

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT INVERNESS

[2025] FAI 29

INV-B80-25

DETERMINATION

BY

SHERIFF EILIDH MACDONALD

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

into the death of

FRASER JOHNSTONE

INVERNESS, 11 July 2025

FINDINGS

The sheriff, having considered the information presented at the Inquiry, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (hereinafter referred to as “the Act”) that:

- 1. In terms of section 26(2)(a) of the 2016 Act (when and where the death occurred):**

That the late Fraser Johnstone, born 16 December 1940, died at Raigmore Hospital Inverness at or about 04:40 hours on 7 June 2024.

2. **In terms of section 26(2)(b) of the 2016 Act (when and where any accident resulting in death occurred):**

That the accident resulting in death occurred during the afternoon of 3 June 2024 at a time sometime after 12 noon and shortly prior to 16:00 hours at Balnuran Farm, Balnuran, Culloden Road, Inverness.

3. **In terms of section 26(2)(c) of the 2016 Act (the cause or causes of death):**

That the cause of Mr Johnstone's death was:

- (a) Multi-Organ failure
- (b) Rhabdomyolysis; Myocardial Infarction; Rib Fractures
- (c) Crush injury

4. **In terms of section 26(2)(d) of the 2016 Act (the cause or causes of any accident resulting in death):**

That the cause of the accident resulting in the death was that while Mr Johnstone was feeding colostrum to a calf, he was attacked by a female cow which pinned him against a wall, threw him to the ground and trampled him on his chest and body.

5. **In terms of section 26(2)(e) of the 2016 Act (any precautions which (i) could reasonably have been taken, and (ii) had they been taken, might realistically have resulted in death, or any accident resulting in death, being avoided):**

There are no precautions which could reasonably have been taken, which might realistically have resulted in the death, or accident resulting in death, being avoided.

6. **In terms of section 26(2)(f) of the 2016 Act (any defects in any system of working which contributed to the death or the accident resulting in death):**

There were no defects in any system of working which contributed to the death or the accident resulting in Mr Johnstone's death.

7. **In terms of section 26(2)(g) of the 2016 Act (any other facts which are relevant to the circumstances of the death):**

There are no other facts which are relevant to the circumstances of Mr Johnstone's death.

RECOMMENDATIONS

In terms of S26(1)(b) of the 2016 Act there are no recommendations to make as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, or (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances.

NOTE

Introduction

[1] This is a mandatory inquiry in terms of section 2(3) of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016, because Mr Johnstone died as a result of an accident whilst he was acting in the course of his occupation.

The participants and their representatives at the Inquiry

[2] The Procurator Fiscal, who represents the public interest, issued notice of the Inquiry on 21 March 2025. A Preliminary Hearing took place at Inverness Sheriff Court on 19 May 2025 before the Inquiry took place on 3 June 2025. Mr Burton, Procurator Fiscal Depute, appeared for the Crown; there were no interested parties and the family were not represented.

[3] At the Preliminary Hearing it was established that there were to be no matters in dispute. The medical information was not in dispute. The Crown intended to rely on witness statements taken of witnesses Margaret Johnstone, Mr Johnstone's wife and Malcolm Johnstone, Mr Johnstone's son. There were also witness statements lodged of Dr Benjamin Greateorex, Specialist Doctor in Critical Care, who provided treatment to Mr Johnstone after he was admitted to Raigmore Hospital Inverness; and PC Lewis Appleton, the Reporting Officer who had taken statements from the witnesses.

Penny Falconer from the Health and Safety Executive ("HSE") had provided a report. There had been no separate investigation by the Health and Safety Executive. They had not visited the site of the accident but had provided a report on the circumstances of the accident based on the information made available to them. The Crown's case was entirely contained in a Notice to Admit lodged on 12 May 2025. The contents of the Notice to Admit were not controversial and simply reflected the evidence contained in the witness statements and the relevant information in the documents lodged: therefore the Crown submitted that there was no need for oral evidence to be led at the Inquiry.

I was asked to proceed with the Inquiry on the basis of the written information, which I

agreed to do. The Inquiry took place at Inverness Sheriff Court on 3 June 2025. At the Inquiry I accepted the Facts as set out in the Notice to Admit. The Inquiry also had the following productions:

- (a) The Intimation of Death form sent to the Procurator Fiscal dated 14 June 2024.
 - (b) Relevant extracts from NHS Highlands Medical Records pertaining to Mr Johnstone.
 - (c) Report by the Health and Safety Executive (HSE) outlining precautions required for Cattle Handling, Cows with Calves.
 - (d) Agricultural Information sheet No 35 produced by the HSE pertaining to Handling and Housing Cattle, which is non-compulsory guidance issued by the HSE.
- [4] Written submissions were also lodged by the Crown.
- [5] On the basis of all this information I was able to make my findings.

