panel above the door. They found Mr Crook suspended in his cell by the bedclothes from fire alarm piping. Once a suitable hole had been made in the wooden panelling the ligature was cut and Mr Crook's body lay against the door. When officers made their way into the cell he was found to be dead. A nurse and a doctor were called but nothing could be done because Mr Crook was already dead. Investigations in the cell by the police showed no sign of any struggle, or any suspicious circumstances and there were no unexplained or unusual marks on his body.

[18] The evidence in this case produced no disputed facts and there were no factual anomalies which required to be resolved. Most of Mr McShannon's evidence was given before Mr Crook's family were represented and there had been indications that some of his evidence in relation to the reasons for Mr Crook not being allowed to go home immediately or to stay overnight required to be challenged, but in the event the explanation of the reason for the difficulty did not raise a controversy and it seems quite clear that the circumstances of Mr Crook's wife's death created the difficulty in relation to accommodation for his release. I was able to set out the facts in the case in the foregoing narrative and would indicate that I accepted all the evidence given by the witnesses as being truthful and reliable.

[19] There was no dispute about the formal findings in this case. The evidence made it clear that Mr Crook died in Castle Huntly prison on 22nd December 2004 as a result of suspension by ligature at his own hand. The question which had to be considered was whether any recommendation should be made under section 6(1)(c), (d) or (e). The Crown in their final submissions raised some questions but did not suggest positively that recommendations should be made or not made. Reference was made to what is described as "the rope incident" and the difference in approach between that of Castle Huntly and that of the Case conference in Shotts was highlighted. It was suggested that the incident was treated seriously at Castle Huntly but was regarded as "a rumour" at Shotts. Secondly it was suggested that Mr Crook may have been under the impression that he would be released on his return to Castle Huntly. Further it was suggested that the question of his non-release ought to have been a feature of the Case conference because it would have influenced the decision on his mental state. That was particularly so when it was remembered that the medical input was based on an examination which lasted about five minutes. Overall it may be that too much emphasis is placed at such a conference on observing the way the subject reacts rather than applying all the information obtained from important sources such as a medical examination of background information such as the rope incident. It is possible that the death may have been prevented if Mr Crook had been retained on the ACT procedure for longer.

[20] In relation to any recommendations Mrs Munn suggested that there were precautions which could have been taken which would have avoided the death. In particular Mr Crook should not have been returned so quickly from Shotts prison to Castle Huntly and his status as High Risk should not have been reduced to No Apparent risk so quickly. It may be that the reason why that happened was that the Case Conference failed to take into account or at least give sufficient weight to a number of factors pointing to risk and were too influenced by observation of Mr Crook's attitude and outward appearance. For instance more weight ought to have been given to a number of matters namely:- to the information which they had that he had attempted suicide in the past; the information that he had been seen possibly on the roof but certainly with a rope by one of the other prisoners and that a prison officer had actually seen the rope in question in the possession of that other prisoner; to the fact that it ought to have been clear that Mr Crook was under the impression that he was going to be allowed home as soon as he was returned to Castle Huntly and that he would be likely to be very disappointed to find that that was not so and that he would be more vulnerable to self harm than he would otherwise have been; and to the fact that the medical examination of Mr Crook was perfunctory

although perusal of the medical records would have demonstrated previous suicide attempts.

[21] Mr Gillies for the Prison Officers Association contended that there was no evidence to suggest that any recommendation under (c), (d) or (e) should be made. A number of concerns were raised by the family of Mr Crook but the Inquiry should have answered all such questions. Any evidence of failings on the part of prison officers came with the benefit of hindsight. The suggestion that the failure to make everyone aware of what was contained in the medical notes did not affect the issue because the main participants at the Case conference were aware of his history. Furthermore the Case conference was attended by family members who would also have been aware of the history, and medically qualified people who had access to the case notes. Any suggestion that Mr Crook was under the erroneous impression that he would be released immediately he returned to Castle Huntly was a false one. He was an "experienced" prisoner who was aware that things did not operate as simply as that and his reaction when he was being taken back to Castle Huntly amply exemplified his understanding of the procedure. For instance he asked his escort "do you think I will get out?" showing that he was aware that release was not guaranteed.

[22] Mr Stewart for the Scottish Executive agreed also that the formal findings should be made although he was uncertain of the time of death and suggested that the time should be accorded as the time Mr Cook was pronounced dead. He argued that no other reasonable precautions should have been taken and there was no defect in any system which would have caused the death. No one incident or action on the part of any of the officers brought about the death. A whole catalogue of things had interacted with each other. In particular there was the response of all the officers at Castle Huntly to the death of Mr Crook's wife. Secondly there was the response of the officers at HM Prison Shotts and thirdly there was the response of the officers in Castle Huntly when he was returned there. Mr Stewart argued that the response at Castle Huntly on 20th December 2004 was appropriate and Mr Crook was given the support to which he was entitled and which was appropriate for his situation. He was immediately placed on the ACT procedure and transferred to Shotts. A considerable amount of time was spent with him by experienced officers. The same could be said of the officers in Shotts who were experienced officers and one was an experienced mental health nurse. The family were also involved. In relation to his return to Castle Huntly and possible release, no promises were given and while there was a general recognition that release would come soon after his return to Castle Huntly it would have been perfectly clear that the formalities would have to be completed before he could get out.

