SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

INQUIRY HELD UNDER
FATAL ACCIDENTS AND
SUDDEN DEATHS
INQUIRY (SCOTLAND)
ACT 1976
SECTION 1(1)(a)(ii)

DETERMINATION BY NEIL JOSEPH MACKINNON, ESQ., ADVOCATE, Sheriff of the Sheriffdom of Lothian And Borders at Edinburgh following an Inquiry held at Edinburgh on 26, 27, 28 and 29 October all Two Thousand and Nine into the death of THOMAS ANDREW TANT

EDINBURGH 4 December 2009

The Sheriff, having resumed consideration of the evidence, joint minute of agreement, productions, and submissions thereon

FINDS IN FACT

[1] That Thomas Andrew Tant was born on 28 August 1981. He resided latterly at Weir Court, 3 Sighthill Bank, Edinburgh.

[2] On 23 October 2007 he was admitted to Her Majesty's Prison, Edinburgh as a remand prisoner.

[3] On admission, steps were taken both to ascertain and to confirm the nature and dosages of medication already prescribed for his use. Said medication included methadone, diazepam and olanzapine. He agreed to participate in a detoxification programme. Methadone was administered under supervision.

[4] On 26 October 2007 he was examined by a Consultant Forensic Psychiatrist prior to a court appearance set for 30 October 2007. It was considered that Mr Tant did not present an immediate management problem in prison and there was no

medical reason for extracting him from custody. It was not considered the case would proceed to a psychiatric disposal and no recommendation was made in respect of either an assessment order or a treatment order.

[5] On 21 November 2007, following upon concerns expressed by Thomas Tant Senior, the father of Thomas Andrew Tant, Mr Tant was made subject to the "Act 2 Care" procedure, which addresses those within the establishment at risk of self harm or suicide. He was made subject to said procedure until 24 November 2007.

[6] On 1 December 2007 Mr Tant was once more made subject to the "Act 2 Care" procedure. He was subject to said procedure until 3 December 2007.

[7] Later in December 2007 Mr Tant was transferred to cell 2 – 28 on level 2, Ingliston Hall. He had sought a transfer from Glenesk Hall, for his own protection.

[8] On 6 February 2008 he was examined once more by Dr Lenihan, Consultant Forensic Psychiatrist. Mr Tant continued to receive anti psychotic medication at significant doses. As at said date he was being treated by olanzapine daily, together with chlorpromazine daily as a form of non addictive night sedation. In his report following said examination Dr Lenihan recorded that it was possible he continued to abuse drugs in prison. It was uncertain whether he suffered from a primary psychotic illness exacerbated by drug use or a drug induced psychosis. It was considered his mental health needs could be safely met in custody.

[9] Concerns were expressed on 8 February 2008 that Mr Tant showed increasing agitation and a decrease in interaction with others. Dr Lenihan prepared a written clinical report of 12 February 2008 which discussed his findings on the examination on 6 February 2008.

[10] Whilst in Ingliston Hall Mr Tant had responsibilities and privileges as a passman. He denied having suicidal thoughts. He presented as a quiet individual.

[11] Within HMP Edinburgh there was a policy of allowing prisoner patients to self administer certain medications such as non-opioid analgesics. This was under and in

terms of the Scottish Prison Service overall policy for the supply of medication to prisoner patients.

[12] Following a commission at the instance of the Department of Health, a research document entitled "An Evaluation of In-possession Medication Procedures within Prisons in England and Wales" was published in August 2009.

[13] Whilst Mr Tant was in cell 2-28 in Ingliston Hall, an adjacent cell was occupied by James McDonald. Mr Tant would visit Mr McDonald. Mr McDonald was prescribed medication which included nefopam, a non-opioid analgesic. Mr McDonald was prescribed this medication monthly "in-possession " i.e. said medication was with Mr McDonald for self administration.

[14] Within HMP Edinburgh certain medications notably tramadol would sometimes be utilised by prisoners as a form of currency within the establishment.

[15] Staff employ systems which include spot-checks to ensure that medication is being taken correctly by prisoner patients.

[16] On the afternoon of 26 February 2008 Mr Tant met with a Legal Adviser. He spoke afterwards to prison officer Whyte.

[17] On the evening of said date the lockup procedure was followed. At 20.45 hours prisoners returned to their respective cells and two officers carried out the procedure for locking up for the night. At that stage prison officer Whyte observed that Mr Tant appeared absolutely fine. James McDonald who occupied an adjacent cell had seen Mr Tant prior to lock up on said date. There was nothing unusual about his demeanour at that time.

