

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FALKIRK

[2018] FAI 28

FAL-B141-17

DETERMINATION

BY

SHERIFF JOHN K MUNDY

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRIES (SCOTLAND)  
ACT 1976

into the death of

**RAYGEN MERCHANT**

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Appeared:

Ms Rollo on behalf of the Procurator Fiscal

Present:

Mr Scullion on behalf of the Scottish Prison Service  
Mr Cahill on behalf of the Prison Officers Association  
Mr Dar on behalf of William Main

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Falkirk, 21 August 2018

The Sheriff, having resumed consideration of the inquiry:

FINDS IN FACT

1. On 16 May 2014 Raygen Merchant (“RM”), born 12 December 1996, was placed  
in cell 33/2 Blair House HMP YOI, Polmont and remained placed in that cell until

- his death on 17 October 2014. He did not share his cell. The cell was on the second of three levels in Blair House.
2. At the time of his death on 17 October 2014 RM was lawfully detained in custody at HMP YOI, Polmont. He was approaching the end of a 21 month sentence for offences pertaining to knives and was simultaneously awaiting sentence for an assault involving a knife.
  3. On or about 8 October 2014, Prison Officer William Stewart Main submitted an anonymous intelligence report to the SPS to the effect that RM might be vulnerable if he was convicted of charges pending against him. This was following a discussion with a prisoner. This intelligence was not conveyed to the prison officers dealing with RM.
  4. On 13 October 2014, Prison Officer Francis Kennedy, RM's personal officer, in response to an intercom message from RM, attended at his cell along with Prison Officers Patrice Napoli and Gregor Young. RM wanted clarification that a sexual element in a charge against him had been dropped. Kennedy led the discussion and indicated that he would try and assist by contacting RM's solicitor. Kennedy contacted the solicitor's office and spoke to a member of staff who indicated that RM's solicitor would speak to him at court the following day. Kennedy told RM that if he had concerns then he should consider moving to another part of the prison for his own protection. RM refuted that there was a sexual element to the charge and refused to be moved. The meeting was recorded in the prisoner

- record PR2 for 13 and 14 October 2014 completed by Kennedy. Those prison officers were not aware of RM's concern prior to the intercom message.
5. On 14 October 2014 at Glasgow High Court RM entered a guilty plea to assaulting a female and with a knife in circumstances from which a sexual motive was inferred by media reporting the case. Sentence was deferred until 11 November 2014. The charge had been amended by the Crown prior to the plea removing reference to an offence under the Sexual Offences (Scotland) Act 2009.
  6. Following his court appearance RM was received back into custody on 14 October pending sentence. In his "Act 2 Care Reception Risk Assessment" completed by prison staff, no concerns were recorded and RM stated that no issues concerned him at that time. The Act 2 Care assessment was designed to help prison staff identify concerns, including the potential for self-harm or signs of suicidal ideation.
  7. On 16 October 2014 an article was printed in The Sun newspaper which came to the attention of inmates and staff at HMP YOI Polmont and as a result the deceased was believed by prison staff to be at risk of violence from other inmates. In the morning of the same day, Peter Russell, Unit Manager of Blair House, James Young, First Line Manager and Francis Kennedy met with RM in a room separate from his cell during which meeting he was shown the newspaper. He refuted that there was any sexual element to the crime and indicated that he did not wish to be moved to another part of the prison for protection when that was suggested, stating that he would be violent to other prisoners if sent there.

8. At around 1pm on 16 October 2014 a piece of paper with writing thereon was placed under the door of the deceased's cell by other inmates outwith the sight of prison officers. The note stated:

"RAYGEN MERCHANT...HEAVY DUTY PREDATOR, AS WELL AS A  
JUNKIE LOOKIN, CHAVY BASTERT THAT PRAY OAN HELPLESS  
WOMEN N THERE WEANS YER A DIRTY WRONG YIN YER GETTING  
DONE YER ASWELL HEADING UP THAT MONRO 4".

9. On 16 October 2014 RM made telephone calls to his sister and to his former girlfriend (LM). In a call to LM timed at 13.55 hours, he asked her to read the newspaper article. In a subsequent call timed at 18.42 hours he spoke to LM again, denied what was said in the newspaper account and expressed frustration at not being believed. He referred to being offered protection and refusing it. He said that there was "nae light at the end of the tunnel is there?" He said that he did not want to bring shame on LM and his family. He said "it's nae a sentence I'm gonna have to do at the end of the day". He said that he wanted her to pass on his love to his family.
10. At around 6.45pm on 16 October 2014, RM was visited in his cell by Russell Turnbull, Prison Officer, accompanied by Prison Officers Orr and Reid. Turnbull had received intelligence that there was a risk of RM being assaulted during the recreation period. It was agreed that it would be best that RM missed recreation that evening. They also discussed the possibility of RM moving to another part of the prison and Turnbull said they would talk about it again the following day.

- Turnbull had no concerns for RM following that discussion (in the sense of concern that he might self-harm).
11. At 2100 hours on 16 October 2014 RM was locked within his cell. He asked for and was given a pen.
  12. On 16 or 17 October 2014, RM wrote a letter to LM apologising for the trouble and shame he'd caused her and his family and, in a reference to the newspaper article, being branded as one of the things he despised. He stated that there was nothing left for him, that there was "no light at the end of this tunnel" and that there was "only one way out now". He expressed his love for LM and his family. At around the same time, he left a note for prison staff apologising to whoever should find him and stating that he had done what he had done as he been branded something he hated.
  13. RM was upset and frustrated by the publicity suggesting there was a sexual element to his crime and how others would regard him as a result.
  14. At about 0530 hours on 17 October 2014 Matthew McGahan, prison officer, carried out a prison check and at 0543 hours on checking the deceased's cell observed RM hanging from the light fitting. He contacted various named prison officers to attend to assist him enter the cell. On opening the cell it was immediately apparent that RM was dead and the cell was secured pending the arrival of the ambulance service.