The legal framework

[6] The Inquiry is held under section 1 of the Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (the 2016 Act) and is governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (“the 2017 rules”). The purpose of such an Inquiry is set out in section 1(3) of the 2016 Act and is to: (a) establish the circumstances of the death, and; (b) consider what steps (if any) might be taken to prevent other deaths in similar

circumstances. An Inquiry is an inquisitorial process and it is not the purpose of an Inquiry to establish civil or criminal liability.

Summary

[7] On 3 June 2024 Fraser Johnstone resided at Balnuran Farm, Balnuran, Culloden Road, Inverness IV2 5EL with his wife, Margaret Johnstone. He was a self-employed farmer. He was the tenant and operator of the farm. The farm was rented by Mr Johnstone from Nairnside Estates. Mr Johnstone was the only active farmer on the farm at that time.

[8] At approximately 0730 hours on 3 June 2024, Mr Johnstone left his home to attend to the animals on the farm. He returned home after some time to have breakfast, then carried out a few jobs within the house and then left to tend to the animals again sometime after 12 noon.

[9] At approximately 1600 hours that afternoon Mr Johnstone returned to the house on a quad bike. He had blood and bruising around his mouth and was holding his chest. His wife assisted him into the house and lay him on a chair.

[10] Mr Johnstone told his wife that he had been in a cow shed feeding colostrum to a calf which had not been getting enough milk from the cow. As he was doing so the cow, which was the mother of the calf, had pinned him against the wall of the cow shed, thrown him to the ground and trampled him on the chest and body. After the attack he crawled from the cow shed to the outside, climbed onto his quad bike and rode home.

[11] Mrs Johnstone telephoned their son Malcolm Johnstone, who then attended at the house at approximately 1630 hours and contacted an ambulance at approximately 1635 hours. An ambulance attended the house at 1654 hours and left with Mr Johnstone at 1718 hours arriving at Raigmore Hospital, Accident & Emergency Department at 1731 hours on that date. Mr Johnstone was assessed there and then taken to the Intensive Care Unit (ICU).

[12] Mr Johnstone underwent a CT scan on 3 June 2024 at approximately 1750 hours. He was found to have left sided rib fractures on the 2nd to 4th ribs and a mildly displaced sternal fracture. He had a stent placed in his right coronary artery.

[13] On 4 June 2024 he underwent a chest X-ray at 0840 hours. He was found to have a moderate cardiomegaly suggesting a degree of cardiac failure. A further CT scan was undertaken later that same day which showed left sided anterior rib fractures on 2nd to 6th ribs, and cardiomegaly of both sides of the heart.

[14] On 5 June 2024 Mr Johnstone's condition continued to deteriorate: he suffered a heart attack and kidney failure. He was moved to palliative care and placed on a "do not attempt CPR" instruction, after discussion with his family and with their consent, which they gave in accordance with Mr Johnstone's own wishes as they knew them to be. Treatment continued but Mr Johnstone's condition deteriorated until the family were contacted at 0300 hours on 7 June 2024 to attend hospital. At 0440 hours on 7 June 2024 Mr Johnstone was pronounced life extinct by Dr Alexander Hunter, after life support was withdrawn.

Conclusion

[15] Mr Fraser Johnstone was 83 years of age at the time of his death. He had been married to Margaret Johnstone, his wife, for 51 years and together they had two sons. He lived on and worked the farm at Balnuran Farm, Balnuran, Culloden Road Inverness. He had been born there and had worked there alongside his father from an early age. After the age of 16 working on the farm became his job and eventually he took over the running of the farm from his father. He had been a farmer all his life. He had continued working right up to the time of the accident. He kept cattle on the farm. He was an experienced cattle farmer and the risks associated with cattle handling would have been well known to him. Mr Johnstone died on 7 June 2024 in Raigmore Hospital in Inverness after sustaining extensive chest injuries as a result of an accident involving a breeding cow on his farm.

[16] In the absence of eyewitness evidence, the court has the account of the circumstances of the accident given by Mr Johnstone to his wife in the immediate aftermath, when he arrived home on the quadbike injured. The evidence of Mrs Johnstone about what her husband told her happened is evidence from which the court can make the relevant conclusions.

[17] The Health and Safety Executive were aware of the circumstances of the death, did not undertake a formal investigation, did not visit the locus of the accident but did produce a report about the known hazards of cattle handling. They did not wish to take part in the Inquiry.

[18] The family of Mr Johnstone also, quite understandably, did not wish to take part in the Inquiry, and were content for their evidence to be submitted by witness statements previously given.

[19] The Procurator Fiscal asked me to make formal determinations only and did not seek any recommendations as to formal precautions to be made. On all of the information before me I accepted that was appropriate and I did not make any finding in relation to precautions.

[20] I am conscious that this determination is being issued just after the anniversary of Mr Johnstone's death which I am sure is a painful time for the family. This was a tragic accident for which I extend my condolences to Mr Johnstone's family for their loss.