[18] On the morning of 27 February 2008 when Mr Tant's cell was opened at approximately 07.30 hours, the cell was in darkness. Mr Tant was lying on his back on the bed within the cell. He was motionless. A 'Code Blue' alarm was raised. There was a discharge from Mr Tant's mouth.

[19] Nursing staff attended. CPR was commenced and continued, but to no avail. No heart trace was detected. Mr Tant was recorded as being deceased as at 07.59 hours.

[20] Within his cell there was discovered a pack of nefopam medication. The serial number on the pack matched the nefopam medication prescribed to Mr J McDonald who occupied an adjacent cell.

[21] The cause of Mr Tant's death was initially unascertained. Following toxicological examination, methadone was found in the blood of the deceased. Apart from this, a concentration of nefopam was found in the blood of the deceased, 25 times higher than the highest concentration found following its normal medical use. It was established that the cause of death was combined methadone and nefopam toxicity.

[22] Nefopam hydrochloride is a non-opioid analgesic. Mr Tant was not prescribed nefopam. It is unclear by what means he came into possession of said medication.

FINDS AND DETERMINES:-

[1] In terms of s.6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, Thomas Andrew Tant, whose date of birth was 28 August 1981 and who formerly resided at Weir Court, 3 Sighthill Bank, Edinburgh, died within Her Majesty's Prison, 33 Stenhouse Road, Edinburgh between the hours of 20.45 on 26 February 2008 and 0759 hours on 27 February 2008, in which establishment he was a remand prisoner;

[2] In terms of s.6(1)(b) of the said Act, that the cause of his death was combined methadone and nefopam toxicity;

[3] In terms of s.6(1)(c) of the said Act, that there were no reasonable precautions whereby his death might have been avoided;

[4] In terms of s.6(1)(d) of the said Act, that there were no defects in any system of working which contributed to his death;

[5] In terms of s.6(1)(e) of the said Act, that there were and are no other facts which are relevant to the circumstances of his death.

NOTE

[1] This Fatal Accident Inquiry was convened to inquire into the circumstances of the death of Thomas Andrew Tant, who died within Her Majesty's Prison, Edinburgh. He was 26 years of age, having been born on 28 August 1981.

[2] The inquiry proceeded under s.1(1)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 because at the time of his death Mr Tant was a remand prisoner.

[3] At the inquiry, Mr Drugan, Procurator Fiscal Depute, appeared for the crown in the public interest. Mr McHugh, solicitor, appeared for the Scottish Prison Service.

[4] I heard evidence from Mr Thomas Tant Snr and the witnesses whose identities are set out at the conclusion of this Determination. A Joint Minute of Agreement was entered into between the parties appearing.

[5] A Fatal Accident Inquiry is held under and in terms of the foregoing provisions of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, and that statute requires that an inquiry should be held into the death of any person held in legal custody. The statute provides, in terms of s.6(1) that "at the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the

Sheriff shall make a determination setting out the following circumstances of the death, so far as they have been established to his satisfaction –

(a) Where and when the death and any accident resulting in the death took place
(b) The cause or causes of such death and any accident resulting in the death
(c) The reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided
(d) The defects, if any, in any system of working which contributed to the death or any accident resulting in the death; and
(e) Any other facts which are relevant to the circumstances of the death.

[6] The Procurator Fiscal has the responsibility in the public interest of investigating the circumstances of the death and placing before the court evidence which has a bearing on those circumstances. The court can only proceed upon the basis of the evidence placed before it and may not speculate about whether other circumstances exist other than those matters raised in the evidence.

[7] It is also clear on the authorities that an inquiry such as this is not a forum for determining fault or apportioning blame. The function of the Sheriff is different to that which he is required to perform at a proof in a civil action to recover damages.

[8] In the course of his evidence, Mr Thomas Tant Snr, the father of the deceased, raised a number of concerns. These arose against the background of Mr Thomas Andrew Tant having died from combined methadone and nefopam toxicity. The deceased was prescribed methadone. He was not prescribed nefopam. Mr Tant Snr expressed concerns that within the establishment medication could be stockpiled by individuals. Further, in respect that his son had mental health problems, Mr Tant Snr had raised concerns which he considered were not taken seriously. He raised such concerns with Personnel at the Family Centre within the establishment. He expressed the view that his son was going to put himself and others at risk. In addition, Mr Tant Snr who was visiting his son regularly, had concerns as to whether his son was receiving the appropriate medication.