15. At 0552 hours on 17 October 2014 paramedics attended at the institution in response to a call. The deceased was examined and life was pronounced extinct at 0552 hours. The cell was secured awaiting a scene examination.
16. At about 1020 hours on 17 October 2014 a scene examination was carried out within cell 33/2 at Blair Hall, by police and forensic officers. They concluded that the deceased had used two holes in the plastic light fitting which had been burned and thereafter a ligature made from bedding was fed through the same. Items of furniture within the cell would have afforded access to the light fitting. The said letter to LM and note to prison staff were found in the cell.
17. RM's body was left in place awaiting police and forensic examination. The length of time taken to release RM from the ligature and manner in which it was proposed that the body be removed from the cell caused distress to prison staff. Prison officers intervened and decided to remove the body themselves.
18. A post mortem examination was conducted on RM on 23 October 2014 by consultant forensic pathologists at the City of Edinburgh Mortuary. The cause of death was certified as hanging.
19. There was no reason for prison officers to suspect that RM had, prior to his death, suicidal ideation or was at risk of self-harm.
20. At the DIPLAR (Death in Prison Learning Audit Review) meeting held on 23 January 2015, chaired by Heather Keir, Deputy Governor, and attended by prison and NHS staff, and at which Mr Main was present, Mr Main did not make any allegation about inappropriate conduct on the part of prison officers towards

RM prior to his death. RM'S personal officer, Frank Kennedy, was not at the meeting. The report following that meeting identified significant events or precipitating factors possibly relating to RM's death as (1) media reporting of the crime (2) anniversary of deaths (in RM's family) and (3) content of telephone calls with RM's sister and girlfriend immediately prior to his death. In a subsequent document dated 26 January 2015 produced by Ms Keir, for the purpose of identifying a learning plan, action points included: the management of the scene following a death by hanging; the appropriate management of the deceased; and the storing of social work reports so that all relevant information regarding prisoners was available to the correct staff.

21. During a discussion with a colleague, Russell Turnbull, then a First Line Manager at HMP YOI, Polmont, sometime in 2015, after the DIPLAR meeting, when Mr Main was on sick leave, Main said that two prisoner officers, Patrice Napoli and Gregor Young, both from Blair Hall had entered RM's cell on the morning before his death to terrorise him. He said that Napoli had telephoned Young to join him to go and see RM. Main said in that conversation that he would never formally make a statement about it. Mr Turnbull passed that information on to Heather Keir, Deputy Governor, who passed it on to the Governor. It was decided not to act on the information until further details were forthcoming.
22. In about September or October 2015, following a meeting with his union representative, Mr Main made a "section 11 application" to the SPS in support of

- a claim for injury at work benefit in which he referred to inappropriate conduct by unnamed prison officers, whereby they “terrorised” RM, after the circulation of the article in the Scottish Sun newspaper.
23. On 11 February 2016, Sean McFedries and Christopher Thomson of the SPS were directed by the Head of Human Resources at the SPS to investigate “whistleblowing” allegations made by Mr Main which included the allegation of inappropriate behaviour on the part of prison staff towards RM prior to his death, and also wider issues involving the culture, environment and management at Polmont. The allegation relating to inappropriate behaviour towards RM was being investigated in light of the material in the section 11 application by Mr Main. Mr Main was informed of the investigation. Mr Main did not cooperate with the investigation. The investigation concluded in September 2016 and concluded that there was no evidence to support his allegation that there was an inappropriate in-cell interview between prison officers and RM on 16 October 2014.
24. Mr Main had a meeting with Heather Keir, Deputy Governor, on 8 March 2016 about returning to work during which he was told that he could not return to Polmont in light of the allegations which he had made and which were the subject of investigation. He was offered an alternative workplace. Main was unhappy with this suggestion. He did not return to work for the SPS and is no longer working with the service.

25. Mr Main gave a statement to the police at Falkirk Police Station on 25 March 2016 in which he made allegations that officers Patrice Napoli and Gregor Young attended together and without the presence of any other officer at RM's cell on 16 October 2014 following the publication of the aforementioned article in The Scottish Sun and had an "inappropriate in-cell interview" with RM during which they "terrorised" him.
26. CCTV of 16 October 2014 of level 2 Blair House HM YOI Polmont shows that neither Mr Napoli nor Mr Young attended at RM's cell at any point on the said day.
27. Following the statement by Mr Main to the police being made available to the SPS, Christopher Thomson was directed to make further investigations on 9 November 2016. The prison officers allegedly involved having been named, it was discovered that Prison Officers Young and Napoli had, in the company of Prison Officer Kennedy, visited the RM's cell on 13 October 2014. The investigation concluded that there was no evidence to support Mr Main's allegation of inappropriate behaviour. An Addendum Report to the Whistleblowing Allegations was produced in December 2016.
28. Shortly prior to the hearing of evidence at this inquiry, Mr Main intimated to the court that the alleged inappropriate behaviour of Prison Officers Napoli and Young had taken place on 13 or 14 October 2014, rather than 16 October 2014. This was after having viewed the CCTV footage of 16 October 2014 and having had sight of the Addendum Report to the Whistleblowing Report containing the

findings of Christopher Thomson following his further investigations, which contained reference to the said PR2 Record for 13 and 14 October 2014 relating to RM.

