

## **SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW**

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

DETERMINATION by SAMUEL  
CATHCART, Esquire, Advocate,  
Sheriff of the Sheriffdom of Glasgow  
and Strathkelvin following an Inquiry  
held at Glasgow on the 9 and 10 June  
Two Thousand and Eight into the death  
of JOHN FRANCIS FAY

GLASGOW, 12 June 2008. The sheriff, having considered all the evidence adduced,  
DETERMINES: in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland)  
Act 1976 Section 6(1):

- (a) that John Francis Fay, born 25 February 1932 who resided at 110 Braidcraft Road, Glasgow died at the premises occupied by Planet Waste, Finglen Road, Glasgow at 1040 hours on 7 January 2006;
- (b) that the cause of death was:
  - 1a. Head injury due to
  - 1b a Fall, and
  - 2 Acute alcohol intoxication;
- (e) that:-
  - 1 On and prior to 6 January 2006 Mr Fay was paid by Planet Waste to perform night watchman duties at their premises at Finglen Place, Glasgow.
  - 2 While acting as a night watchman Mr Fay had access to the upper floor of the premises, where there was an electric fire and a television.
  - 3 On 6 and 7 January 2006 building works at the premises, including a staircase leading from ground level to the upper floor, had not been completed. In particular, there was neither handrail nor balustrade.
  - 4 On the morning of 7 January 2006, Mr Fay's body was found within the premises at the bottom of the staircase. His left foot was on the first step. The rest of his

body was on the floor at ground level. A handkerchief was lying within a foot or so of his right hand. An injury to his head had been bleeding.

5 The police and ambulance were summoned. Life was pronounced extinct by Dr Boyd, Police Casualty Surgeon at 1040 am on 7 January 2006.

6 Prior to the discovery of Mr Fay's body, the premises were secure. The key was on the inside of the locked door. £500 in cash was found in Mr Fay's jacket in an upstairs part of the premises.

7 At the time of his death his blood alcohol level was 265 milligrammes of alcohol per 100 millilitres of blood.

8 Post-mortem examination revealed injuries, including a skull fracture, which were consistent with Mr Fay having fallen.

**NOTE:**

At this Inquiry the Crown was represented by Miss Morag McLintock, Procurator Fiscal Depute. Although Mr Fay's son was present during part of the evidence, he did not wish to be represented nor to ask any questions. The procurator fiscal depute called the following witnesses:-

- 1 Joseph McGuinness, 57 Ravenscraig Drive, Glasgow.
- 2 Brian William Kilgour, 9 Burnside Road, Giffnock.
- 3 Colin Mackie, Sergeant.
- 4 Kevin Adamson, Detective Constable.
- 5 Scott Smith, Constable, all Strathclyde Police.
- 6 Stephen Norman Taylor, H M Principal Specialist Inspector Health and Safety, Health and Safety Executive, North West Construction Technical Unit, Merton Road, Bootle.
- 7 William Reilly, H M Inspector, Health and Safety Executive, 375 West George Street, Glasgow.
- 8 Michael Francis Thompson, H M Specialist Inspector of Health and Safety, Health and Safety Executive, 375 West George Street, Glasgow.

- 9 Yasmeeen Ahmad, H M Specialist Inspector Ergonomic, Health and Safety Executive, 375 West George Street, Glasgow.
- 10 Marjorie Black, Forensic Pathologist, Department of Forensic Medicine and Science, University of Glasgow.

### ***Evidence***

Mr McGuiness gave evidence of having known Mr Fay for 30 years. He obtained the job of night watchman for Mr Fay. He described Mr. Fay`s practice of sleeping upstairs while on duty. Mr McGuiness attended the premises of Planet Waste on the morning of 7 January to discover that the gates were closed, the door was locked and the shutter was down. These had normally been opened by Mr Fay. Mr McGuiness shouted to Mr Fay and eventually saw his body through the shutters. Mr Fay was found lying at the bottom of the stairs. An ambulance and police were summoned. When Mr McGuiness had last seen Mr Fay at about 5.00 on the Friday night he had seemed fine.

