

**IN THE CORONERS COURT
AT WELLINGTON ([N CHAMBERS])**

IN THE MATTER

of the Coroners Act 2006

AND

IN THE MATTER

of an Inquiry into the death of

SHANE HASAN FRANCIS

SHARIF KOTUHI

Date of Death: 9th May 2011

Before: Coroner Mr I R Smith

Date of Findings: 2nd October 2013

FINDINGS OF CORONER I SMITH

[1] Introduction

This is an enquiry into the death of Shane Kotuhi, a 16 year old boy who resided with a cousin at Flat 20/175 Owen Street, Wellington.

[2] The deceased was found collapsed behind the bathroom door. He was seen to go into the bathroom some 20 minutes before and a family friend, being concerned, entered the bathroom. An almost empty can of air freshener was found with a towel that smelt strongly of the freshener. Ambulance services were called but the deceased could not be revived.

[3] I have decided to complete this matter by way of a chambers finding, pursuant to s 77(2) Coroners Act 2006. I have given notice of that intention to the various parties and I am satisfied I can complete this matter by that process. This finding is to be read in conjunction with the Certificate of Final Findings made pursuant to s 94 Coroners Act.

[4] For the purposes of this finding I have considered the police report, the various witness statements, the report of Child, Youth and Family of the Ministry of Social Development, the general practitioner's report, as well as the post-mortem and toxicology reports.

[5] This is yet another tragic death of a young 16 year old whose family life (or lack of it) was traumatic and involved care and protection from an early age with Child, Youth and Family Service. It has features similar to another finding I completed in February 2010. That matter concerned the suicide of a 17 year old, Joy Leanne Vincent, who died in February 2008. She also had what I would describe as a traumatic upbringing that involved various family members and the CYF Service.

[6] The background regarding Shane Kotuhi's life is set out as follows: Shane Kotuhi first came to the notice of CYF on the day of his birth, due to abuse problems that had occurred with his older sister. There was difficulty of bonding with his mother and no contact with his father. Shane was initially in the care of his mother and by the time Shane was two years old CYF appeared to cease their involvement. In 2000, at the age of five, the school reported to CYF that Shane had turned up at school with a bleeding nose, as an assault at home. CYF then began to monitor matters again and in December 2001, at the age of six, serious concern was raised about Shane's welfare. In 2002 Shane was taken into CYF's care. His initial placement was with his maternal grandparents but after allegations came to surface at three months, Shane was placed in the care of his paternal grandparents. It became obvious that they had little control over their grandson and the situation became untenable and after consultation it was decided that Shane would be placed with other CYF caregivers.

[7] In 2003 Shane, now aged eight, was returned to the care of his mother, where he stayed until 2008. At that time concerns were again raised about his welfare and care and he was placed in another home run by CYF.

[8] Further assessments were undertaken, with Shane being admitted to Whakatakapokai, the CYF care and protection residence in Auckland in October 2008. Shane was discharged from that residence in January 2009. An application for a specialist one-to-one placement had been made but no placement was available. He was therefore placed with his maternal aunt in Lower Hutt but three days later he absconded and the aunt was unwilling to continue the care for him, as he had not complied with the conditions of his placement with her. Once he was located he was placed in another CYF home.

[9] Shane was then placed with the Youth Horizon Trust on a one-on-one placement at Auckland but frequent absconding made it difficult to make sustainable changes around his alcohol and drug abuse (he was now aged 14). Over the next two year period there were many difficulties, including appearances before the Youth Court in Auckland. By August 2010 the Youth Court directed that Shane's social worker consider a placement back with his mother. This again did not work out. By December 2010 Shane had moved back to his maternal grandparents' home, who were not approved caregivers with CYF, however he remained there until another placement could be arranged.

[10] He then had several other placements until March 2011, when counsel for the child submitted a memorandum to the Ministry applying for discharge of custody from CYF, as Shane wanted to be independent. This order was granted on 21 April 2011, on the condition that CYF would remain involved with Shane, to support him and to apply for the independent youth benefit.

[11] The Ministry was at this time informed by Mr Kotuhi's lawyer for the child, that he wished for the s 101 custody order to be totally discharged.

[12] Mr Kotuhi's social worker did not oppose the discharge of the custody order because since early 2011 Mr Kotuhi had refused to live in the approved placement. At discharge the Court ordered that Mr Kotuhi's social worker

should continue to be involved by helping him to obtain support from Work and Income and any other support services that were required. It is to be noted that the social worker did continue to be involved with Mr Kotuhi, up until the time of his death.

