

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FALKIRK

[2014] FAI35

DETERMINATION

of

SHERIFF CRAIG CALDWELL

into the death of

JOHN PAUL PRATT

**in terms of the Fatal Accidents and
Sudden Deaths Inquiry (Scotland) Act
1976**

[1] The sheriff having resumed consideration of the evidence makes the following determination in terms of a the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976:

[2] in terms of section 6(1)(a): where and when the death and any accident resulting in the death took place. John Paul Pratt died on 29 May at 11.00 hours at Forth Valley Royal Hospital following an accident on the M80 Glasgow to Stirling Motorway, Haggs, District of Falkirk at a part 430 metres south of the M876 slip off.

[3] In terms of section 6(1)(b): the cause or causes of such death and any accident resulting in the cause of the deceased's death was:

- (a) multiple injuries
- (b) blunt force trauma
- (c) vehicular collision (driver).

[4] in terms of section 6(1)(e): see paragraphs [27] to [58] below.

[5] I heard evidence in relation to this inquiry on 11, 12 and 19 August 2014 and heard submissions by the parties on 22 August 2014.

[6] Parties had helpfully entered into a substantial Joint Minute which agreed almost all of the relevant evidence in the inquiry.

[7] The Crown was represented by a procurator fiscal depute Miss Graham in the public interest; Dr Keddie was represented by Ms Donald, solicitor; Pollock (Scotrans) Ltd were represented by Miss Anderson; Driver and Vehicle Licensing Agency (DVLA) was represented by Mr McConnell, solicitor.

[8] Mr Pratt's family elected not to participate but attended during the evidence. His parents each gave evidence by way of affidavit. Each were of considerable assistance to the inquiry. I heard evidence from the following witnesses: Police Constable Lee Fisher, Police Scotland Road Policing Unit; Dr Richard McCallum, senior consultant, Emergency Medicine, Forth Valley Royal Hospital; Catherine Hill, administrator, Stuart Nicol Transport, Shotts; William Paterson, transport planner, DSV; Mark Jackson, operations director, Pollock Transport; Dr James Keddie, general practitioner, retired; Dr Gordon McGlashan Duff, occupational physician; Dr Giorgia De Paoli, Forensic Toxicologist Centre for Forensic Medicine, Dundee; Janet Susan Leach, senior executive officer, Medical Policy, Driver and Vehicle Licensing Agency; Dr Ronald Gilmour Neville, general practitioner, Westgate Medical Practice, Dundee. I also had affidavit evidence from Niall Dickson, chief executive, General Medical Council; Berry Hill, HN Inspector, Health and Safety, HSE, Edinburgh; Dr Gareth Wynn Parry, Senior Medical Advisor, Driver and Vehicle Licensing Agency.

NOTE

[9] On 29 May 2012 the deceased John Paul Pratt then in the course of his employment as a driver with Pollock (Scotrans) Ltd, 10 Blackburn Road in Bathgate was involved in a fatal road traffic accident on the M80 motorway district of Falkirk.

[10] Death having occurred as a result of an accident in the course of his employment, a Fatal Accident Inquiry in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ("the 1976 Act") is mandatory. Section 6 of the 1976 Act requires the sheriff to make a determination on the following matters:

- (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.

John Paul Pratt

[11] Mr Pratt was 39 years of age and resided at 8 Cortachy Place, Bishopbriggs with his parents and his daughter.

[12] He had a history of heroin addiction dating back to around 1993. He took part in a methadone programme in the mid-1990s and intermittently the dihydrocodeine substitute programme from 1999 until about 2004. He was referred to specialist services for rehabilitation on a number of occasions but failed to engage.

In 2008 he had a deep vein thrombosis (DVT) relating to intravenous drug use. He was dependant on heroin from around 1993 until his death.

[13] From February 1999 until 2010 the deceased's general practitioner was Dr James Keddie, Brackenbrae Surgery, Kirkintilloch Road, Bishopbriggs.

[14] Mr Pratt had completed an apprenticeship as a printer and from his early 20s until his death he was employed by various companies in the transport industry. He undertook various roles including the position of driver. He passed his HGV licence test in December 2005.

[15] He worked from Stuart Nicol Transport, High Street Industrial Estate, Shotts as a lorry driver from November 2008 until June 2011. His employment was then transferred to Pollock (Scotrans) Ltd, 10 Blackburn Road, Bathgate under the Transfer of Undertakings (Protection of Employment) Regulations 2006. He was employed by Pollock (Scotrans) Ltd at the time of his death although in effect he was subcontracted to another logistics company bearing the title DSV.

