

SHERIFFDOM OF LoTHIAN AND BORDERS AT LIVINGSTON

[2022] FAI 40

LIV/B268/22

DETERMINATION

BY

SHERIFF DOUGLAS A KINLOCH

**UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016**

into the death of

GABRIEL CUSICK

Livingston, 7 November 2022

DETERMINATION

The Sheriff, having considered the information presented at the Inquiry determines in terms of Section 26 of the Inquiries into Fatal Accidents and Sudden Deaths Etc (Scotland) Act 2016 that:

- (i) The deceased was Gabriel Cusick (d.o.b. 22/05/1987). He died at Addiewell Prison, 9 Station Road, Addiewell, West Lothian between the hours of 17.28 on 17 April 2021 and 08.01 hours on 18 April 2021.
- (ii) The death was principally due to Cardiomegaly (cardiac enlargement), which may have been caused by obesity and chronic drug misuse.
- (iii) A post mortem examination took place.

RECOMMENDATIONS

I have no recommendations to make.

NOTE:

[1] An Inquiry into the death of Gabriel Cusick was held at Livingston Sheriff Court on 18 October 2022. A preliminary hearing took place in relation to the Inquiry on 29 June 2022. At the Inquiry on 18 October 2022 Ms Dickie, Procurator Fiscal Depute, represented the public interest. Mr Considine, Solicitor, represented the Scottish Prison Service. Ms Houlston, Solicitor, represented Sodexo Justice Services. Mr Holmes, Solicitor, represented Lothian Health Board. I did not hear evidence from any witnesses, the totality of the evidence being contained in a joint minute of agreement.

The legal framework

[2] The Inquiry was a mandatory inquiry under Section 2(4)(a) of the Inquiries into Fatal Accidents and Sudden Deaths Etc (Scotland) Act 2016, in that at the time of his death Gabriel Cusick was in legal custody. The Inquiry was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017, and the purpose of the Inquiry in terms of Section 1(3) of the 2016 Act was to establish the circumstances of the death, and to consider what steps, if any, might be taken to prevent other deaths in similar circumstances.

Summary

[3] This Fatal Accident Inquiry relates to the death of a 33 year old male called Gabriel Cusick, who was found dead in his prison cell at Addiewell Prison, West Lothian, on 18 April 2021. It has not been suggested by anyone that there were any suspicious circumstances in relation to his death, or that there were any precautions which could have been taken would realistically have prevented his death. For reasons which I will explain below I do not see either that any such precautions could have been taken.

Parties to the Inquiry

[4] In terms of Section 11(1)(e) the following parties sought to participate in the Inquiry, and I was satisfied that they had an interest in the Inquiry which allowed them to participate. They were, first, the Scottish Prison Service, which almost always participates in Fatal Accident Inquiries where there was, as here, a death in custody. Second, Sodexo Justice Services, which is the company which runs Addiewell Prison under the auspices of the Scottish Prison Service, Addiewell being a privately run prison, the running of which has been contracted out to Sodexo. Third, Lothian Health Board which, as I understand it, usually seeks to participate in cases where there has been a death in custody, this being as a result of a Statutory Instrument in 2011 which transferred the function of healthcare in prisons to the National Health Service.

Evidence at the Inquiry

[5] I did not hear the evidence of any witnesses at the Inquiry. The reason for this was that the parties very helpfully, and in accordance with their duties under Rule 4.11 of the Fatal Accident Inquiry Rules 2017 to agree on controversial evidence, had agreed in a joint minute of agreement all the relevant evidence which it was felt I would require at the Inquiry. Having done so, in terms of Rule 4.10 of the 2017 Rules it was not necessary for any of the participants to present evidence regarding facts agreed in the joint minute. However, under the relevant legislation and rules the Sheriff is given a more inquisitorial role in relation to the conduct of Fatal Accident Inquiries, and the Procurator Fiscal had lodged all the relevant witness statements which were available to her so that I could form a view as to whether any of these witnesses ought to be called to give evidence, or whether any other witnesses were necessary. Having read these statements I agreed with the parties that all relevant evidence had been incorporated in the joint minute, and that it was not necessary for me to call upon any of the parties to lead further evidence from other witnesses.

[6] The parties had also helpfully prepared written submissions regarding the Inquiry. These submissions were comprehensive, and in my view, covered all relevant areas. None of the parties wished to add any oral submissions at the Inquiry hearing. These written submissions have been lodged digitally in process and, like the joint minute, are available for reference. In terms of Rule 4.8 of the 2017 Rules the “information presented at the Inquiry” is to be recorded by any means ordered by the Sheriff, and I took the view that the lodging in process of the joint minute of agreement

and the written submissions, which constituted the information presented at the Inquiry, was sufficiently recorded by being available for reference in the process. The hearing was, however, recorded by electronic means via WebEx, although I did not consider that that was actually necessary in terms of the Inquiry rules.

Circumstances of death

[7] The circumstances of the death are set out in some detail in the joint minute of agreement. As this is part of the court process, I think it is sufficient for me to say that Gabriel Cusick was serving a prison sentence of 5 years and 3 months which had been imposed when he was convicted of assault to severe injury and danger to life on 22 May 2019. At the time of his death in April 2021 he was serving his prison sentence at HMP Addiewell. At around 17.28 on Saturday 17 April 2021, Gabriel Cusick, who had been a known drug user, had entered his cell which was then locked up for the night. At about 8 o'clock the following morning a prison officer entered the cell and saw Gabriel Cusick apparently sitting up on his bed, holding a television remote control in his left hand. The prison officer did not think that anything untoward had happened. However, about 5 minutes later a fellow prisoner entered Gabriel Cusick's cell and saw that Gabriel Cusick was slumped over on his bed, and told another prisoner about this, thinking that Gabriel Cusick was under the influence of drugs. The other prisoner then entered the cell and formed the opinion that Gabriel Cusick was dead. Prison officers were thereafter alerted to the situation, and it was quite quickly ascertained that

Gabriel Cusick was in fact dead, and at 8.28am on the Sunday morning a paramedic of the Scottish Ambulance Service attended and pronounced life extinct.

[8] It was thought that Gabriel Cusick might have died from drug related causes. A post mortem was carried out 26 April 2021 and the pathologists concluded that the primary cause of death was that the deceased had an enlarged heart. They concluded that the enlarged heart could have been caused by the fact that Gabriel Cusick was moderately obese, and had a documented history of chronic drug misuse. They were unable to give any accurate indication of the time of death.

Conclusions and recommendations

[9] None of the parties participating in the Inquiry suggested that there were any suspicious circumstances relating to Gabriel Cusick's death, and no other party sought to participate in the proceedings in order to suggest otherwise. On the information presented to me it appears clear that there were indeed no suspicious circumstances relating to his death.

[10] Each of the parties participating in the Inquiry submitted that no precautions could have been taken which would realistically have prevented the death. I agree with those submissions. This was essentially a natural death, caused, as I understand it, by heart failure which was the result of Mr Cusick having an enlarged heart. His enlarged heart may have been caused by his obesity and by the fact that there was a history of drug misuse. I do not see that his death could have been anticipated, and I do not see that any steps could have been taken which would have prevented the death.

[11] In these circumstances I do not have any recommendations to make regarding reasonable precautions which might have prevented the death. In that sense, this determination is therefore a formal determination only, which sets out the circumstances and cause of the very unfortunate and sad death at a young age of Gabriel Cusick.