#### DETERMINATION

The Sheriff determines:

1. That, in terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976, the deceased Raygen Merchant, date of birth 12 December 1996, died on 17 October 2014 at 05:52 hours at cell 33, Level 2, Blair Hall, Polmont Young Offenders Institution, Redding Road, Brightons, Falkirk.
2. That, in terms of section 6(1)(b) of the said Act, the cause of death was hanging.
3. That, in terms of section 6(1)(e) of the said Act, Raygen Merchant deliberately took his own life, the main factor in his decision to do so being the publicity surrounding his conviction of 14 October 2014.

## NOTE

**Introduction**

[1] As a result of an Application by the Procurator Fiscal in the public interest lodged in this court on 17 May 2017, a Fatal Accident Inquiry was held into the circumstances of the death of this young man, evidence being led over five days. This is a mandatory inquiry in terms of section 1(1)(a)(ii) of the 1976 Act as Mr Merchant was in legal custody at the time of his death.

[2] For the purposes of publishing this determination I have referred to the deceased, Raygen Merchant, who was just 17 at the time of his death, as RM.

[3] Oral evidence was led by the Crown from eight witnesses and there was in addition evidence by way of affidavit from one witness. There were also certain facts agreed by all parties and contained in a joint minute of agreement.

[4] The witnesses who gave oral evidence were (1) Matthew McGahan, prison officer (2) Francis Kennedy, prison officer (3) William Stewart Main, former prison officer (4) Heather Keir, retired Deputy Governor of HMP YOI, Polmont (5) Christopher Thomson, Scottish Prison Service (6) Russell Turnbull, First Line Manager (7) Gregor Young, prison officer; and (8) Peter Russell, Unit Manager, Scottish Prison Service. An affidavit was provided by Patrice Napoli, prison officer.

[5] At the inquiry the Crown was represented by Ms Rollo, Procurator Fiscal Depute. Mr Scullion, solicitor advocate, appeared for the Scottish Prison Service, Mr Cahill, solicitor, for the Prison Officers Association and Mr Dar, solicitor advocate, appeared on behalf of Mr William Stewart Main.

[6] In the run up to the hearing it became clear, for reasons that will become apparent, that Mr Main was seeking to be legally represented at the inquiry and that necessitated an adjournment of the hearing previously set down for 9, 10 and 13 November 2017. Mr Main did secure legal representation and the hearing proceeded on 26 February 2018. It was initially set down for three days but it took longer. Halfway through the third day on 28 February the court required to adjourn early due to adverse weather conditions. On the further appointed date of 2 March 2018, the diet required to be adjourned once again because of severe weather conditions. The inquiry thereafter reconvened on 19 April and concluded on 28 May with the last of the evidence and submissions. The parties helpfully provided written submissions.

[7] The principal focus in the inquiry was upon allegations made by Mr Main against certain prison officers that there was an inappropriate interview with RM in his cell prior to his death. RM's cell was on the second of three levels in Blair house. As will be seen, the initial allegation was that the interview occurred on 16 October 2014 following a publication of an article in The Scottish Sun. Shortly prior to the inquiry hearing it became clear from a Note lodged in court on behalf of Mr Main for the purpose of a preliminary hearing that the allegation was in fact that the inappropriate interview had occurred either on Monday 13 or Tuesday 14 October 2014. Much of the inquiry was taken up with this issue which had been the subject of a Report into Whistleblowing Allegations of September 2016 and an Addendum Report into Whistleblowing Allegations dated December 2016, both reports being instigated by the head of human resources at the Scottish Prison Service (SPS). In the light of the concerns

expressed by Mr Main regarding the SPS and in particular his concerns relating to the death of RM in custody, it was entirely appropriate that Mr Main was separately represented at the inquiry. Ultimately, the question for me was whether the concerns expressed by Mr Main were relevant to the circumstances in relation to which I required to make my determination in terms of section 6 of the 1976 Act.

### **The evidence**

[8] The first witness Matthew McGahan discovered the deceased at around 0543 hours while carrying out his usual prisoner check. He used his radio and instigated a “code blue” (hanging). He entered the cell with some other prison officers and it was immediately apparent that RM was dead. As indicated in the joint minute, paramedics thereafter attended and pronounced life extinct at 0552 hours. It appeared that RM had used bed sheets or towels with which to hang himself.

[9] Francis (Frank) Kennedy was RM’s “personal officer”. He had been assigned as such and was the first point of contact for the prisoner. He had been RM’s personal officer for several months. He was there to assist RM with any problems or questions he may have. If he was not available the prisoner could speak to any other prison officer. He described RM as a “troubled young man”. He could be pleasant but he could also be angry. He described him as a strong willed character that did not appear to be vulnerable. However he was needy in the sense of making numerous requests, in particular to use the telephone. He became aware that RM had tendered a plea of guilty to a particular charge in relation to which RM said that the sexual element was not true.

According to the officer this came about by way of an intercom message on 13 October 2014 in which RM spoke to the officer indicating that he wished to speak with his solicitor regarding the charges. The officer's evidence was that because prison officers Gregor Young and Patrice Napoli were in the area and also aware of the problem they all went to speak to RM. He said that he spoke at length and indicated that he would get in touch with the warrant office to find out the precise nature of the charge. He said that he would try and speak to his solicitor. Ultimately he was unable to do so but spoke to someone he presumed to be a secretary in the solicitor's office who told him that RM could speak to his solicitor at court the next day. Kennedy's evidence was that in the meeting with RM in the cell he told him that if he had concerns he should think about moving to another part of the jail. If there was a sexual element in the charge to which he was tendering a plea he suggested to RM that there must be some truth in it.

