

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT INVERNESS

[2023] FAI 7

INV-B253-22

DETERMINATION

BY

SHERIFF GARY AITKEN

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

into the death of

DAVID JAMES TAYLOR

INVERNESS, 9 February 2023

Determination

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

In terms of section 26(2)(a) of the 2016 Act (when and where the death occurred)

The late David James Taylor, born 14 February 1993, died at an undetermined time between 2.14 pm and 5.41 pm on 18 August 2020, at a Landrover track in an area known as Achnahannet on the Muckrach Estate, Dulnain Bridge, Speyside.

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

The accident resulting in death took place an undetermined time between 2.14 pm and 5.41 pm on 18 August 2020, at a Landrover track in an area known as Achnahannet on the Muckrach Estate, Dulnain Bridge, Speyside.

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

The cause of the death of said David James Taylor was crush asphyxia due to or as a consequence of a quadbike accident.

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

The cause of the accident resulting in the death of said David James Taylor was that Mr Taylor was riding a quadbike eastwards on the Landrover track in an area known as Achnahannet on the Muckrach Estate, Dulnain Bridge, Speyside on the approach to a ford when, for reasons that cannot be ascertained, the quadbike deviated to the nearside, struck the embankment and overturned, trapping him underneath.

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)

Given that the precise mechanism of the accident which resulted in the quadbike being ridden by Mr Taylor leaving the track is unknown it cannot be determined whether there are precautions which might realistically have resulted in that accident being avoided.

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)

Given that the precise mechanism of the accident which resulted in the quadbike being ridden by Mr Taylor leaving the track is unknown it cannot be determined that there were defects in any system of working which contributed to the death or the accident resulting in death.

In terms of section 26(2)(g) (any other facts which are relevant to the circumstances of the death)

There are no other facts relevant to the circumstances of the death of said David James Taylor.

Recommendations

In terms of sections 26(1)(b) of the 2016 Act (recommendations (if any) 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, (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances)

There are no recommendations made.

NOTE

Legal Framework

[1] This inquiry was held in terms of section 1 of the 2016 Act and was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (hereinafter referred to as “the 2017 Rules”). This fatal accident inquiry was presented by the Crown as a mandatory inquiry in terms of section 2 of the 2016 Act as Mr Taylor died as a result of an accident in the course of his employment or occupation.

[2] The purpose of this inquiry is set out in section 3 of the 2016 Act as being to establish the circumstances of the death and to consider what steps, if any, might be taken to prevent other deaths in similar circumstances. It is not intended to establish liability, either criminal or civil. The inquiry is an exercise in fact finding, not fault finding. It is not open to me to engage in speculation. The inquiry is an inquisitorial process. The Crown, in the form of the Procurator Fiscal, represents the public interest.

[3] In terms of section 26 of the 2016 Act the inquiry must determine certain matters, namely where and when the death occurred, when any accident resulting in the death

occurred, the cause or causes of the death, the cause or causes of any accident resulting in the death, any precautions which could reasonably have been taken and might realistically have avoided the death or any accident resulting in the death, any defects in any system of working which contributed to the death, and any other factors relevant to the circumstances of the death. It is open to the Sheriff to make recommendations in relation to matters set out in subsection 4 of section 1 of the 2016 Act.

Introduction

[4] This inquiry was held into the death of David James Taylor. He was a 27 year old man who was employed as a beat gamekeeper. He died on 18 August 2020 when he was trapped under a quadbike which he had been riding and which left the track and overturned.

[5] A preliminary hearing was held by Webex at Inverness Justice Centre on 18 January 2023. It was clear that the evidence was not likely to be disputed and the Crown undertook to prepare a joint minute of agreement.

[6] The inquiry proceeded by Webex at Inverness Justice Centre on 9 February 2023. Mr Urquhart, Procurator Fiscal Depute, represented the Crown. Mr Gribben, solicitor, represented Mr Taylor's employer, Kinrara Estate Partnership. No other parties were represented. Parties lodged a substantial joint minute of agreement. I accepted the facts set out in the joint minute of agreement. The findings in fact listed at paragraphs [9] to [34] below are derived from the joint minute of agreement.

[7] The Crown also lodged an inventory of documentary productions as follows:

1. Album of photographs
2. Invoice
3. Contract of employment
4. E-mail
5. Lantra ATV course details
6. Curriculum vitae
7. Extract from 1:50,000 Ordnance Survey Map
8. Collision Investigation Report
9. Not allocated
10. Vehicle Examination Report
11. Not allocated
12. Post Mortem report
13. Not allocated
14. Not allocated
15. Toxicology report
16. Photograph
17. Photograph
18. Photograph

[8] There being no dispute between parties as to the evidence the inquiry proceeded on the basis of the joint minute of agreement, which was read by Mr Urquhart.

