

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT ABERDEEN

[2023] FAI 2

ABE-B622-22

DETERMINATION

BY

SHERIFF MUNGO BOVEY KC

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

into the death of

STEVEN JOHN REDPATH

Aberdeen, 24 November 2022

1. The Sheriff, having resumed consideration of the Inquiry, DETERMINES as follows:

A When and where the death occurred (section 26(2)(a))

2. Steven John Redpath of [redacted], Aberdeenshire, who was born on 7 April 1973, died at the River Ythan near Quarry Brae Cottage, Auchedly, Aberdeenshire on the evening of Thursday 27 May 2021.

B When and where any accident resulting in the death occurred (section 26(2)(b))

3. An accident resulting in Mr Redpath's death occurred on the evening of Thursday 27 May 2021 at the River Ythan near Quarry Brae Cottage, Auchedly, Aberdeenshire.

C The cause or causes of the death (section 26(2)(c))

4. The causes of death were drowning and cardiac enlargement.

D The cause or causes of any accident resulting in the death (section 26(2)(d))

5. The deceased suffered a health incident related to his cardiac enlargement which caused him to lose control of the tractor he was driving such that it ended in the water with him trapped underneath it.

E Any precautions which - (i) could reasonably have been taken, and (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided (section 36(2)(e))

6. In the circumstances, I do not find precautions which could reasonably have been taken which might realistically have resulted in the death or the accident being avoided.

F Any defects in any system of working which contributed to the death or any accident resulting in the death (section 36(2)(f))

7. I do not find that there are any defects in any system of working which contributed to the death or the accident.

G *Any other facts which are relevant to the circumstances of the death (section 36(2)(g))*

8. I do not find that there are any other facts which are relevant to the circumstances of the death.

NOTE

[1] A formal hearing was held in this inquiry on 23 November 2022. The Procurator Fiscal Depute, Ms Sun appeared by Webex. KT, the deceased's partner and Neil Barnett, the chairman of the Haddo House Angling Club observed the proceedings by Webex. The evidence before me took the form of witness statements, documentary productions and a Crown notice to admit on the basis of which I find the following matters established.

[2] Mr Redpath was born on 7 April 1973, and died on 27 May 2021 at the River Ythan near Quarry Brae Cottage, Auchedly, Aberdeenshire. He was 48 years old at the time of his death.

[3] Mr Redpath was an employee of Macgregor Limited, where he worked as a hydraulic engineer. He also operated a landscape/gardening service assisted by his partner KT. Through this business Mr Redpath carried out grass cutting, earthmoving and other similar landscaping operations.

[4] Haddo House Angling Club has the fishing rights on a 6 mile stretch of the River Ythan and, as part of this, they are required to manage the banks and maintain safe access to the water. In July 2020 Mr Redpath took on the contract for cutting the grass

along the riverbank for the Club. On the first occasion Alexander Collie, the Banks Officer for the Club walked the riverbank with Mr Redpath.

[5] About 6.30am on Thursday 27 May 2021, the deceased left his home address for work. During the day, he spoke with Ms T and advised her he intended to carry out grass cutting that evening between the Ythanbank and Methlick area. He told Ms T that he was reluctant to carry out the grass cutting because recent rain made the area treacherous. Mr Redpath had cut the grass three times before this occasion. This was the first cut of the year 2021.

[6] At 9.00pm on that day, DM was at home near the locus putting his nine-year-old step-son to bed. As he went to close the blinds, Mr M became aware of an unusual sound like a motor running. This caused him to look toward the riverbank and he noted the back wheel of what appeared to be a small tractor sticking out of the water. He immediately grabbed his mobile phone and ran to the river bank. On arrival at the riverbank Mr M noted that the small tractor was almost fully submerged other than a rear wheel. It was unclear to him whether anyone was below the water and he contacted emergency services.

[7] Scottish Fire and Rescue Service attended and members entered the water and detected a body under the water. They turned the tractor further into the river and recovered the deceased onto the riverbank. Mr Redpath was wearing a red boiler suit and there were no obvious signs of injuries. Members of the Scottish Ambulance Service attended and carried out a full assessment. They found that the deceased was not alert

and *rigor mortis* had set in his jaw. At 9.55pm life was pronounced extinct, the deceased having been fully submerged for some time.