[16] The accident occurred at around 9.35 on 29 May 2012 on the M80 Glasgow to Stirling Motorway, Haggs, District of Falkirk at a part 430 metres south of the M876 slip off.

[17] Iveco motor lorry registration number SP55DYC was stationary in northbound lane one at the locus in its role as an impact protection vehicle. The large illuminated direction sign and crash cushion apparatus fitted to the vehicle were in operation. Mr Pratt was travelling north in lane one in motor lorry registration number DK07HXZ. He was apparently oblivious to the illuminated warning board and unaware that the impact protection vehicle was stationary ahead.

[18] He applied the brakes of the vehicle at a very late stage and was unable to avoid a collision with the rear of the stationary vehicle in lane one of the locus. The cab of the lorry was severely damaged by the impact with the bulkhead and dashboard crushed backwards trapping him and causing fatal injuries. He was declared dead at Forth Valley Royal Hospital at 11am. The cause of his death is as outlined in the Post Mortem Report which was agreed amongst the parties.

[19] It appears that the deceased was driving without due care and attention or being otherwise distracted whereby he did not become aware of the presence of the impact protection vehicle in the lane ahead until it was too late to react.

[20] He disclosed to attending medical personnel that he had taken a bag of heroin the previous evening. Two bags of heroin, a bag of diazepam and drug paraphernalia were recovered from his vehicle. Post mortem toxicology revealed the presence of morphine and morphine metabolites in cardiac blood. Heroin breaks down into morphine. It is not possible to say whether the presence of morphine and metabolites was as the result of administration of heroin by the deceased, administration of morphine by attending medical personnel or a combination of the two.

[21] Common street contaminants of heroin were detected in his blood and organs. This indicates that he had taken heroin in the recent past but it is not possible to say when.

[22] His habit, as far as is known, was to take a bag of heroin in the morning and a bag in the evening. He appears to have slept in on the morning of the accident. The existence of two bags of heroin in the van and his disclosure to medical personnel suggests that he did not take a bag that morning. The inquiry was unable to

determine what the effect might have been of the fact that he did not appear to have taken a bag of heroin that morning. William Patterson, a transport planner for DSV, saw him a very short time before the accident and had no concerns about his fitness to drive. There is insufficient evidence to establish what caused him to fail to react to the presence of the impact protection vehicle on the day of the accident.

[23] I heard evidence about Mr Pratt's employment history and general demeanour from a number of witnesses including Mr Patterson and Catherine Hill who was an administrator with Stuart Nicol Transport who previously employed Mr Pratt. It was clear from the evidence of these witnesses and from Mr Jackson, operations director of the employers at the time of his death, that he was a highly regarded and valuable employee. Notwithstanding his apparent longstanding dependence on heroin, he was a diligent employee whose attendance and timekeeping were exemplary. He was highly regarded by colleagues, managers and by customers alike.

[24] As noted above the immediate circumstances of the accident resulting in his death are well understood and accepted by all parties.

[25] The accident was the subject of a professional and thorough investigation by experienced police officers whose report was lodged as Crown production 2 as was the post mortem report, Crown production 4. The traffic management scheme in place at the site where the collision took place was also investigated by the Health and Safety Executive. No deficiency in such scheme was found.

[26] The medical treatment given to Mr Pratt at the scene and at Forth Valley Royal Hospital Accident and Emergency Department was recorded in Crown

production 6 and spoken to by Dr McCallum. No issue was raised by any party or in the post mortem examination concerning this treatment.

[27] The principal issue for the inquiry and the only issue in which there was contention came to be the means by which Mr Pratt as a longstanding abuser of illegal drugs was able to obtain a class 2 licence to drive heavy goods vehicles and public service vehicles. As a sub issue the inquiry was concerned with the circumstances in which he had been allowed to obtain and retain a class 1 licence while he was being treated for heroin addiction by his then general practitioner Dr Keddie.

[28] In relation to these issues I heard evidence from Dr Keddie, Dr Duff, Dr Neville and for the DVLA by Mrs Miles who had the benefit of the affidavits of Niall Dickson, Chief Executive of the General Medical Council and Dr Gareth Wynn Parry, Senior Medical Advisor, Driver and Vehicles Licensing Agency.

Procedure in application for a class 2 licence

[29] After establishing aptitude or competence to drive the applicant must complete an application form "D2" and subject himself to a medical examination to be carried out by a medically qualified practitioner who will complete a further form (Form D4).

[30] In form D2 the applicant is asked *inter alia* whether he has experience of persistent drug abuse or dependency. In form D4 the medical practitioner is asked, *inter alia*, whether there is a history of or evidence of (a) persistent drug misuse in the past 12 months and (b) drug dependency in the past three years.