[23] In relation to his return to Castle Huntly, every effort was made to look after him. He was checked at 8.30 and 9 p.m. and apparently he was sleeping, he was allowed phone calls and officers were designated to keep an eye on him. He did not appear to be suicidal and there was no evidence of inquiry that anything else that might have been done would in fact have avoided the suicide.

[24] In my opinion there is no basis for making any findings of defects in the system or of making any recommendations to avoid such a death in the future. In my view the suggestions made by the Procurator Depute and Mrs Munn as to possible

failures on the part of prison officers or on the part of the system merely served to illustrate how difficult it is to balance the need to protect a vulnerable prisoner such as Mr Crook with the need to cater for his very obvious need to grieve with his family in relation to the death of his wife. The ACT procedure was set up in an effort to protect prisoners from self harm and while it patently failed on this occasion, that only emphasises how difficult it is to avoid such a tragic incident. It was suggested during the evidence that there are simply some occasions when it is impossible to prevent a suicide and that unfortunately sometimes proves to be true. I was impressed by the caring attitude of the prison officers and others involved with Mr Crook. They struck me as taking their responsibilities seriously and certainly not simply going through the motions of following the ACT procedure. Determined efforts were made by all concerned to identify Mr Crook's mood after being told about his wife's death. Each officer speaking to Mr Crook expended extensive periods of time discussing with him how he felt and observing his attitude and replies with care. The Case conference which took place at Shotts examined at length the risk which Mr Crook posed to himself and thought about ways to avoid it. No doubt the procurator Fiscal Depute and Mrs Munn are right to say that those attending the Case conference might have placed more emphasis on such things as previous history or on the incident involving the rope at Castle Huntly but in my opinion that suggestion is a counsel of perfection. The evidence showed quite clearly that those attending the Case conference were experienced, caring officers who took their responsibilities very seriously. They chose to prefer information they obtained from observing Mr Crook's reactions and listening to what he was saying about his future plans. They did so over an extended period. No doubt they were conscious of the strong desire he had to be out with his family. They came to a conclusion which on the evidence seemed at the time to be appropriate. I do not consider that the decision or the approach can be criticised. Any decision to retain Mr. Crook on High risk would have resulted in his being kept at Shotts and that was unlikely to have acted as a disincentive to attempt suicide.

[25] Some criticism was levelled at the approach of Dr Singh whose medical examination did not involve perusing Mr Crook's medical records and took something in the region of five minutes. Although I found it a little surprising that such a short period was required in the circumstances, I do not think that it is likely that any longer examination would have made any difference to the outcome and without evidence from other experts that such an examination should be more extensive, it is not possible to make any finding that it was unsatisfactory. In any event the view reached by Dr Singh was in accordance with the views reached by the other experienced persons dealing with Mr Crook, namely that he was reacting in too positive a way to suggest a likelihood of risk.

[26] For all these reasons I do not consider it appropriate to make any findings or recommendations under section 6(1)(c), (d) or (e). It is fair to say that each Case conference will have to be conducted taking into account the individual circumstances of the prisoner concerned. That makes it even more difficult to lay down individual considerations which should be taken into account based on the experience of one tragic incident. What is more important I think, is to have a pool of experience from various different disciplines, all focusing their mind on taking care of prisoner. Each of these persons will no doubt place slightly different emphasis on the individual features of each case but the impression that the evidence gave was that

experienced officers were of the view that it was more important to spend time observing the outward appearance of Mr Crook than to concentrate on previous history. Superficially it is difficult to escape the conclusion that what has been described as "the rope incident" should have assumed a greater importance both at Castle Huntly and finally at Shotts but I was not convinced by the evidence that a clear understanding of that incident by those attending the Case conference would necessarily have made the Case conference come to a different conclusion. All the time it has to be remembered that there was a perfectly natural desire to allow Mr Crook to grieve with his own family and help with the funeral arrangements and the like, which would have been impossible if he had remained on the ACT procedure. Furthermore there would require to be evidence based on research that the emphasis on observation of the prisoner and his reaction to the situation rather than an emphasis on his history was inappropriate or at least unlikely to achieve the result of assessing accurately the risk to the prisoner. In these circumstances I have made no recommendations.