According to Kennedy of the three officers it was he who did the talking. He had not been aware of a suggestion of there being a sexual element to the charge prior to that meeting on 13 October (by which I think he meant the intercom message, as it appears that at this time other officers in the vicinity became aware of the problem at about this time). He indicated that it was possible the only persons in the prison who would know were those on the warrant desk. The suggestion that he move to another part of the jail (for his protection) drew a stern reaction from RM. He was not agreeable to that suggestion. He refuted any sexual element to the charge. The next event spoken to by this witness was on 16 October, the day before RM's death, when one of the "pass men" presented a newspaper article to him. This would have been the article in The Scottish

Sun newspaper. Kennedy spoke to his first line manager, Jim Young, who suggested that the witness speak to the unit manager Peter Russell, the Unit Manager of Blair House. It was decided to meet with RM in one of the classrooms. When there, RM was given the newspaper to read. He indicated that there was no truth in the sexual element. It was suggested to him that there must be some truth in it but he denied that. He again was against the idea of moving to another part of the prison for protection. At the meeting according to the witness RM did not come across as vulnerable, rather his attitude was "bring it on".

[10] In cross-examination by Mr Dar the witness was referred to a written record known as a "PR2" record. This is a record kept by prison officers. The record for 13 October reads as follows:

"Spoke to Raygen today regarding his court appearance tomorrow 14/10/2014 with officers Napoli and Young and as we were trying to make Raygen aware that as far as the warrants desk was concerned the charges that he was going to court for included the one that he thought his solicitor had got dropped and as that is not the case he was quite aggravated (sic) and I said that I would try to speak to his solicitor about it. Spoke to Denise about Raygen and she said that as he is at court tomorrow his solicitor and advocate would be there also and would be having discussions with Raygen about the poss of a plea regarding the sexual element of his charges (her words)."

The entry for 14 October 2014 reads as follows:

"Raygen is at court today but yesterday he stated that if he comes back from court and he is being charged with the sexual content of his warrant he will (take a screw out if he is sent to Munro 4) this was said in front of two other officers Gregor Young and Paddy Napoli."

[11] The witness indicated that this expression used by RM that he would "take a screw out" was quite commonly used in the prison and he took it as a flippant remark.

His response to the suggestion that there had been an inappropriate occurrence was “most definitely not”. He said that following the meeting on 13 October there was no indication of any suicidal tendencies on the part of RM. The witness explained that the staff were all trained in something termed “Act 2 Care” designed to help staff identify signs of self-harm or suicide. They were trained to look for “cues or clues”. There were no such signs with this prisoner.

[12] William Stewart Main spoke of RM being initially unpredictable and violent but with his help and the help of colleagues his behaviour improved. He described him as a robust character and more problematic than most prisoners. He was someone who could handle himself. Mr Main had no concerns for RM’s personal safety. His evidence was that in early October (later clarified as 8 October) he submitted an intelligence report to the risk management team known as a “5 by 5” intelligence report. He had had a conversation with one of RM’s peers from Aberdeen who indicated that he might be vulnerable if convicted of the charges he was going to court for. This was the subject of the intelligence report. Main hoped that action would be taken but he heard nothing. He also indicated that there were no “cues or clues” in relation to RM. He said that on 13 or 14 October, while working on level 2, he had a conversation with Patrice Napoli, prison officer, when Napoli indicated to him that he was going “to terrorise him” i.e. RM. The implication was that Mr Napoli knew of the sexual element to the charge or charges. According to Mr Main, Napoli then fetched Gregor Young, a prison officer, from level 1 to accompany him to make a visit to RM. Main said that he knew their intentions were not professional and so he would not have accompanied them. He said

that they went into the cell and when they returned to the console area where Main was they said that they had goaded him and that there were "tears in his eyes". He said they had wanted to get him put in a separate cell in the Dunedin unit. He said they were trying to provoke a violent reaction from him to justify moving him to segregation. Main said that they should contact prison officer Frank Kennedy, RM's personal officer, and get something put in the narrative. He said that Frank Kennedy became involved and completed a narrative, in other words the PR2 record. The witness said that he felt a great deal of shame that he had not stood up to them. Following RM's death on 17 October he said nothing about this. There had been a subsequent DIPLAR (Death in Prison Learning Audit Review) in January 2015 but again he had said nothing about the incident at that meeting.

[13] In cross-examination by Mr Dar, Mr Main said that his motivation in coming forward now was to obtain justice for a young man who had taken his own life in custody. Mr Main confirmed that he himself had had health issues including PTSD and that while he had ongoing health issues he was in reasonably good health. He confirmed that he had submitted a "section 11 application" for the purpose of establishing that his absence from work was attributable to his duties. The document is not dated but refers to sick absence from 26 January 2015 to 3 August 2015 and 28 August 2015 ongoing. The witness indicated that he submitted the application having spoken to his representative from the Prison Officers Association in about September or October 2015. In that application he dealt with the event in question and indeed it appears to be the first time that he had raised the matter publicly. It is clear from page 4

of that application that he fixes the inappropriate in-cell discussion between prison officers and RM after the newspaper story had been circulated. This would have to mean that the event took place on 16 October rather than 13 or 14 October. In the letter the prison officers were not named. In his evidence Mr Main accepted that the content of the application was at variance with his evidence. His explanation was simply that his recollection had been wrong. He had got the dates wrong. He confirmed having seen the CCTV footage of 16 October 2014 showing that Napoli and Young were not in the vicinity of the cell and also having seen the Addendum Report to the Whistleblowing Report referring to the PR2 Record, shortly prior to the hearing. His explanation for not making a disclosure prior to this was that he wanted to return to work, the implication being that a disclosure would make it difficult for him to return to work at Polmont. Ultimately he decided to make the disclosure in his application which was for the purpose of the civil service pension scheme and benefits rules. In the course of his evidence it became clear that Mr Main was actually suggesting that there were two visits to the cell on 13 or 14 October. He indicated that Young and Napoli had fetched Frank Kennedy after the witness had suggested that they put something down in the narrative. He said that Frank Kennedy, Napoli and Young all went into the cell but that there were no sinister discussions around that visit. In the contact that the witness had with RM following those visits it was not indicated by RM that there had been any inappropriate behaviour. He made no complaints. He said that he did not tell Frank Kennedy of his intelligence report of 8 October but did tell Patrice Napoli on 13 October because he considered that the prisoner was potentially vulnerable. He said that he was