[31] The notes to form D4 advise applicants that if they have any of the conditions set out in the medical standard part of the form (which includes drugs and alcohol dependence) they may not be granted a licence. In fact disclosure of a heroin addiction will result in a refusal or, if made after the grant of such a licence, revocation for a minimum period of three years, free of such addiction or dependence.

[32] Dr Keddie became Mr Pratt's general practitioner in early 1999 and was immediately aware that he was addicted to heroin. He was also aware of the General Medical Council's guidelines in relation to such matters. He gave evidence that he would have discussed driving at Mr Pratt's initial appointment in February 1999 when he disclosed his employment as a delivery driver. However he did not follow the matter up nor did Dr Keddie notify the Driver and Vehicle Licensing Agency of this fact notwithstanding that he was aware of the General Medical guidelines.

[33] It must be borne in mind that the legal obligation in relation to a driver's fitness to drive lies with the driver himself. Mr Pratt failed to notify DVLA at any time while he held a driving licence, of his dependence on heroin, and clearly made a false declaration in his application for a Class 2 licence on Forms D2 and D4 in failing to disclose that dependency.

[34] The GMC guidelines for doctors in relation to when and how to notify concerns about patients' fitness to drive have been in place since at least 1995. They have varied little over the years. There are a number of steps in the procedure as follows:

1. It is a doctor's duty to tell patients if they have a condition that may affect their ability to drive and to advise patients that they have a legal duty to inform the DVLA.
2. Doctors who are in doubt about whether a patient may be unfit to drive should seek the advice of an experienced colleague or the DVLA medical advisors.
3. If a patient is incapable of understanding advice about their ability to drive, for example because of dementia, doctors should notify the DVLA.
4. If a patient does not accept the diagnosis or for another reason continues to drive when he or she might be unfit to do so, the doctor should make every reasonable effort to persuade them to stop. For example he might suggest that they seek a second opinion or discuss their concerns with the patient's relatives, friends or carers if they please.
5. If a doctor becomes aware that a patient is continuing to drive then doctor should contact DVLA and disclose any relevant medical information.
6. Before giving information to the DVLA the doctor should try to inform the patient of his or her decision to do so. Once DVLA has been informed the doctor should write to the patient to confirm that disclosure of his condition has been made.

[35] Although the GMC guidelines are directory rather than mandatory, doctors are expected to be familiar with them and to follow the guidance contained therein and also to use their own judgement in their application of the guidelines in the

particular situation encountered in practice. Compliance with the guidelines is regarded as a matter of importance by the profession.

[36] It was submitted by the Crown and by DVLA that Dr Keddie failed to comply with GMC guidelines, by failing to advise DVLA of Mr Pratt's continued drug dependency. Dr Keddie himself in his evidence accepted that he might have been more assiduous in dealing with the issue of Mr Pratt's driving status. It should be made clear that Dr Keddie was never aware that Mr Pratt had applied for and had been granted and was employed as a driver of a large goods vehicle.

[37] It is clear however that whatever knowledge or understanding Dr Keddie had about Mr Pratt's employment status he had been advised in late 2000 that the pursuer had been disqualified from driving and indeed had an outstanding prosecution in respect of a road traffic matter for which a further disqualification from driving might well be imposed.

[38] At the time it was noted that Mr Pratt was employed loading trucks on the nightshift.

[39] In July 2002 Dr Keddie was advised that Mr Pratt was working full time [].

[40] Although Dr Keddie accepted in evidence that he knew Mr Pratt was a driver from 1999 when Mr Pratt became his patient, at some point it is not clear that he was aware that Mr Pratt continued to drive after the period of disqualification in 2001/2002 or beyond.

[41] Moreover I suspect that Dr Keddie, in common with many other general medical practitioners in busy practices, gave priority to his primary function of treating his patient's medical condition to the best of his ability and that any

responsibilities he had in connection with the enforcement of a road traffic licensing regime were not foremost in his mind on a day to day basis.

[42] I accept Dr Keddie's evidence that on being made aware of Mr Pratt's addiction and employment as a driver in 1999 he raised the issue of notification to the DVLA with him. Beyond that the evidence of his knowledge of Mr Pratt's driving and employment status is insufficiently clear to found any conclusion.

