SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2025] FAI 47

EDI-B778-25

DETERMINATION

BY

SUMMARY SHERIFF JOSEPH STEWART

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

into the death of

JOHN BARR

EDINBURGH, 8 December 2025

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 ("the Act") that:

1. In terms of section 26(2)(a) of the Act, that John Barr, born 14 March 1952, died at Ferryfield House community hospital in Edinburgh on 5 October 2023.

2. The death did not result from an accident so no findings in terms of section 26(2)(b) need be made.

3. In terms of section 26(2)(c) of the Act, that the cause of death was 1a) squamous cell lung cancer with bronchopneumonia and 2) ischaemic heart disease and cerebrovascular disease.

4. In terms of sections 26(2)(d), (e), (f) and (g), no findings fall to be made.

5. In terms of sections 26(1)(b) and 26(4), no recommendations are made.

NOTE

The legal framework of the inquiry

[1] In terms of section 1(3) of the Act, the purpose of an inquiry is to establish the circumstances of the death and to consider what steps, if any, may be taken to prevent other deaths in similar circumstances. Section 26 requires the sheriff to make a determination which in terms of section 26(2) is to set out factors relevant to the circumstances of the death. These are (a) when and where the death occurred; (b) when and where any accident resulting in the death occurred; (c) the cause of the death; (d) the cause of causes of any accident resulting in the death; (e) any precautions which could reasonably have been taken and if they had been taken might realistically have resulted in the death being avoided; (f) any defect in any system of working which contributed to the death or to the accident; and (g) any other facts which are relevant to the circumstances of the death.

[2] In terms of section 26(1)(b) and 26(4), the inquiry is to make such recommendations as the sheriff considers appropriate 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; and (d) the taking of any other steps which might realistically prevent other deaths in similar circumstances. The sheriff is not obliged to make recommendations; that is a discretionary power. The procurator fiscal depute

represents the public interest. An inquiry is an inquisitorial process. The determination must be based on the evidence presented at the inquiry. It is not the purpose of an inquiry to establish criminal or civil liability.

Introduction

[3] This inquiry was held under section 1 of the Act. It was a mandatory inquiry in terms of section 2(1) and (4) as Mr Barr was a person who was in legal custody at the time of his death. The procurator fiscal lodged a notice of the inquiry on 4 June 2025. Two preliminary hearings took place on 21 July 2025 and 1 September 2025. The inquiry itself took place on 4 November 2025 at Edinburgh Sheriff Court.

[4] Four parties were represented at the inquiry. A procurator fiscal depute appeared for the Crown. Solicitors appeared for the Scottish Ministers acting through the Scottish Prison Service, for Lothian Health Board and for GEOAmey Ltd. The Crown advised that intimation of the inquiry had been made to Mr Barr's family. The family did not attend the hearing and were content to be updated by the Crown throughout proceedings.

[5] No oral evidence was led at the inquiry hearing. A joint minute of agreement was entered into by all parties. All parties invited me to make formal findings only in respect of sections 26(1)(a) of the Act. None of the parties invited me to make any recommendations.

[6] The following productions were lodged and referred to in the joint minute:

- Crown production 1 - post-mortem report by Dr Kerryanne Shearer, consultant forensic pathologist;
- Crown production 2 - toxicology report by Dr Eleanor Miller and Dr Fiona Wylie, forensic toxicologists;
- Crown production 3 - neuropathology report by Dr Kevin Kinch, consultant neuropathologist;
- Crown production 4 - death in custody folder of documentation and records maintained by the Scottish Prison Service in relation to Mr Barr;
- Crown production 5 - Death in Prison Learning and Audit Review ("DIPLAR");
- Crown production 6 - Edinburgh Royal Infirmary ("ERI") medical records of Mr Barr;
- Crown production 7 - Ferryfield House medical records of Mr Barr;
- Crown production 8 - Local Case Review ("LCR") carried out by Lothian Health Board following Mr Barr's death;
- Lothian Health Board production 1 - statement of Dr Pauline Jones, consultant in general medicine and diabetes, dated 24 July 2025;
- Lothian Health Board production 2 - risk assessments from the medical records of NHS Lothian pertaining to Mr Barr;
- Lothian Health Board production 3 - laboratory and radiology reports from the medical records of NHS Lothian pertaining to Mr Barr;