asked to review CCTV footage by Russell Turnbull relating to the passing of a note under the door of RM's cell on 16 October 2014 and he was referred to a letter he subsequently wrote to the unit manager, Peter Russell, on 26 October 2014. That letter dealt with the passing of the message under the cell door of RM and there was no mention by him at that stage of the alleged activities of Patrice Napoli or Gregor Young. He describes the witness Kennedy's reason for going to the cell as "incorrect". He described Patrice Napoli's affidavit as "not the truth" when its contents were put to him. (In that affidavit Napoli denies any inappropriate meeting or inappropriate discussion with Main). Mr Main did indicate that he had informed his representative about the allegations prior to making his section 11 application. He was referred to his statement to the police which was given on 25 March 2016. In that statement Young and Napoli were formally named for the first time as the prison officers involved in the inappropriate in-cell meeting. Again, however, it is said in that statement that the meeting occurred following the circulation of the Scottish Sun newspaper article within the prison. Further there was no mention of Frank Kennedy going into the cell with Napoli and Young following their initial visit.

[14] The interview Main gave to those conducting the Whistleblowing Investigation on 7 April 2016 was put to him and he confirmed that he indicated to the investigators at that time that he did not wish to make any additional comments, explaining that he had been under stress and that the SPS had failed to protect his interests. It was put to him that he had changed his account in relation to the allegations to maintain his credibility but this was denied.

[15] In summary Mr Main stuck to his account of what occurred but indicated that the event had happened on 13 (or 14) October rather than 16 October.

[16] Heather Keir was Deputy Governor of HMP YOI Polmont at the relevant time. She had no personal dealings with RM. She chaired what was known throughout the inquiry as the DIPLAR meeting although the documentation (Crown production 7) refers to it as an "Operational and Learning Review Following a Self-inflicted Death or Death by Undetermined Intent in Prison". The review was held on 23 January 2015. There were a number of attendees, including Russell Turnbull the first line manager, various prison officers including William Main, and NHS staff. Absent from the meeting was Frank Kennedy, RM's personal officer (something that was never satisfactorily explained). It was indicated that the review was "independent" of the prison. The witness said that RM was never identified by staff as being someone that was at risk of self-harm and was therefore never subject to the Act 2 Care procedures. In the report at part 8 under heading "Detail any significant events or precipitating factors possibly relating to the death in custody" three matters are set out: (1) media reporting of the crime; (2) anniversary of deaths and; (3) content of telephone calls with his sister and girlfriend immediately prior to his death. As regards item (2), it appears that RM's mother died when he was 9, one of his sisters died on 19 October 2013 (almost exactly a year before), and his grandfather died on 27 October 2013. Another observation in the report at part 7 related to the effect on staff and this states:

"the period immediately after the death significantly affected staff due to the length of time taken to release Raygen's body from the ligature by the police and

the manner in which the body was going to be removed from the hall. Staff intervened and chose to remove the body themselves from the hall.”

The conclusion of the report was as follows:

“Raygen had experienced a difficult life and family upbringing; accommodated in local authority care for a lot of that time. He had experienced hugely significant losses in his short life, that of his mother, his sister and his grandfather. He used violence as a means of gaining control status was very important to him. He was subjected to media reporting that significantly upset him.”

[17] There was a subsequent document produced by Ms Keir, dated 26 January 2015 and titled “Joint Learning Plan Following a Self-inflicted Death or Death by Undetermined Intent in Prison”. This report set out various action points including that SPS were to consider management of the scene following a death by hanging, the appropriate management of the deceased and also that the storage of social work reports was to be explored to ensure that all relevant information was available to the correct staff.

[18] Ms Keir also indicated that she had listened to RM’s last telephone calls to his sister and his girlfriend on 16 October 2014 and it seemed clear that the sexual element in the conviction was one step too far for RM. The witness said that the document went to the National Suicide Risk Management Group who had a quarterly meeting at SPS HQ. As regards to the action points, there were seen to be deficiencies in the management of the scene following this death given that staff were upset and had to take action on their own initiative. The practice was that if it was clear that someone could not be revived, the cell would be locked up. If there was a chance of survival then the person would of course be taken down. In this instance the body was left too long

while the police were awaited. There also seems to have been a difficulty relating to the removal of the body when the staff that arrived were not sufficient in number and did not have the necessary equipment. They apparently proposed dragging the body through the hall. Prison officers intervened so that RM could be carried out with dignity. This episode, unsurprisingly, caused distress to the staff. The detail of this incident is contained in the Suicide Review Panel report completed by Rhona Morrison, Associate Medical Director (Mental Health) following the DIPLAR review on 23 January 2015, which she attended. As regards social work reports, they were located in the warrant file. They were not scanned into the PR2 system and so not readily available to prison officers. I understood the witness to say that steps were being put in place so that the information in reports relevant to a prisoner would be more readily available to prison officers.

