

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT DUNDEE

[2019] FAI 26

DUN-B208-19

DETERMINATION

BY

SHERIFF L A DRUMMOND QC

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

into the death of

STANLEY FORBES

Dundee, 21 June 2019

The Sheriff, having considered the information presented at an inquiry on 21 June 2019 under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 finds and determines:

- (1) That in respect of paragraph (a) of section 26(2), Stanley Forbes, born 19 November 1957, died on 11 November 2018 whilst an inpatient at the Royal Victoria Hospital, Jedburgh Road, Dundee at 1220 hours. He was at that time a prisoner in HMP Perth.
- (2) That in respect of section 26(2), paragraph (c), the cause of death was a metastatic carcinoma of oesophagus and its complications.
- (3) I have no findings to make under paragraphs (b), (d), (e), (f) or (g) of section 26(2) of the Act. I have no recommendations to make under section 26(1)(b).

Note

Legal framework

[1] This Inquiry was held under section 1 of the 2016 Act. This was a mandatory inquiry in terms of section 2(1) and (4) of the 2016 Act as Mr Forbes was in legal custody at the time of his death. The purpose of the inquiry 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.

[2] The Procurator Fiscal issued notice of the inquiry on 4 April 2019. A preliminary hearing took place at Dundee Sheriff Court on 12 June 2019. Ms Whyte, Procurator Fiscal Depute appeared for the Crown. Ms Glen appeared for Tayside Health Board and Mr Shand for the Scottish Prison Service. The family of Mr Forbes was not represented. The matter was continued until 18 June 2019 for an updated joint minute of agreement to be received. A further joint minute was received on 18 June 2019.

[3] The inquiry was held on 21 June 2019. The same people appeared. Ms Whyte read out the terms of the Joint Minute of Agreement. She invited the court to make formal findings in terms of section 26(2)(a) and (c) of the 2016 Act. The other two represented parties adopted that position.

Circumstances

[4] The following narrative is taken from the terms of the agreed Joint Minute.

[5] Mr Forbes ("the deceased") was convicted of three rape charges and one charge of abduction at Forfar High Court and sentenced to 12 years imprisonment with an

extended sentence of 6 years on 25 October 2002. He was released from that sentence on 6 October 2010 and made subject to licence conditions.

[6] On 4 March 2014 a decision was made to recall the deceased to prison for breaching the licence. As a result of the recall the deceased died in legal custody whilst receiving inpatient palliative care at the Royal Victoria Hospital Dundee on 11 November 2018 at 1220 hours.

[7] The deceased was returned to custody at HMP Perth on 5 March 2014 following a decision by the Parole Board to revoke his licence in terms of section 17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, whereby he must remain in custody until at least 6 October 2020. Crown Production 3 pages 34 to 40 is a letter, extract minute and extract sentence warrant relating to said recall.

[8] In 2012 the deceased was diagnosed with Oesophageal cancer. Treatment options were discussed with the deceased and on 21 February 2012 the deceased had an oesophagectomy (removal of the gullet) surgery. In July 2018 the deceased was admitted to the surgical unit at Ninewells Hospital where investigations did not show any evidence of the return of cancer. The deceased's condition continued to deteriorate and he was admitted to Perth Royal Infirmary on 8 September 2018 with a very low body weight and breathlessness from bilateral pleural effusions (accumulations of fluid in the chest cavity), a scan did not detect any recurrence of cancer but analysis of the pleural fluid showed abnormal cells which were highly suspicious of cancer recurrence. Crown Production 6 is a letter dated 31 May 2019 from Dr Peter Brown, Consultant Physician, Respiratory Department, Perth Royal Infirmary, detailing the findings and

care provided to the deceased during his admissions to Ninewells Hospital and Perth Royal Infirmary.

[9] The deceased was in custody at HMP Perth from 5 March 2014 until he was admitted to Perth Royal Infirmary on 8 September 2018. The deceased remained an inpatient at Perth Royal Infirmary from 8 September 2018 until 30 October 2018.

[10] On 30 October 2018 the deceased discharged himself against medical advice and returned to HMP Perth. The deceased told his family and nursing staff that the reasons for his self-discharge was that he felt he was being bullied by one of the G4S officers present at his bedside. Notes relating to this are within Crown Production 4 at pages 12, 276 and 277. The deceased was readmitted to Perth Royal Infirmary from HMP Perth at 0230 hours on 31 October 2018 as it was clear that his medical needs could not be met in a prison environment. The deceased remained at Perth Royal Infirmary until 9 November 2018 when he was transferred to the Royal Victoria Hospital where he remained until his death on 11 November 2018 at 1220 hours.

[11] A meeting was held at Perth Royal Infirmary on 26 September 2018 at 1420 hours to discuss the deceased's end of life care. At that time Dr Brown, Consultant Physician, agreed to provide a letter in support of compassionate release. The letter is dated 27 September 2018 and is contained within Crown Production 4. At page 205 Dr Brown states that the deceased is very weak, substantially confined to bed and nearing the end of his life due to recurrent progressive cancer. He states he is clearly unfit to return to a prison cell and opines that the deceased will require ongoing nursing care in a hospital bed, nursing home or hospice environment.

[12] On 2 October 2018 the deceased was informed that his application for compassionate leave was refused. Following that intimation, the deceased's brother, Mr Walter Forbes, raised concerns to G4S officers, doctors, nursing staff and SPS about the presence of G4S officers and the refusal to release the deceased on compassionate grounds. Crown Production 4, page 246 records these concerns.

[13] On 10 October 2018, a staff nurse at HMP Perth wrote to Perth Royal Infirmary to confirm that the deceased could not be returned to prison as prison healthcare could not provide 24 hour nursing care. That letter is within Crown Production 5 at page 706.

[14] Crown Production 2 is a report containing the findings of a post mortem examination of the deceased carried out on 13 November 2018 by Dr David William Saddler. The deceased's cause of death was established as metastatic carcinoma of the oesophagus and its complications.

Conclusion

[15] No submissions were made by any party that any accident resulted in Mr Forbes' death or that any precautions could reasonably have been taken which might realistically have resulted in Mr Forbes' death being avoided (section 26(2)(b)(d) and (e)); or that any defect in any system of working had contributed to his death (section 26(2)(f)). Nor were any submissions made to indicate that any other facts relevant to the circumstances of Mr Forbes' death fell to be included in my determination (section 26(2)(g)). No submissions were made that I should make any recommendations under section 26(1)(b).

[16] I am satisfied that in all the circumstances formal findings should be made in this case. I have set out those formal findings above.

[17] In conclusion I wish to express my sincere condolences to the bereaved family of Mr Stanley Forbes.