Mr Kilgour was the owner of Planet Waste. He denied that he had employed Mr Fay although he did pay him for “looking after the place”. Mr Fay was the only person who carried out this role. He gave evidence of building works being carried out within the premises. The stairs were of concrete and had still to be painted and finished. It was his intention to place a handrail and banister to the staircase. According to Mr Kilgour the upstairs part of the premises was not in use and there was no reason for Mr Fay to be upstairs as this part of the building was locked. He was present on 7 January 2006 when Mr Fay’s body was found at the bottom of the stairs. He had seen Mr Fay at about 5.00 on the Friday and had not smelled alcohol from his breath.

Sergeant Mackie attended the premises on 7 January. He looked for and found no evidence of forced entry.

Detective Constable Adamson also attended Planet Waste on 7 January 2006. He gave evidence of the premises being secure with the keys to the inside of the building. £500 cash was recovered from a jacket upstairs. He concluded

that there had been no break-in. He was present when Dr Boyd pronounced extinct at 1040 hours.

Constable Smith also attended Planet Waste on 7 January 2006. He gave evidence of a white handkerchief lying near to Mr Fay.

Mr Taylor gave evidence in accordance with his report, Crown Production no. 7. It was his evidence that the staircase was dangerous. In his opinion there should have been at least a temporary balustrade and handrails. In his experience it was common practice for such a balustrade to be made of scaffolding tubes. He considered that the lighting on the staircase may have been inadequate.

Mr Reilly became involved in investigating the circumstances of the death in July 2006. He arranged for other experts to become involved. He had obtained information from Mr Fay's wife that someone in addition to Mr Fay had acted as night watchman at the premises.

Mr Thompson gave evidence in relation to his report, Crown Production no. 6 in relation to the measurements of the staircase. It was possible for someone to fall from the upper set of stairs to the lower set, a distance of 2 metres.

Yasmeen Ahmad gave evidence about her report but she was unable to reach any conclusion which would have been of assistance to the court.

Dr Black gave evidence of the injuries sustained by Mr Fay listed in her report, Crown Production no. 3. She also gave evidence of the amount of alcohol in Mr Fay's blood at the time of his death which was greater than three times the legal driving limit. It was her evidence that the injuries sustained by Mr Fay could have been caused by him falling his own height, from the first step up on the staircase or from further up.

In the main, I accepted the evidence of all witnesses to be credible and reliable with the exception of Mr Kilgour. I did not accept his evidence that upstairs was off limits to everybody. This was inconsistent with the evidence of Mr McGuinness who said that Mr Fay would, on occasion, sleep upstairs in the premises where he had a fire and television. The fire and television can be seen in the photographs Crown Production no. 4. It also appears from the photographs

that two chairs have been pulled together in front of the television to make for more comfortable viewing. I accepted the evidence given by Mr. McGuinness.

There is no doubt, to my mind, that the condition of the stairway at the premises of Planet Waste on 6 and 7 January 2006 was dangerous in that no handrail was provided and no balustrade, even of a temporary nature, had been put in place to prevent someone falling a maximum distance of 2 metres to the set of stairs below. However, from the evidence led at this Inquiry, I am unable to determine the exact circumstances of Mr Fay's fall. There was no mark or damage to the lower set of stairs which might have indicated that Mr Fay had fallen from above. According to the pathologist the injuries sustained by Mr Fay, while consistent with a fall, that fall could have been from his own height. Mr Fay's left foot was on the first step above ground level which would indicate that he had started to climb the stairs but beyond that, I am of the view, that no further inference can be drawn. I am unable to conclude that the absence of handrail or balustrade was in any way connected to his death. I am unable, therefore, to determine in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 section 6(1)(c) or (d) that there were any reasonable precautions whereby Mr Fay's death might have been avoided nor that there were any defects in any system of working which contributed to his death. . No satisfactory evidence as to the lighting on the stairs at the time of Mr. Fay's fall was given. I heard no evidence which would enable me to conclude that a second nightwatchman was used at these premises.

I would like to express my sympathy and condolences to the Fay family and hope that this Inquiry has assisted them in coming to terms with their tragic loss.