[19] As regards the telephone calls, which Ms Keir had listened to for the purposes of the review, there was a telephone call to RM's sister at 1347 hours on 16 October, then to his girlfriend at 1355 hours, then 1842 hours. The last call referred to the suggestion by prison staff that he go up to protection. He indicated that he would not be doing that. It also appears from the call that RM did not think that anyone believed him that there was no sexual element in the crime that he had committed. He says "there's nae light at the end of the tunnel..." That sentiment is repeated and he makes reference to the newspaper article and the fact that he did not wish to bring shame on his girlfriend and his family. In one point he says "it's nae a sentence I'm going to have to do at the end of the day..." The evidence of the witness Keir was that being tagged a sex offender was

one step too far for RM. Clearly the review had access to information from Frank Kennedy because that is referred to in the review but it is not clear why it was that he was not at the meeting. Further the witness could not recollect whether or not they would have had access to the intelligence submitted by witness Main on 8 October. Ms Keir gave evidence that around 6 months after the death Russell Turnbull, who was returning to work after some leave, passed comment informally that Mr Main had made an allegation as to the conduct of other prison officers towards RM prior to his death. She passed this to the Governor. It was decided (by the Governor) they should wait to see if any further information was forthcoming before deciding on any action. While Mr Main had contributed at the review meeting in January 2015 he did not convey any concerns regarding other staff at that meeting.

[20] Ms Keir spoke of a meeting with Mr Main on 8 March 2016. He was due to return to work but it was not thought appropriate that he return to Polmont because of the allegations that he by then had made, including allegations regarding the management of the prison. It was indicated to him that he would be posted to Glenochil Prison. He did not wish this. He was agitated. He left the meeting. The meeting was cut short.

[21] The witness then spoke about the Act 2 Care documentation in relation to RM. Such documentation would be completed in relation to a prisoner on admission to the establishment. That included a document completed on his reception on 14 October 2014 following conviction. In that document under section 2 dealing with assessment of behaviour attitude and risk all questions were answered in the negative meaning in

short that there were no concerns. In the narrative it is stated "Raygen stated he has no issues or concerns at this present time". The witness stated that if required a plan would be devised and tailored to suit the individual prisoner should any concern arise. There were no verbal "cues or clues". All staff were trained in identifying that. RM was not placed on Act 2 Care. The witness indicated that where there were appropriate concerns a prisoner could be put into an anti-ligature cell which has for example no light fittings. In relation to the whistleblowing report, this stemmed from the information given to the Governor. Witness Keir had, as explained, passed certain information conveyed by Russell Turnbull. That was passed to the Governor. It was when further information was received (presumably in the form of the section 11 application from Mr Main – see evidence of Christopher Thomson), that the decision was made to proceed with a whistleblowing investigation and the matter was passed to the Scottish Prison Service for that purpose. As regards the telephone calls I asked the witness whether those were monitored. This depended on information which required staff to do that. In this case it was apparent that the calls referred to were only listened to after RM's death, there being no perceived need to do so prior to that.

[22] Witness Christopher Thomson was the joint author of the initial Whistleblowing Report of December 2016 and was the sole author of the subsequent addendum report in December 2016. He was directed by the Head of Human Resources of the SPS to investigate certain whistleblowing allegations made by Mr Main. He was instructed to do so on 11 February 2016. It is important to recognise that there were two aspects to this investigation. The first aspect related to alleged cultural, environmental and

management issues at HMP YOI Polmont. The second related to the concerns directly related to the death in custody of a young offender, namely RM. I would pause to observe at this stage that given the purpose of this Fatal Accident Inquiry, we are not concerned with the first aspect of the allegations covered in the Whistleblowing Report. This is not a public inquiry into the workings of the prison system or even the workings of the system within HMP YOI Polmont.

[23] At paragraph 5.9 of the report it was concluded inter alia that there was no evidence available to support Main's allegation that there was an "inappropriate in-cell interview" involving RM on 16 October 2014 or any inappropriate interaction between staff and RM on that date.

[24] As already indicated Mr Main refused to cooperate with this investigation. But it is noted that the investigation was dealing with an allegation of an event on 16 October 2014 rather than 13 or 14 October. Further investigation was necessary when the statement that Mr Main had given to the police on 25 March 2016 came to light, as that provided further detail including naming the individual prison officers, allegedly involved in an inappropriate in-cell interview. The witness Thomson was asked to investigate once again on 9 November 2016. The additional information included the identity of the newspaper involved and the names of the officers Napoli and Young. CCTV did not show that the identified prison officers were in the vicinity of RM's cell on 16 October 2014. However, the PR2 record showed that Prison Officers Napoli and Young along with Prison Officer Frank Kennedy visited RM's cell on 13 October 2014 to discuss concerns. The terms of that record have already been noted. Officers Kennedy

and Young were interviewed for the purpose of the investigation and denied any inappropriate conduct. Officer Napoli was by then on a career break from SPS and was in Dubai UAE as he was at the time of the Fatal Accident Inquiry. Napoli was asked questions by email and responded in kind. It should be noted at this time that there was no suggestion that there had been two visits to the cell that day. The conclusion of the author, witness Thomson, was that Kennedy and Young appeared to be credible. Napoli denied any inappropriate conduct in his emails. The conclusion of Mr Thomson was that there were issues with the reliability of officer Main's account and that there was no evidence available to support the allegations made by officer Main that officers Napoli and Young conducted an inappropriate in-cell discussion with RM or that they claimed to have done so.

[25] It is worth noting at this point that in the initial Whistleblowing Report it is recognised that intelligence was in fact submitted on 8 October 2014 from an unidentified member of staff regarding a potential threat to RM's safety. That of course would support Mr Main's assertion that he submitted such a report.

[26] Russell Turnbull, prison officer and a First Line Manager, spoke of RM being a needy prisoner always wanting to use the telephone. He had a propensity to be violent and could be aggressive towards staff. He stated that on 16 October he was made aware of the newspaper article and the consequent risk of the prisoner being assaulted. At around 6.45 pm he spoke to RM and suggested that he miss recreation. This was for his own safety. RM was agreeable to that. He discussed with him the possibility of moving to another part of the prison. He said that he would speak to him again the following

day and he did not notice any difference in his demeanour. There were no warning signals. This meeting was in the cell with prison officer David Orr and prison officer Paul Reid was at the door. Later on the cell was locked down at about 0855 pm. RM asked for a pen which was given to him.