The facts

[9] At the date of his death on 18 August 2020, David James Taylor was aged 27, having been born on 14 February 1993. He resided with his fiancée, Christina McInnes, and their infant son.

[10] Mr Taylor died at an undetermined time between 2.14 pm and 5.41 pm on 18th August 2020, at a Landrover track in an area known as Achnahannet on the Muckrach Estate, Dulnain Bridge.

[11] The cause of the accident was that Mr Taylor was riding a quadbike eastwards on the Landrover track referred to on the approach to a ford when, for reasons that cannot be ascertained, the quadbike deviated to the nearside, struck the embankment and overturned, trapping him underneath.

[12] As the cause of the deviation and subsequent collision cannot be ascertained, it is not possible to identify any precautions which could reasonably have been taken, and which had they been taken, might realistically have resulted in his death, or the accident resulting in his death, being avoided; nor has it been possible to identify any defects in any system of working which contributed to his death or the accident resulting in his death.

[13] A Police report in relation to Mr Taylor's death was received by the Procurator Fiscal on 19th August 2020 and a report by the Highland Council Environmental Health Department on health and safety aspects of the circumstances of the accident was received by the Procurator Fiscal on 12th November 2021.

[14] The Muckrach Estate, Dulnain Bridge is principally an agricultural holding owned by The Niall Anstruther-Gough-Calthorpe's Discretionary Settlement dated 4 February 1959 and managed by the international estate agents and factors, Savills, from their Perth office. From 2017 until 2022 the sporting rights to Muckrach Estate were let to the deceased's employers, the Kinrara Estate Partnership, Lochindorb Lodge, Lochindorb, Grantown-on-Spey, PH26 3PY, (herein after referred to as 'Kinrara') which at that time also owned the Kinrara Estate in Badenoch (until it was sold in December 2020) and Lochindorb Estate in Morayshire. Lochindorb Estate lies to the north of Muckrach Estate. The Muckrach Estate is no longer rented by the Kinrara Estate Partnership. The lease for the sporting rights was surrendered in July 2022 as the ground at Muckrach is to be planted with trees.

[15] Mr Taylor was from a family of multi-generation gamekeepers; his father is, and his grandfather was, head gamekeeper on another Speyside estate. He commenced employment with Kinrara on the Muckrach Estate as a beat gamekeeper approximately 18 months before his death and was the sole beat keeper working the Muckrach Beat.

[16] At the time of the accident Kinrara had seven employees across the various estates. Mr Taylor's line manager was the Kevin Begg, head gamekeeper at Lochindorb. As head keeper Mr Begg was responsible for the day-to-day estate management, sheep management and dealing with contractors. He also had his own allocated area of land at Lochindorb to manage. Kevin Begg had four members of staff answering to him: - a shepherd, and three beat keepers who included Samuel Hook and Mr Taylor.

[17] Each beat keeper was responsible for his own area of land. Mr Taylor was the sole beat keeper on the Muckrach Beat. The remainder of the estate was farmland not leased to Kinrara. He was responsible for the hill ground or moor. His role included looking after the grouse beats and vermin control. The beat keepers effectively managed themselves and would only contact the head keeper if they had a problem or needed assistance. Generally, Kevin Begg would contact the beat keepers by phone every second day or so as required. Although the estates are adjoining, by road Muckrach is a twenty minute drive from Lochindorb and Kevin Begg would see Mr Taylor less often than he spoke to him.

[18] Kevin Begg and the partners of Kinrara had known Mr Taylor since he was born and were of the opinion that he was more than capable of looking after his area with minimal input or supervision. Mr Taylor had not been given any specific tasks to perform and as an experienced beat keeper, on most days, including the day of his death, he was left to set his own tasks and manage himself. It is not known exactly what duties he was carrying out on 18 August 2020.

[19] Prior to being employed by Kinrara, after qualifying in Gamekeeping and Wildlife Conservation at North Highland College, Thurso in 2011, Mr Taylor had worked as a beat keeper on other estates in Scotland and the north of England. He had represented Scotland as a junior in 'down-the-line' clay pigeon shooting and his passion was grouse keeping.

[20] Kevin Begg regarded Mr Taylor as 'more than competent' on a quadbike or all-terrain vehicle (ATV).

[21] Mr Taylor was a very experienced rider of quad bikes as he used them almost daily as a gamekeeper. He was very cautious on the quadbike, even more so since the birth of his son. Mr Taylor was aware that to go through the ford, you had to slow the quadbike down or you would be thrown off.