- Lothian Health Board production 4 - progress notes from the medical records of NHS Lothian pertaining to Mr Barr;
- Lothian Health Board production 5- A&E episode notes from the medical records of NHS Lothian pertaining to Mr Barr;
- Lothian Health Board production 6 - inpatient episode notes from the medical records of NHS Lothian pertaining to Mr Barr;
- Lothian Health Board production 7 - Ferryfield House notes from the medical records of NHS Lothian pertaining to Mr Barr;
- Lothian Health Board production 8 - e-mail from Sharon Taylor, healthcare manager, HMP Edinburgh, dated 16 July 2025;
- Lothian Health Board production 9 - e-mail from Dzidzai Chipuriro, clinical services manager, REAS, NHS Lothian, dated 18 July 2025;
- Lothian Health Board production 10 - e-mail from said Dr Pauline Jones, dated 14 August 2025.

[7] The following narrative of the facts is derived from the joint minute of agreement and productions.

Narrative of the facts

Background

[8] On 1 November 2011, the responsibilities for the provision of healthcare to prisoners transferred from the SPS to the NHS (Health Board Provision of Healthcare in Prisons (Scotland) Directions 2011). Since then, individual regional NHS health boards

have been responsible for the delivery of health care services within prisons in Scotland which fall within their geographical ambit for the provision of medical care.

[9] On 10 September 2019 Mr Barr was sentenced to 7 years' imprisonment for charges including assault and rape. He commenced his sentence at HMP Edinburgh where he remained until being transferred to hospital on 14 July 2023 and then to Ferryfield House community hospital on 12 September 2023 for palliative care. He died there on 5 October 2023.

Medical history and treatment

[10] Mr Barr had a brain tumour which was partially removed in 2011 which caused weakness to his left side. On 27 April 2021, while in prison, Mr Barr was diagnosed with type 2 diabetes for which metformin was prescribed. On 10 March 2021 Mr Barr was moved to a wing of the prison which offered constant medical care. His cognitive ability declined. Between April 2022 and January 2023 Mr Barr suffered weakness to his left side, fell frequently and had bouts of vomiting. He was frequently assessed by NHS staff at the prison in relation to those symptoms and on several occasions was sent to hospital for assessment.

[11] In December 2022 Mr Barr was admitted to hospital with flu. Chest X-rays were taken on 14 and 18 December 2022 which showed evidence of a chest infection. From the evidence provided it is not clear if he was given any medication on that occasion.

[12] In January 2023 Mr Barr was taken to hospital by ambulance on two occasions. The first was on 6 January 2023 due to Mr Barr having a "wheezy chest, high

temperature and signs of fever." A chest X-ray was taken which showed that his chest infection had not cleared. That X-ray and the X-rays taken in December 2022 were consistent with pneumonia. They did not indicate a lung mass or the presence of cancer. A CT scan of his head was also taken. He was given antibiotics and discharged.

[13] The second admission was on 30 January 2023 due to Mr Barr experiencing weakness in his left arm. A CT scan of his head was taken which showed no changes from the previous CT scans taken on 7 January 2023 and in 2010. He was assessed by the stroke team who concluded that he had not had a stroke. A further chest X-ray was also taken on 30 January 2023, which showed persistent changes in the lung consistent with ongoing inflammation. It did not indicate any lung masses or the presence of cancer. From the evidence provided it is not clear if he was given any medication on that occasion.

[14] On 4 July 2023 NHS staff at HMP Edinburgh diagnosed Mr Barr with another chest infection. He was not prescribed any medication on that date.

[15] On 14 July 2023 Mr Barr was again conveyed to ERI by ambulance as he was found to have shallow breathing, presented as shaky and was unable to give a verbal response. This was thought to be linked to the progression of the chest infection. He was treated for recurrent pneumonia and administered fluids, antibiotics and oxygen. It was decided not to transfer Mr Barr to ICU and put him on a ventilator as it was unlikely that he would be able to come off the ventilator.

[16] On 14 July 2023, Dr MacKenzie had a discussion with Mr Barr's next of kin about his condition and a DNACPR order (Do Not Attempt Cardiopulmonary Resuscitation) was put in place.