[27] Mr Turnbull also gave evidence about a further statement he had given to the police on 11 November 2016 which made reference to a meeting with witness Main about a year prior. He said that Main had approached him as he lived in his street. Main had been off work for a while. Turnbull would check on his welfare from time to time. On this day Main approached him on the street and mentioned that two prison officers, Patrice Napoli and Gregor Young, both from Blair Hall, had entered RM's cell on the morning before his death to terrorise him. He said that Patrice had telephoned Gregor to join him to go and see RM. After the comment the witness remembered Main saying something like he would never formally make a statement about it. Mr Turnbull said that the information was passed by him to Heather Keir and of course she confirmed in her evidence that she received some such information. Witness Turnbull heard nothing more about it. He confirmed that he was the Act 2 Care coordinator for around 9 years. He said there was good training for staff. He could not recall speaking to Frank Kennedy about the allegation. He had no concerns regarding RM. He had not been aware of the intelligence of 8 October. He had attended the DIPLAR meeting of 23 January 2015 where the allegation by Mr Main was not mentioned.

[28] Gregor Young, prison officer, had what he described as "general dealings" with RM. On 13 October 2014 he went along with Napoli and Kennedy to RM's cell

following a communication via the intercom to the central console. He does not think that he spoke to RM. RM wanted to get in touch with his solicitor to find out about a part of a charge which he thought had been dropped. That is all this witness remembers about the meeting which he thought was brief, around five minutes. He did not recall any conversation about the possibility of RM going to "protection". He denied any inappropriate conversation or goading. He denied having any inappropriate conversation with Mr Main before or after his visit to the cell. According to this witness there had only been one meeting with RM in his cell and not two as suggested by Mr Main. He did not have any concerns regarding RM. All in all this witness did not seem to recollect a great deal about 13 October.

[29] The last witness to give oral evidence was Peter Russell. He was the Unit Manager of Blair House. His attention was drawn to the newspaper article on 16 October. He spoke to the first line manager James Young and also Frank Kennedy. They had a meeting with RM during which they gave him an opportunity to read the article. This was the meeting in the classroom. He was offered the chance to move to "protection" in Munro 4 as there was he perceived a credible threat to the prisoner's safety. RM stated that if he was moved he would be violent towards other prisoners (sexual offenders) in the protection area. He did not wish to be moved. The decision was made not to move him at that time and to wait and see how matters developed. The first line manager James Young briefed the rest of the team which I take to mean the prison officers in the hall. Notwithstanding the credible threat mentioned the witness had no concerns he said about RM's personal safety (which I took to mean risk of self-

harm). All staff were trained in suicide prevention and in RM's case there were no "cues and clues" which gave rise to any concern on that front.

[30] In his affidavit of 22 February 2018 Patrice Napoli, now working in Dubai, indicated that he was employed as a prison officer at the relevant time and was trained in the SPS Suicide Risk Management Strategy (Act 2 Care). He received refresher training each year. He commenced a career break from the service in July 2016 leaving it open to him to return to his role within the SPS within a five year period. At the time of RM's death he normally worked on level one of Blair House, however due to the low number of prisoners in that level it meant that he would move between that and other levels in the course of his working. He got to know RM through the usual daily interactions although did not have many dealings with him. He states that during his shift on 13 October 2014 he attended RM's cell with Frank Kennedy and Gregor Young to discuss the nature of RM's charges. RM was trying to explain that he thought the sexual element of his charge had been dropped and wanted assistance to get in touch with his solicitor. Kennedy said that he would contact RM's solicitor. In paragraph 7 of his affidavit he states the following:

"I was aware of the reason why Raygen was detained within HMYOI Polmont. I believe that I learned this through prison officer Gregor Young or Frank Kennedy. I had visited Blair level 2, which could have been for numerous reasons but most probably to either pick something up from the printer, which was in the manager's office and/or simply to have a chat and a cup of tea with my colleagues. It was at the point of me being there that the inquiry from Raygen over the sexual element of his charge came to light. This was the first time I was aware of any sexual element to his warrant. The way in which this came to my knowledge from recollection was through a brief conversation with officers who were on Blair level 2."

[31] Napoli then went on to say that RM did not present as being overly concerned about the sexual element of one of the charges. He did, however, seem to be concerned about any fall out with any of his inmates over the sexual nature of the charge.

Thereafter Napoli did not have any other direct dealings with RM prior to his death. He found RM to be quiet yet confident and mature for his age in comparison with other boys of his age within the prison. RM did not seem to be concerned about the other boys at all. He indicates that if he had any concerns about RM's presentation in any way in respect of self-harming or having suicidal ideation then he would have placed him on ACT (Act 2 Care). He was trained in looking out for cues and clues. This witness has never been asked to provide a statement to the police and he assumes this to be because he did not have any significant involvement with RM.

[32] His first involvement in any investigation was when he was made aware of William Main's statements and in particular the statement to the police on 25 March 2016. Mr Napoli referred to the allegation which was at that stage suggested to have occurred on 16 October 2014. He stated as follows:

"...he said that we were discussing an article that was published in The Scottish Sun reporting on [RM's] court case. We apparently discussed the backlash. In response he alleged that I had said that I was going to get prison officer Gregor Young, and then go and "terrorise" Raygen. It is then alleged that I returned with Gregor Young and we confirmed that we had "terrorised" Raygen. I am aware of the full allegations made by William Main..."