The D4 medical

[43] Many D4 medical examinations are carried out not by the applicant's general practitioner but by an occupational physician such as Dr Duff who gave evidence to the effect that he had carried out tens of thousands of such examinations. He was concerned that in dealing with the questions about existing medical and psychiatric conditions which could not be ascertained or verified by a physical examination the examiner had to rely on the applicant to answer these. Said in relation to that part of the examination he was "merely a scribe". He expressed concerns regarding the veracity or candour of some applications in some applicants in their responses to these questions. He gave, as an example, information on heart conditions in respect of which he said many applicants believed that full disclosure would result in the refusal of an application. In Dr Duff's opinion there ought to be a requirement that the examination is carried out by a general practitioner or that a general practitioner is required to verify or countersign the application. He expressed this opinion in the context of his concern that Scotland has the highest rate of drug addiction in Europe.

[44] Dr Neville was called by the procurator fiscal as an expert witness on the relevant practices of general practitioners. He is himself an experienced general

practitioner. He is familiar with the relevant GMC guidelines and with the D4 procedure. However he had not hitherto appreciated that where a medical examination and D4 procedure was carried out by a doctor who was not the applicant's general practitioner that it did not require to be referred to such general practitioner for verification. He was firmly of the view that such a verification was a necessary element in the protection of the public safety. Indeed he expressed his "embarrassment" that the lack of such a verification safeguard, which was, as he put it "out of touch with reality". His concerns were heightened given the high incidence of heroin use amongst young men in urban areas. In essence he did not consider that the current system was a safe one.

[45] It is commonplace he said for a general practitioner to be asked to countersign and verify information about their patient's connection with, for example, applications for insurance. His own practice deals with many applications in connection with his patients' work in the offshore oil and gas industry. Such activities are neither difficult, time consuming nor expensive.

[46] It was important he said that someone driving a lorry or a bus should not be using illicit drugs, that self-certification of such use was not a satisfactory means of protecting the public safety.

[47] Dr Gareth Wynn Parry, the Senior Medical Advisor to DVLA, gave evidence in his affidavit about the DVLA's approach to the licensing of drivers in the context of their fitness to drive.

[48] In relation to the application for a class 2 licence he noted that the advantage of a general practitioner carrying out the D4 medical is that the general practitioner has an in depth knowledge of the applicant's medical history.

[49] However he also pointed to a number of potential disadvantages. These included:

- A possible higher cost burden for drivers through a lack of competition.
- Potential to threaten the livelihood of those companies that build their business on completing D4s.
- A GP may be tempted to act as his own patient's advocate rather than as his independent assessor.
- If GPs are required to complete D4s without saying how long the waiting period will be, drivers may have a lapse in driving entitlement due to the GP not examining them in time.
- GPs may be tempted to fill in the D4 from patient records rather than by a new examination which could miss the real state of health.
- Private companies/occupational health providers are more likely to be geared up to doing the ? visual check than GPs.
- Businesses which employ large numbers of vocational drivers such as haulage firms may have the D4 medical examination done by their own occupational health facilities so they know that the application is in process. Having GPs do the D4 would remove this benefit.
- Applications originating from the military could be delayed.

[50] He went on to say that such a practice would have financial implications for the applicant and that in his view amendment of secondary legislation to acquire such a procedure would be necessary as would a change in general practitioners' contracts.

[51] I find no force in any of these objections. Indeed I was surprised that a professional person should offer these as a contribution to an inquiry into these serious matters. I was further concerned that they should be repeated by the DVLA's other witness, Mrs Leach who gave her evidence in person. She is a Senior Executive Officer in the Medical Policy Unit of the DVLA where she has worked for six years. She confirmed that the issue informing the policy in relation to the medical fitness of applicants for class 2 licences was the safety of the public and its interest that persons driving lorries (being potentially more dangerous vehicles) for long periods of time on the public roads should be fit to drive. The department was made aware of the circumstances of Mr Pratt's death in April 2014. There was no discussion about the circumstances of his application. No concerns arose as to the efficacy of the current procedures; the system operated adequately; there are no plans to change the procedure. In response to the suggestion that general practitioners should verify or countersign the D4 she enunciated similar objections to those expressed by Dr Wynn Parry but added further objections; that a change in legislation would be required; there would require to be a public consultation; there would require to be a change in the general practitioners' contracts; that it was unlikely that the minister would accede; it would add to the burden of red tape when it was the government's policy to reduce that burden; there would be delay and additional cost.

Discussion

[52] The DVLA has determined that it is in the public interest, as part of the statutory regime for the licensing and drivers and vehicles on public roads to put in place a procedure to ascertain whether applicants for driving licences and existing holders of such licences are and continue to be medically fit to drive. The overarching issue is of course the safety of the public or the other road users as drivers or passengers or as cyclists or pedestrians.