[17] Chest X-rays were taken on 14 and 17 July 2023 which were consistent with pneumonia and showed little improvement. Repeat X-rays were recommended for 4 weeks' time following treatment.

[18] From 2 August 2023 he was prescribed 2mg of midazolam subcutaneous injections for the management of anxiety and breathlessness and 2mg of morphine sulphate subcutaneous injections on an as needed basis in accordance with the Scottish Palliative Care Guidelines for anticipatory medication.

[19] A repeat X-ray was taken on 2 August 2023 which appeared worse. A doctor considered a possible underlying malignancy and requested a CT scan for prognostic purposes and to assist with planning the discharge of Mr Barr either to prison or a hospice. The request for a CT scan was declined by the radiology department who advised that a repeat chest X-ray was required first. A repeat chest X-ray was taken on 10 August 2023 which showed no improvement.

[20] On 21 August 2023, Dr Pauline Jones, acute medicine consultant at ERI, spoke to Mr Barr's next of kin and advised that he had received repeated treatment for pneumonia and that his condition was deteriorating. He was too weak to cough up the secretions from his lungs. He looked visibly more frail and gaunt. He was more agitated and restless. It was agreed that no more invasive treatment or investigations

should be carried out due to Mr Barr's declining health and that palliative care only should be provided. The decision was made to transfer him to a hospice.

[21] On 12 September 2023, when a bed became available, Mr Barr was transferred to the Rowan Ward of Ferryfield House community hospital. While there he received end of life care only, ie medication to manage pain and make him more comfortable. He thereafter became more frail due to a number of health conditions namely sepsis caused by a urinary and chest infection, a collection of fluid in his brain, type 2 diabetes and cognitive impairment. Mr Barr passed away at in the early hours of 5 October 2023.

Pathology

[22] A post-mortem examination was conducted on 10 October 2023. The pathologist concluded that the cause of death was 1a) squamous cell lung cancer with bronchopneumonia and 2) ischaemic heart disease and cerebrovascular disease. This was demonstrated by the presence of extensive infection in both lungs and associated thrombus within blood vessels, in addition to cancer being identified histologically ie by examining the cancer cells under a microscope. The ischaemic heart disease was demonstrated by the severe narrowing of two of the main coronary arteries by longstanding atheroma and associated scarring of the heart muscle.

Submissions

[23] All parties submitted that formal findings only should be made in terms of section 26(2)(a) and 26(2)(c) and that no findings should be made in respect of the other elements of the section.

Conclusions

[24] On the basis of the evidence presented at the inquiry I am satisfied that I should make formal findings in terms of sections 26(2)(a) and (c) only. I have set out those findings above.

[25] On the available evidence at the inquiry I have determined that Mr Barr died from lung cancer with bronchopneumonia. A secondary cause was ischaemic heart disease and cerebrovascular disease. Mr Barr was an elderly man. Over the last few years of his life his cognitive function declined and he had dementia. In December 2022 he contracted flu and was admitted to hospital. A chest infection was diagnosed which never went away. There was no evidence of lung cancer until the post-mortem autopsy was carried out, despite several chest X-rays being done throughout 2023. An elderly and frail patient dying from pneumonia is not unusual. Had Mr Barr not been a prisoner, an autopsy would not have been carried out and the cancer would not have been discovered. The opinion of Dr Jones, consultant in general medicine and diabetes, was that Mr Barr had not required to be admitted to hospital any earlier than when he was admitted in July 2023. The chest X-rays had not shown any clear evidence of cancer; no obvious lung mass had been missed. The treatment Mr Barr received had been

appropriate. Even if cancer had been diagnosed in July 2023, it would not have altered the treatment that Mr Barr would have received or the outcome. By that stage he was too weak and frail to withstand cancer treatment. I accept Dr Jones' opinion on those matters.

[26] I have not identified any systemic defects arising or precautions that might have been taken to avoid the death. I have not identified any matter that would require a finding beyond the formal findings in terms of section 26(2)(a) and (c) of the Act. I am satisfied that it would not be appropriate to make any recommendations in terms of section 26(1)(b) of the Act.

[27] I would like to extend condolences on behalf of all of the parties and the court to Mr Barr's family for their loss.