[9] On the evidence it remains unclear by what means Thomas Andrew Tant obtained the nefopam discovered in his cell. The serial numbers matched up with the medication prescribed to Mr James McDonald who was in the adjacent cell.

[10] In evidence however, Mr McDonald was adamant that he had not supplied nefopam to the deceased. His evidence appeared to me to be credible and reliable and I did not understand the Procurator Fiscal Depute to suggest otherwise. I did not understand the evidence before the inquiry to exclude the possibility that the nefopam obtained by the deceased came from elsewhere within the establishment.

[11] Although there was no direct evidence of the intentions of the deceased the evidence before the inquiry did not indicate that he had any intention of self harming. Those who saw him on 26 February 2008 did not discern anything unusual in his demeanour. Elaine Worsfold gave evidence to the effect that the deceased had appeared optimistic about the forthcoming court procedure.

[12] The evidence presented by the Procurator Fiscal Depute focused on the policy operated by the Scottish Prison Service for the dispensing of medication within the establishment.

[13] The policy in operation as at February 2008 (and as subsequently revised) provided for certain medicines to be available in possession to prisoners for self administration. Non-opioid analgesics would potentially be available for such self administration. However, the policy provides for an assessment of the individual prisoner patients. Prisoner patients with acute mental health problems or those classified as "high risk" under the "Act 2 Care" policy would not normally be given medicines in possession. Further, patients being treated for drug misuse or those susceptible to manipulation or bullying would not normally be given such medication.

[14] Those latter features of the policy it might be thought, would operate to minimise scope for such medication finding its way into the hands of individuals for whom such medication had not been prescribed.

[15] The Scottish Prison Service Policy does not expressly address the toxicity level of the medication with a view to placing a limit or ceiling on the quantity of medication dispensed at one time. Against a background of medication in possession being potentially available as a form of currency or otherwise available for abuse, the question arises whether the policy ought to include such an appraisal or assessment, with a view to minimising the risk of harm to others.

[16] The court was invited to consider a report to the National Institute of Health Research dated August 2009, which evaluated in possession medication procedures as they operated in England and Wales. Within that document it is recorded that at least anecdotally, the issue of in-possession medication creates feelings of unease in staff, stemming from fears that medicines will be abused or traded or used to self harm. Before the inquiry there was evidence that medication, notably tramadol was used as a form of currency within the establishment.

[17] The Procurator Fiscal Depute invited the inquiry to make a recommendation that consideration should be given, when prescribing and dispensing non-abusable medication, to the toxicity level for the medication that is to be dispensed to an individual prisoner patient.

[18] Mr McHugh for the Scottish Prison Service submitted that no such recommendation should be made. Although the issue of toxicity had been explored in the evidence of Dr Gracie, this was with reference to the potential toxic effect on the prisoner to whom the medicine was being prescribed. Mr McHugh submitted that the matter was not relevant where, as here, nefopam had not been prescribed to the deceased. Further, Dr Gracie's evidence was to the effect that if a prisoner was considered to be at risk of overdose he would not be prescribed medication in possession. Also, standing Dr Gracie's evidence that what might constitute a toxic dose would vary from patient to patient, there were difficulties in making such calculations accurately. In those circumstances any such proposed recommendation was of doubtful practicability and proportionality.

[19] As the said report notes (page 17) prison environments engender inherent tensions between maintaining the security of the institution as a whole, and

encouraging individuals to accept responsibility for their lives and choices. The authors of the report also observe that some medicines have higher toxicity and therefore either cannot be given in possession, or only with caution. The first recommendation of the report is that the default position should be that medicines should be held in the possession of prisoners.

[20] The report makes a number of further recommendations. It is noteworthy that the Scottish Prison Service Policy appears already to contain within it, features recommended in the report. e.g. Recommendation 8 provides "All prisons should have a locally agreed limited prescribing formulary detailing which medication may/may not be issued in possession". This corresponds with what is found in the Scottish Prison Service Policy.

[21] Recommendation 9 of said report provides that "All prisons should be covered by a Drug and Therapeutics Committee or equivalent". The Scottish policy is promulgated under the Auspices of the SPS Drug and Therapeutics Committee.

[22] Recommendation 10 in said report provides "Each prison establishment should have a policy and risk assessment criteria developed through the Drug and Therapeutics Committee …. for determining on an individual basis when medicines …. may not be held in possession of a prisoner". The SPS Policy already addresses the matter of assessment of patients to identify those who may put themselves or others at risk through misuse of their medicines. Some patients may for example be unable to follow dosage instructions correctly, may use their medicines for self harm or to obtain desirable side effects, or pass their medicines to others to be misused. The policy makes clear that patients should not be given medicines in possession when the risks of such behaviour are considered to be high.