[22] In early April 2012, at a time he was employed as a beat keeper on the Candacraig Estate in Strathdon, the land industries training awards body LANTRA granted David Taylor a "Sit astride ATV- All terrain use including loads and trailed equipment (Experienced operator) certificate" and a "Sit in ATV's – Skid steer all terrain use including loads & trailed equipment certificate." The skills taught in the sit astride ATV course included the ability to: - Comply with legal requirements with an emphasis on safe practice; Identify the risks associated with using a sit-astride ATV; Select and use appropriate personal protective equipment (PPE); Understand the main causes of accidents; Start up and drive over a variety of terrain and ground conditions; Carry out a risk assessment and plan the route; and Identify track profile and weight transfer.

[23] The place at which Mr Taylor died was about 800 metres south-west of Clachbain Farm and 700 metres north of Achnahannet steading.

[24] On 18 August 2020 Mr Taylor had come home for lunch and returned to work about 2.00 pm, telling his fiancée, he would be back about 5.00 pm for his dinner. After he had gone, she could see his pick-up from the living room window and assumed he had left for work on his quadbike.

[25] Neil Gordon, a tenant farmer who leases some of the land on the estate, was working at Achnahannet steading that afternoon. From 2.04 pm Mr Taylor and

Neil Gordon had a ten-minute phone conversation. It is not known where Mr Taylor was at this time, other than that he was somewhere in the Achnahannet area. Mr Taylor told Neil Gordon it was dry where he was. Mr Gordon states that it was raining heavily at that time at Achnahannet steading. The call ended at 2.14 pm and is the last time at which Mr Taylor is known to have been alive. His mobile phone was not used after this time.

[26] At 2.21 pm a message was sent to Mr Taylor via WhatsApp. The message was never read but, as he was working, it cannot be said that he could not have answered it. Around 4.00 pm there was a heavy downpour of rain at Clachbain Farm and his fiancé sent him a WhatsApp message which failed to be delivered. Due to the heaviness of the rain and her knowledge that he did not usually stay out on his quadbike in persistent rain, she assumed he would be back home soon. Thunder and another heavy downpour of rain followed. At about 4.40 pm she sent him another WhatsApp message which again did not appear as delivered. She became increasingly worried, and at 5.25 pm she messaged Samuel Hook, the beat keeper on the neighbouring Lochindorb Estate. She asked Samuel Hook if he was with Mr Taylor or had heard from him. Samuel Hook replied by text at 5.31 pm that he had not spoken to Mr Taylor since the morning.

[27] Around 5.35 pm Christina McInnes went in search of Mr Taylor, quickly spotting his overturned quadbike. She called an ambulance at 5.41 pm. She had found Mr Taylor trapped beneath the quadbike which was too heavy for her to move. Two fire engines, two emergency ambulances and an air ambulance attended, as did the police,

but Mr Taylor was already dead. Once this had been confirmed by an ambulance technician, life was pronounced extinct was 6.07 pm.

[28] On 20 August 2020 at Raigmore Hospital, Inverness an autopsy was carried out on Mr Taylor's body by Dr Natasha Inglis, Consultant Pathologist. She concluded that the cause of David Taylor's death was 1(a) Crush asphyxia, due to (or as a consequence of) 1(b) Quad bike accident.

[29] As is standard practice at autopsy, samples were taken for toxicological analysis. All analyses were negative other than that for the peripheral blood sample which was found to contain 10mg of alcohol per 100ml of blood, which is not significant in the context of this case.

[30] The quadbike Mr Taylor had been riding was a four-year-old 500 cc, single-cylindereed Honda TRX sit-astride all-terrain vehicle (ATV) provided to him by his Kinrara. It was registered for road use and bore the registration mark SY66 BUW.

[31] The unladen weight of a standard Honda TRX 500 is 328 kg. The quadbike SY66 BUW had been modified for estate work. The underside had been fitted with Honda-supplied protective aluminium undertrays; a wooden toolbox was fitted to the front rack; and the bike fitted with non-standard wide 'Duro Powergrip' tyres. The quadbike was not overloaded at the time of the accident.

[32] An independent mechanic who had not been involved in fitting the undertrays, tyres or toolbox explained that the tyres on the quad were the most suitable for the jobs gamekeepers undertook on the estate. He also explained that the estates were hilly and rocky, and rocks could not always be seen. The undertrays were therefore necessary to

protect the frame from damage. The undertrays were Honda manufactured and appeared to have been factory-fitted. Whilst the undertrays would have reduced the weight of cargo that could be carried, they would have increased the resistance to rollover as they lowered the centre of gravity.