[13] Shane was able to stay with his uncle in Newtown, Wellington but he was again asked to leave that residence as the uncle was about to have his own children returned to him but before this could occur Shane died at that address.

[14] A statement was provided to the Court by Shane's mother. It is clear that she had also suffered from an abusive childhood. She has had six children over a period of time and it is clear that she also never received family support.

[15] Efforts were made by my Inquest Officer to obtain a background of Shane's father's involvement with his son. He was reluctant to take part in any interview, simply stating the following, "I am the biological father of Shane Kotuhi and I did not have a long relationship with his mother. I had some contact with Shane. Contact with CYF was good. Don't know about Shane's contact with his mother's family was like. I knew he was getting into a bit of trouble but not sniffing cans."

[16] A statement was also taken from David Mahare, the deceased's uncle, where Shane eventually lived and where he had died. He stated that Shane had only lived there for about a month. Mr Mahare's son lived next door and Shane and his son spent time together. They were cousins and good mates. Mr Mahare was very critical of CYF. He said that his own children were with CYF and considered that all CYF seem to do is pass a child to a caregiver and go and do their paperwork. There was, he said, not enough interaction with the children.

[17] As I stated in paragraph 4 of this finding, it has very similar features, as did my finding into the death of Joy Leanne Vincent. As I commented in

this earlier with this matter, I reiterate again here, that I think CYF try to do their best with these children who come from abusive and disruptive homes with very little family support. My concern however again returns to these young people when CYF involvement ends, as I believe that it is the next period of the young person's life that is as critical as they will need continual stewardship right through their teenage years. I have given the opportunity to CYF to address this issue and I have incorporated the essence of their response as follows. The Department has considered this case in the light of my previous findings, in relation to young people transitioning to independence. The Ministry previously noted that under the current legislation it has no authority to provide any support after the age of 20 years.

[18] The Ministry have stated that since Mr Kotuhi's death there have been a number of initiatives in relation to youth transitioning from CYF care. There has also been an improved interface between Work and Income and CYF, when young people have been discharged from CYF care and are seeking financial assistance.

[19] The Ministry reiterated that it has no mandate under the Children, Young Persons and Their Families Act 1989 to provide assistance to persons beyond the age of 20 years. In line with this, the Ministry is not funded to provide any such assistance.

[20] In addition, another barrier to working with people over the age of 17, is that they are then deemed legally competent. As such they cannot be compelled to engage with social workers or staff. Even when the Chief Executive of the Ministry has been appointed an additional guardian, the Ministry is only able to offer guidance and advice to the young person.

[21] Transition planning with this ensures that support, other than CYF, are also involved. It is frequently the case that a community group is involved or that the young person remains, post 17 years, with those who have provided care for them up until that age.

[22] CYF does not aim for all young people who have been in its care and who are unable to return to their original family, to be in a permanent home for life on discharge. Where this is not possible and the young person needs to live independently, provision is frequently made for them to be provided with the basic necessities required for flatting situations, such as their own bed, bedding and a set of drawers.

[23] In May 2011, the Government announced that over the following four years \$15.3 million would be invested in comprehensive gateway assessments for children and young people entering or in State care and children and young people who have been referred for a family group conference. The gateway assessment programme teams up with health and education partners. It involves a local dedicated DHB co-ordinator pulling together all of the child's social, health and education information. The social worker, family, medical professionals and the education providers can then use this information to agree on a plan that addresses all the child or young person's needs.

[24] Gateway assessments have been available in all 20 DHBs since October 2012. By working together it is possible to build a complete picture of the child or young person's needs and make sure they get access to the right services.

[25] Section 389 Children, Young Persons and Their Families Act 1989 allows for the Chief Executive to make grants or provide financial assistance to any person, for the purposes of assisting that person to care for any child or young person who previously has been in the care of the Chief Executive and who is in need of special assistance. This allows, for example, for assistance with education for a child who is no longer in CYF care but has remained at school.

[26] Where a young person is discharged from CYF care and is seeking financial assistance, Work and Income will work with CYF to ensure the young person's smooth transactions to youth services.

[27] If a young person is granted what is called YP (youth payment) or YPP (young parent payment) Work and Income will provide information to the youth service provider regarding the young person's past involvement with CYF.

[28] Community-based youth service providers are contracted by Work and Income to give young people guidance, support and encouragement in finding education, training or work-based learning that works for them. In many cases this involves getting these people back into school or keeping them at school.