[23] The recommendation posited by the Procurator Fiscal Depute seeks to address the overall quantity of potentially toxic medication available for circulation or abuse within the establishment. The proposed recommendation implicitly acknowledges that the inappropriate use of medication by means of circulation as currency or by other forms of abuse tends to feature in prison establishments.

[24] It appeared to me that a number of protective measures were already set out in the SPS Policy. As part of the procedure, individual patients would be assessed for their suitability to have medication in possession and those deemed to be susceptible to manipulation and bullying would not receive such medication. As respects the deceased, Thomas Andrew Tant, it appears that he himself had initially been refused medication in possession (as at 16 November 2007) due to uncertainty at that time as to his ability to take his medication.

[25] There was also evidence from Mrs Fiona Gilmour, the Clinical Manager at HMP Edinburgh, responsible for the Primary Care Team in the Health Centre, that a system of spot checks operated within the establishment. This system sought to identify whether prisoners were stockpiling medication, and to ensure medication was being used as prescribed.

[26] Having considered the evidence and submissions I am not persuaded that the evidence before the court warrants a recommendation in the terms desiderated by the Procurator Fiscal Depute. Dr Gracie, the Medical Officer at HMP Edinburgh was asked about the existing policy under reference to the potential toxicity of prescribed medication. His view was that the existing policy worked very well. To address the potential toxicity of particular medicines, guidance was available from the standard medical texts, but there were variable factors. Some individuals developed a greater tolerance to particular medications. He envisaged difficulties in addressing the perceived risk by focusing on toxicity. As he put it, just about any drug is dangerous at high levels.

[27] The policy of dispensing certain medicines for prisoner patients in possession plainly carries risks in terms both of the secure storage of such medication and the potential for abuse arising from the employment of such medication as currency within prison establishments. The said report to the National Institute of Health Research highlights (page 75) a concern in England about the lack of secure storage facilities in cells. In the present inquiry the court did not hear detailed evidence about the position at HMP Edinburgh and accordingly I do not consider it appropriate to make any formal recommendation in this regard. The analysis of security issues at page 75 of said report is however, in my view valuable in general terms as pointing to

the need for secure lockable storage facilities in cells insofar as any penal establishment may lack such facilities.

[28] In respect that Mr Tant Snr expressed concerns about his son to staff at HMP Edinburgh, the evidence from staff at the establishment before the court demonstrated that, at least with regards the "Act 2 Care" procedure, certain of the issues raised by Mr Tant Snr prompted appropriate action on the part of the prison authorities. One example of this is in relation to the placing of Thomas Andrew Tant on the "Act 2 Care" procedure on or about 21 November 2007.

[29] Whilst in HMP Edinburgh, the deceased had been subject to psychiatric examination. Mr Tant Snr had concerns about whether his son was receiving the appropriate medication. His son had not been sleeping properly at night. Dr Lenihan had examined the deceased on 6 February 2008. The evidence before the inquiry did not indicate that there was a failure properly to prescribe appropriate medication for the deceased. I did not understand the Procurator Fiscal Depute to suggest that there was any such failure. There was no criticism of the method by which methadone was dispensed within the establishment under supervision.

[30] The Procurator Fiscal Depute did not invite the court to make findings under either of subsections (c) or (d) of section 6 of the 1976 Act. I have made findings under subsections (a) and (b) in light of the evidence presented to the inquiry. There are no circumstances which would justify any further findings.

[31] The witnesses who gave evidence at the inquiry were as undernoted:-

(1) Thomas Tant Snr.
(2) Dr Fionnbar Lenihan, Consultant Forensic Psychiatrist.
(3) Lesley Whyte, HMP Edinburgh.
(4) Gordon Ewan, HMP Edinburgh.
(5) James Moffat, HMP Edinburgh.
(6) James McDonald.
(7) Mrs Fiona Gilmour, Clinical Manager, HMP Edinburgh.
(8) Owen Masterson, HMP Shotts (formerly HMP Edinburgh).

(9) Mrs Fiona Delaney, Health Care Manageress, HMP Edinburgh.

(10) Elaine Worsfold, HMP Edinburgh.

(11) Mrs Sandra Barr, Alliance Pharmacy.

(12) Dr George Gracie, HMP Edinburgh.