[53] In the furtherance of the aim of protecting the public the DVLA has identified certain medical conditions which if present or recent will render an applicant unfit to hold the relevant licence, because of the risks associated with such conditions in the context of road usage and safety. Amongst the prescribed conditions are certain “psychiatric illnesses”. These are set out at Part 3 of the form D4 which is the medical examination report which requires to be completed by every applicant for a class 2 licence to drive a bus or a lorry. There are seven such conditions listed. They include

- (a) Persistent alcohol misuse in the past 12 months
- (b) 5. Alcohol dependence in the past three years
- (c) 6. Persistent drug misuse in the past 12 months
- (d) 7. Drug dependence in the past three years

There is of course a clear disincentive to candour on the part of an applicant in responding to these questions; if they disclose such a condition the application will almost certainly fail.

[54] It must be remembered the applicants for such licences are almost certainly motivated by a desire to gain employment or to gain more lucrative employment.

Even if the vast majority of applicants are honest, without a reference to the notes of an applicant's medical history, the information offered on form D4 cannot be relied upon to be comprehensive and accurate. It is plain from the reading of the form D4 that few of the conditions which are the subject of enquiry are capable of being disclosed by a physical medical examination. Moreover much of the detailed information sought about past medical conditions and procedures will be very difficult for an applicant to give even with guidance and explanation from the examining doctor. In addition some of the information sought is necessarily subjective and an applicant without any intention to mislead nonetheless may respond in a misleading manner. The use of drugs and alcohol for example are areas which are notorious for under reporting. I appreciate that together with the "At a Glance Guide" issued by DVLA to assist medical practitioners and the notes to the form, an experienced medical practitioner will elicit a great deal of relevant information but if he is not the applicant's general practitioner with full access to the applicant's records the product of the medical examination and completion of form D4 has the clear potential to be incomplete, misleading or false.

[55] In the submission of the DVLA and in the evidence of Dr Wynn Parry and Mrs Leach a number of reasons why it is not appropriate for a GP to be required to verify or countersign the results of the D4 examination were offered. As noted above I was significantly unimpressed by these passages of evidence. They seem to me to evince a depressing degree of bureaucratic obstructionism rather than a desire to devise and maintain a practical and robust system of licensing individuals to drive dangerous vehicles.

[56] It was claimed that a requirement for a general practitioner to countersign a D4 would require a change of legislation and change in the general practitioners' conditions of contract. Dealing with the latter this was contradicted by Dr Neville whose evidence in this regard I prefer to the evidence of Dr Wynn Parry and Mrs Leach. As to a change in legislation I am puzzled by this claim standing the terms of Part 12 of D4 "Applicants Consent and Declaration". This part requires the applicant's consent to further medical examination and intervention and to disclosure by "my doctors and specialists to release reports and medical information about my condition relevant to my fitness to drive.

[57] I can conceive of no barrier where the D4 examination is carried out by a doctor other than the applicant's general practitioner to the DVLA forwarding a communication to the applicant's general practitioner advising him of the application and seeking simple written confirmation that there is contained in the general practitioner's records no evidence of a condition which is likely to effect the applicant's fitness. It does not follow in my view that any significant further cost or delay would be incurred as a result of such a practice.

[58] **I have therefore recommended that the DVLA institute a practice whereby in cases where the examining doctor is not the applicant's general practitioner that the general practitioner is asked to verify from his records that the applicant has no condition likely to adversely affect his fitness to hold a relevant licence.**

[59] I have no determination to make in terms of section 6(1)(c) and (d) of the Act.

[60] For the sake of completeness I have no comment to make on the guidelines issued by the General Medical Council from time to time in relation to the obligations of doctors in disclosing to the DVLA any healthy medical conditions

which might adversely affect patient's ability to drive. It seems to me that these guidelines are clear and explicit. While I recognise that they will cause ethical concerns for some GPs in some circumstances it is right that they ultimately be left to the professional judgment of the general practitioner in the light of the knowledge of and consideration of guidelines. I am aware that GMC frequently reminds general practitioners of the existence and import of these guidelines.

[61] Finally I am indebted to the parties and the legal representatives, particularly to the Procurator Fiscal Depute Miss Graham for her efforts in preparing and presenting the evidence of the inquiry and in preparing the lengthy joint minute which was agreed amongst all of the parties and was of considerable assistance to me.

[62] I am also grateful to the legal representatives for their efforts in the preparation of their written submissions. That I have not commented at length on these submissions apart from those of the Crown should not found the inference that I have not found them useful and informative.

[63] I have concluded that in the circumstances it is not reasonable, necessary or appropriate to convene a further sitting of the Inquiry for the purposes only of reading my determination and accordingly it will be issued to parties by the Sheriff Clerk.

Craig Caldwell

19 November 2014.