[8] Mr Redpath was using his own Kubota B1400 tractor at the time with a trailed flail mower separately powered by a petrol engine to cut the grass. The tractor is orange with four wheels. The tractor and mower were in good order and suitable for the job. There was no mechanical issue with the tractor or the mower that would account for them entering the river.

[9] The size of the tractor excluded it from the requirements of the Agriculture (Tractor Cabs) Regulations 1974 (W19) requiring roll-over protection to be fitted because it was less than 560kg in unladen weight and is therefore not a tractor as defined. It is excluded from the requirement to have roll-over protection fitted as this may increase the risk of a rollover. (Summary Report by Penny Falconer HM Inspector of Health and Safety 21 February 2022 paragraph 15).

[10] When Mr M returned home, his wife had spoken to her son who had been watching the man on the orange tractor and described him as coming from the Ellon side past his window, from right to left. The tractor was moving at normal speed until it stopped for the man to have a cigarette. When it restarted it was moving very slowly and bouncing up and down as if it was very rough. A vape and refill were retrieved from the front breast pocket of deceased's boiler suit.

[11] On 1 June 2021, at the Aberdeen Public Mortuary, Mr Redpath's remains underwent a *post mortem* examination by registered medical practitioners. The

examiners considered his lungs exhibited changes typical of drowning. The medical causes of death are:

Ia: Consistent with drowning (incident at work)

II: Cardiac enlargement

[12] The heart was enlarged beyond the expected range for height, with no obvious cause for this identified at autopsy. Cardiac enlargement is judged to be a significant contributing factor to death. Individuals with cardiac enlargement are at risk of sudden death at any time due to a fatal cardiac arrhythmia or an ischaemic event such as a heart attack. It was not possible to determine whether the deceased has suffered from a natural event whilst at work, causing him to lose control of the vehicle, or whether a period of immersion in water subsequently exacerbated his underlying cardiac disease.

[13] As the death was unwitnessed, the examiners were not able to determine how the deceased came to be in the water, however, circumstances suggested that entrapment under the vehicle may have hindered his ability to self-rescue. A toxicological report contained nothing of significance.

[14] The depth of the river when police divers entered the river to search for personal effects belonging to Mr Redpath on 28 May 2021, the day following the incident, was hip height. The section of ground in the immediate area where the tractor entered the river was not wet or muddy when photographs were taken at the site that day. Inspection of the locus identified nothing which might have caused the accident.

[15] Ms Sun adopted the conclusion of the HSE that the cause of the accident could not be determined. She drew my attention to the statement of Karen Strangward,

HM Inspector Health and Safety, who had inspected the locus on the day after the accident and taken photographs which were provided to me. While at the site, she formed the opinion that the tractor may have toppled sideways into the river as it was being driven along the bankside:

“I formed this opinion because there was significant reed growth at the edge of the river and considered that it may have been difficult to distinguish between the grass on the bank and the reeds growing from the river as shown in images PF9 to PF14 [pages 132 to 137]. Whilst this is my opinion, there is no definitive evidence to suggest this is what occurred.”

[16] Mr Redpath’s invoice of 7 July 2020 records a special instruction to cut two 1.2m strips at riverbank. Photographs PF13 and PF15 (pages 136 and 138) in particular appear to show that the area nearest to the water had already been cut without incident in a pass that safely skirted the locus of the accident. Photograph PF18 (page 141) appears to show that Mr Redpath was on a pass along the riverbank one vehicle width away from the water. If this is correct, and Ms Sun did not suggest otherwise, the lack of a clear boundary between the grass and the reeds would be of no significance.

[17] It seems most likely that the deceased suffered a health incident related to his cardiac enlargement which caused him to lose control of the vehicle such that it ended in the water with him trapped underneath it.

[18] On this basis, a roll-over protection might have assisted him to escape had he otherwise been in a position to do so. Although not a factor in the accident in question, given that roll-over protection may increase the risk of a roll-over in smaller tractors such as the one involved, I do not feel able to express a view on the failure to fit one

in this case. I do not find that there are any defects in any system of working which contributed to the death or the accident.

[19] After the hearing, Ms T asked for her gratitude to the police officers and the crews from Scottish Fire and Rescue Service and Scottish Ambulance Service who attended on 27 May 2021 to be recorded and I am happy to do this.