[33] Kinrara was prompt in getting vehicles seen if any fault developed and had their vehicles serviced regularly. The last service carried out on the quadbike SY66 BUW was on 29 March 2019. Vehicle servicing was normally carried out annually however with the impact of the COVID-19 pandemic in March 2020 there was unavoidable delay. On 19 August 2020, a mechanical examination was carried out on the quadbike by qualified police vehicle examiners. Their conclusion was that there were no defects that would have contributed to the collision. There is no evidence that the condition of or modifications to the quadbike for estate work caused or contributed in any way to the accident.

[34] On 18 August 2020 specialist constables of the Police Service of Scotland Road Policing unit attended at the scene of the accident and carried out a collision investigation. They found that the quadbike had been in first gear and had travelled only a short distance after striking the embankment, indicating the collision had been at low speed. The officers concluded that

“the Honda 500 TRX ATV registration number SY66 BUW was being ridden east towards the locus. The Honda ATV has thereafter deviated to the nearside where the front nearside of the vehicle has struck the bottom of the embankment. This is confirmed by the two rolling tyre marks that curved to the nearside and lead to the embankment. This is further confirmed by the furrow marks and gouge marks at the bottom of the embankment. During the course of the collision, Mr Taylor has been thrown from the Honda ATV and has come to rest

on his left hand side in the centre of the track. The Honda ATV has thereafter rolled approximately 270° coming to rest on its nearside, trapping Mr Taylor underneath. This is confirmed by the damage to the nearside splash guard of the Honda ATV. This is also confirmed by the resultant positions of both the vehicle and Mr Taylor.”

The evidence

[35] Mr Urquhart intimated that all the evidence to be presented at the inquiry was contained within the joint minute of agreement, which he read out. The salient facts from the joint minute of agreement are noted above and the principal joint minute of agreement is lodged with the inquiry papers. Mr Gribben confirmed that he had no additional evidence to lead on behalf of Kinrara.

Crown Submissions

[36] Mr Urquhart very helpfully lodged written submissions on behalf of the Crown. He made formal submissions in relation to when and where Mr Taylor’s death and the accident resulting in his death occurred, based on the evidence contained in the joint minute of agreement. Likewise, he made formal submissions in relation to the cause of Mr Taylor’s death, in accordance with the findings of Dr Inglis, the pathologist, at autopsy. Mr Urquhart very properly submitted that as the underlying cause of Mr Taylor’s accident is unknown and cannot be determined it he was not in a position to suggest reasonable precautions or any further recommendations.

[37] Mr Urquhart went on to express, on behalf of the Crown, his condolences to Mr Taylor’s family, friends and work colleagues, noting that it was clear that Mr Taylor

was a highly regarded, skilful, valued, trusted, well-liked and sorely missed employee, colleague and family man.

Submissions on behalf of Kinrara Estate Partnership

[38] Mr Gribben had also very helpfully lodged written submissions on behalf of Kinrara. He stated that he had had the benefit of seeing the submissions advanced by the Crown in advance, concurred with and adopted them on behalf of Kinrara. That appeared to me to be an entirely proper approach to take.

[39] Mr Gribben also took the opportunity to extend his client's condolences to Mr Taylor's family, friends and colleagues. He re-iterated that Mr Taylor was indeed a very highly regarded, skilful, valued, trusted, well-liked and sorely missed employee, colleague, family man and friend.

Discussion and Conclusions

[40] It is very clear from the evidence presented to the inquiry *what* happened which resulted in Mr Taylor's untimely death. The quadbike he was riding overturned with tragic, fatal results. However, as the accident was, understandably, unwitnessed there is no evidence as to *why* the accident happened. It is neither helpful nor permissible for me to engage in speculation as to the cause of the accident. As Mr Urquhart and Mr Gribben both submitted, where the cause of the accident cannot be determined, despite significant efforts by investigators, it is not possible to establish and reasonable precautions or to make recommendations for the future.

[41] In those circumstances I am constrained to make the formal findings required by the 2016 Act. I concur with the submissions made by Mr Urquhart and endorsed by Mr Gribben and I adopt the Crown submissions in relation to my findings under Section 26(2) of the 2016 Act, as set out above.

[42] In closing this Determination, may I join with Mr Urquhart and Mr Gribben in expressing my condolences to the family and friends of Mr Taylor. He was clearly a very conscientious, competent and talented young family man who was very well regarded and respected by his employers. His death is a tragedy which is no doubt still very keenly felt.