[29] In cases where a child or young person in the care of CYF has an identified intellectual or physical disability or a diagnosed mental health disorder, there is an obligation to ensure that the child is successfully transitioned by 17 years of age, to the most suitable adult health provider.

[30] Where a young person has high and complex needs, according to the HCN policy, young people can be supported until the age of 21 years under certain circumstances.

[31] In November 2012 a review of the HCN process was completed. The primary concern of the review was develop a new service design for the HCN process, to ensure that the system is responsive and delivers quality plans and services in a timely way. The main feature of the new design includes increased local decision making, streamlined approval and planned processes and an enhanced permanent workforce for HCN cases. Central to the local decision making and the streamlining of approval and plan processes was the 14 interagency management groups. These groups are comprised of local service managers and clinicians from health, disability, education and Child, Youth and Family who work with the children and young people who may require an HCN plan.

[32] The benefits of the HCN include creating a strong interagency team for a young person, supported by an individualised plan. The process

facilitates a good understanding of the need and draws together relevant information and expertise from across a number of fields.

[33] In October 2011, the Minister for Social Development released a white paper for vulnerable children. That white paper recognised protecting vulnerable children is everyone's responsibility and the children's action plan set out how everyone played their part.

[34] Transitioning young people to independence and adulthood is one of the key work streams in the children's action plan. It is focused on improving multiagency planning and support for children and young people moving into or out of the care or between placements. This includes:

- (a) Carers being well supported when the children come into their care.
- (b) Transition out of care is well managed and supported, including health, education and employment.
- (c) Children and young people in care receive the transition services they need from other agencies such as Work and Income, Housing New Zealand, Ministry of Justice and other relevant services.
- (d) Transitions between placements and out of care are well managed and address all aspects of the child or young person's immediate or long-term care needs.
- (e) School transitions are kept to a minimum and those that do take place are fully supported, so the children and young people can readily access and be engaged in education.

[35] The aim is to assist the child or young person to successfully navigate both the physical change in circumstances and the emotional and psychological journey they experience as part of that change. Development

is continuing to occur around a single best practice model with different lenses to inform every kind of transition for children and young people in care.

Coroner's Comment

[36] While it is pleasing to see that CYF have taken steps to provide a pathway once children are no longer in custody and given that it is acknowledged that people over the age of 17 are legally competent, that however there is a fetter on what can be done as an absolute statutory bar for people over the age of 20, it still remains a concern that young people under the age of 29 are, in my view, vulnerable in this current world. It is well known that as we have now progressed in life, each decade of life has tended to be younger and it is particularly noticeable with the young group of people that have required CYF intervention into their lives. It is a matter that should be continually monitored with a strategic plan to assist these people even beyond the age of 20 years.

[37] CODA

- i. A copy of the Court's findings into this Inquiry was forwarded to the Ministry of Social Development in provisional form for the purposes of Section 58 (3) of the Coroners Act.
- ii. It is to be noted that it will be seen that the Ministry had also been aware of aspects concerning this matter that I had foreseen and the Ministry had been given an opportunity to provide further information to me as Coroner.
- iii. Now with the opportunity of the Provisional Findings, the Ministry have assured me that the matters raised have been carefully noted, but pointed out that the Ministry is restricted to deal with matters within its current legislative framework, and therefore it was not possible for the Ministry to monitor and formulate strategic plans for young people over 20 years of age who have had CYF intervention within their lives. The only exceptions being where those young people are subject to

the High & Complex Needs process which again ends when these young people attain the age of 21 years.

[38] While I accept that the Ministry is hampered by the legislative fetter currently in place I must yet again reiterate that the issues I have raised in both this finding and that of the finding into Joy Leanne Vincent's death will not go away and in my view both the Ministry and Parliament need to look at how they extend services to these particularly vulnerable young people. As I have said the world is changing at a rapid pace and there is a need in these times to ensure these young people have the requisite support in a demanding world.

[39] Forensic pathologist, Dr John Rutherford, completed a post-mortem on 10 May 2011. He concluded that the cause of death was from butane toxicity.

Verdict

[40] I find that Shane Hasan Francis Sharif Kotuhi, late of flat 20/175 Owen Street, Wellington, died at that address on 9 May 2011 as a result of overdosing on butane gas, dying from butane toxicity.

Signed this 2nd day of October 2013 at Wellington

Ian Roderick Smith

Wellington Regional Coroner