

**SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT PORTREE  
UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY  
(SCOTLAND) ACT 1976**

**DETERMINATION**

**By**

**SHERIFF ALASDAIR LORNE**

**MacFADYEN**

**IN**

**FATAL ACCIDENT INQUIRY**

**REGARDING**

**ALLEN JAMES NAYLOR**

**PORTREE, 6<sup>th</sup> DECEMBER 2011**

The sheriff, having resumed consideration of the evidence and productions, Determines in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, section 6(1) that:

- (a) Allen James Naylor, aged 51 years, formerly of 3 Burrand Road, West Hampstead, London died soon after 2100 hours UTC on 28 July 2004 at 57° 14.14'N 006° 34.03'W, 4.6 miles off the west coast of Skye in 124m of water when the Fishing Vessel 'Kathryn Jane' LH269 sank there.
- (b) The cause of the accident was the ingress of water into the 'Kathryn Jane' causing her to founder at said location. The cause of death of the deceased was unascertained due to prolonged *post mortem* interval in the sea.
- (c) Reasonable precautions whereby the accident or the death might have been avoided were:

- (i) The deceased not taking the Kathryn Jane to sea in an unsafe and unseaworthy condition.
  - (ii) The wearing by the deceased of a lifejacket or having it stored in a location readily accessible from the deck area of the vessel.
  - (iii) The fitting of a hydrostatic release unit to the liferaft which was aboard the 'Kathryn Jane'.
  - (iv) The carrying by the 'Kathryn Jane' of an emergency position-indicating radio beacon 'EPIRB', which would have raised the alarm quickly and established the position of the vessel, enabling a rescue to operation to be initiated promptly.
- (e) Other than the reasonable precautions listed above, there were no defects in the system of working on board the 'Kathryn Jane' which contributed to the death or the accident resulting in the death.

#### **NOTE**

[1] This inquiry, under section 1(1)(a)(i) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ('the 1976 Act'), was held into the circumstances of the death as a result of an accident while at work, of Allen James Naylor. At the inquiry the Crown was represented by Mr. MacIver, Procurator Fiscal Depute, Portree. No other party was represented at the inquiry. Evidence was led from two witnesses, Andrew Brown and Willem Hart.

[2] The accident which led to Mr. Naylor's death was the sinking of the fishing vessel, 'Kathryn Jane' LH269 six miles south/southwest of Loch Bracadale, Isle of Skye probably on 28 July 2004. Mr. Naylor was the owner/skipper of the vessel and he was certainly on board at the time of the accident. His body was recovered on the shoreline at Lochmaddy, North Uist on 24 August 2004.

[3] It was thought likely that another individual, Lance Edwin Wiltshire-Butler, was on board the Kathryn Jane as crew on what turned out to be her last voyage from Mallaig on 28 July 2004. The evidence of Mr. Brown, a chief inspector with Northern Constabulary dealt firstly with the inquiries which the police made following the accident into Mr. Wiltshire-Butler's whereabouts after 28 July 2004.

[4] From that evidence, which was to the effect that there were no sightings at all of Mr. Wiltshire-Butler after 28 July 2004 and that he had made no contact with his family, in particular his sister in Australia with whom he had previously kept in touch and no evidence of any activity on any bank accounts or mobile telephone after that date, I was satisfied that it was likely that he had died in August 2004.

[5] There was evidence that he had previously worked as crew on board the Kathryn Jane and that he was seen in Mallaig, from where she sailed on 28 July 2004. While there had been one report of him heading away from the harbour, it was also clear that he had the opportunity to be on board the Kathryn Jane on that date.. I was satisfied from the evidence that he, as well as Mr. Naylor, had been on board the Kathryn Jane on her last voyage from Mallaig on 28 July 2004.

[6] Chief Inspector Brown then gave evidence regarding the search for the Kathryn Jane. This had gone on at some length eventually leading to the location of the vessel on 1 September 2004 on the seabed some 4.6 miles off the west coast of Skye in 124 metres of water.

[7] Before that the body of Mr. Naylor had been found on the shore at Lochmaddy, North Uist on 24 August 2004. The body of Mr. Wiltshire-Butler has not been found.

[8] The other witness at the inquiry was Willem Hart, an inspector with the Marine Accident Investigation Branch ('MAIB'), a branch of the United Kingdom Department for Transport whose responsibilities include the investigation of any accident occurring in UK waters. Mr. Hart had carried out as thorough an investigation into the circumstances

of the accident as he could and wrote a report on his investigations. That was lodged as a production. It is also accessible on the internet at [http://www.maib.gov.uk/publications/investigation\\_reports/2005/tri\\_report.cfMm](http://www.maib.gov.uk/publications/investigation_reports/2005/tri_report.cfMm).

[9] From Mr. Hart's evidence and his report it is clear that, before sailing on the 28 July 2004, the Kathryn Jane was in a poor state of repair, with numerous holes in the upper deck plating.

[10] Although a matter of inference, or perhaps even speculation, the likeliest cause for the foundering of the Kathryn Jane was that her trawl gear came 'fast' some time during fishing on 28 July 2004, leading to the deck edge becoming submerged. Once that had occurred, there followed rapid downflooding through holes in the upper deck and the non-watertight fish hold hatch. That in turn led to the vessel foundering.

[11] Mr. Hart, in both his report and evidence, voiced some serious concerns regarding the operation of this vessel. In my view, those concerns could be characterised as reasonable precautions which, if taken, might have prevented the accident, namely the foundering of the 'Kathryn Jane' and the death of Mr. Naylor (and the likely death of Mr. Wiltshire-Butler). Those concerns were as follows:

- The 'Kathryn Jane' went to sea on 28 July 2004 in an unsafe and unseaworthy condition. The poor condition of the deck area seemed to have accelerated the foundering of the vessel once the trawl gear became 'fast', by allowing the rapid ingress of water into the vessel.
- When Mr. Naylor's body was found, he was not wearing a lifejacket. He had never been seen wearing one when working on the 'Kathryn Jane'. It seems likely that lifejackets were stored between decks and were not easily accessible in the event of an emergency occurring when any individual was on deck. A reasonable precaution would have been for Mr. Naylor to be wearing a lifejacket, or at least for one to be stored on deck where it would have been easily accessible.
- The various searches for 'Kathryn Jane' and her crew did not locate a liferaft from the vessel. Despite this observation, 'Kathryn Jane' was known to have had a

liferaft that was fitted to the wheelhouse roof. The assistant harbourmaster at Portree, Isle of Skye, had seen it lashed onto its cradle some time before the last voyage. The probability is that either the liferaft was, indeed, lashed down and could not be activated, or, if a hydrostatic release unit was fitted, it was fitted incorrectly or failed to operate.

- An Electronic Position Indicating Radio Beacon ('EPIRB') was not fitted to the vessel and it is not required under the existing Code for below 15m fishing vessels. However, if an EPIRB had been fitted, and been properly attached to the vessel, it would have released and activated once the vessel sank below the surface of the sea. Emergency services would then have been alerted, and could have responded by instigating a search and rescue mission immediately after the accident occurred. A rapid mobilisation of search and rescue units in the area, would have provided 'Kathryn Jane's' crew with the best chance for survival.

[12] While there can be no certainty as to what happened to the 'Kathryn Jane' immediately before she foundered, or how quickly, what can be said is that if the above-mentioned measures had been addressed, then the death of Mr. Naylor and the likely death of Mr. Wiltshire-Butler might have been avoided.

[13] It remains simply for me to express my condolences to the families of both Mr. Naylor and Mr. Wiltshire-Butler.