He then went on to state (at paragraph 13 of the affidavit):

"When I learned of his accusation I was completely shocked as it is entirely false. I could not believe it. This conversation never took place with William Main at any time. This is not the way I would ever conduct myself."

He went on to say that he did not have any dislike for RM as a prisoner. He stated that if RM had been threatened and was in fear and was bullied he had the opportunity to press an emergency alarm within the cell or the intercom to alert staff. He said that RM would not have been slow in pressing one of those systems as he was an offender who would complain when he was not getting what he wanted. Napoli stated in his affidavit that he is deeply saddened by the false accusations made by Mr Main which are wholly unfounded and that he would never treat a young offender in the manner alleged.

[33] For the purposes of the affidavit Mr Napoli was asked certain questions which essentially put the same allegations but in the context of Monday 13 or Tuesday 14 October 2014. He denied having the conversations alleged by officer Main before and after a visit to the cell and any inappropriate conversation with RM in the cell.

#### **The statute**

[34] Following the conclusion of the evidence, submissions were made on behalf of the parties represented at the inquiry and I think it is helpful, to give context, to mention section 6 of the 1976 Act dealing with the Sheriff's Determination. It provides as follows:

“(1) At the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the sheriff shall make a determination setting out the following circumstances of the death so far as they have been established to his satisfaction—

- (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.”

### **Submissions**

[35] It was submitted on behalf of the Crown that my determination should be restricted to making the formal findings as to where and when the death took place and to the cause or causes of death and that in terms of section 6(1)(a) and (b) of the 1976 Act. In other words I was asked to determine only that RM died in his cell at Blair Hall and the cause of death was hanging. It was recognised that there appeared to be a conflict in the evidence between Mr Main and the other prison officers as to what occurred in the days prior to RM's death. However it was submitted that even if Mr Main's evidence was accepted then that amounted to independent actings of individual members of staff and that there were no reasonable precautions which might have been taken to prevent the death nor were there any defects in any system of working which contributed towards the death (section 6(1)(c) and (d)). As regards section 6(1)(e) it was submitted that I should not find that there were other facts which were relevant to the circumstances of the death. Even if Mr Main's evidence was accepted over the evidence of Napoli and Young, there was no clear indication that such behaviour influenced RM's actions.

[36] On behalf of Mr Main it was submitted by Mr Dar, in common with all the other submissions in the case, that there were no identifiable precautions which could have been taken which might have prevented the death nor were there any defects in any

system of working which contributed to the death. It was submitted that there may be other facts which are relevant to the circumstances of the death in terms of section 6(1)(e) in light of the disclosures by Mr Main. However he recognised that the issues identified by Mr Main may simply amount to aggravating features not directly linked to the deceased's death and in the absence of a causal link they may be of limited relevance. It was recognised by Mr Dar that there were a number of issues or questions identified in Mr Main's evidence but some were outwith the remit of the inquiry. It was submitted that the death of RM was a tragic yet unforeseeable event. There were no reasonable precautions that could have been taken to prevent his death. There was no evidence before the inquiry that suggested any perceived risk to the safety of the prisoner and a decision to end his life appears to have been a relatively spontaneous one. In hindsight the printing of the newspaper article clearly left a devastating impression with the deceased who unilaterally decided to end his own life. It was left to me to consider whether a finding in respect of section 6(1)(e) was appropriate in that context.

[37] On behalf of the Prison Officers Association Mr Cahill invited me to make formal findings only. He invited me to accept the evidence of the prison officers Frank Kennedy and Gregor Young as supported by the evidence of Patrice Napoli as credible and reliable. I was invited to reject the evidence of prison officer Main as not being credible or reliable and my attention was drawn to a number of factors which ought to be considered when assessing Mr Main's credibility and reliability in addition to the contradicting evidence of Kennedy, Young and Napoli. Mr Main had accepted in cross-examination that there were five occasions upon which he either gave different

accounts or omitted parts of his account. It was further submitted that the date change from 16 to 13 or 14 October 2014 in relation to the allegations was significant and adversely affected Mr Main's credibility as his original position had been anchored to the memorable event of The Scottish Sun newspaper article on the day prior to RM's death. This was not simply a straight forward error of date therefore which may have been understandable. It was submitted that in addition to the difficulties with Mr Main's evidence a court would require, if it were to accept his account, to reject the evidence of Kennedy, Young and Napoli with the supporting evidence of the PR2 entry that was recorded. Further RM did not mention any inappropriate behaviour in the written material found in his cell nor was there evidence of inappropriate behaviour in the telephone calls which were recorded in the transcripts. All this, it was submitted, suggested that there was no inappropriate behaviour towards RM by any prison officer. Even if Mr Main's evidence was accepted it could not permit any finding of what actually happened at a meeting between RM and Young and Napoli in the cell. It was submitted therefore that there was no basis to make any findings in terms of section 6(1)(c) or (d) of the Act. It was also submitted that there could be no basis for a finding in terms of section 6(1)(e) as facts were not relevant to the circumstances of the death. Even if established this was a conversation that took place over three days prior to death.

[38] Finally Mr Scullion for the Scottish Prison Service submitted also that I should restrict my determination to formal findings only in terms of section 6(1)(a) and (b). It was submitted that I should attach no significance to the interactions between RM and

three prison officers, Kennedy, Napoli and Young on the days leading up to his death. I was invited to reject the evidence of William Main that anything untoward or inappropriate occurred. I was reminded under reference to decisions in other cases that I had no power to make a finding of fault. I was also reminded that the provisions of section 6(1)(c) and (d) required there to be some causal connection between the "fact" and the death. Paragraph (c) referred to the reasonable precautions whereby the death might have been avoided, paragraph (d) required the identification of defects in any system of working which contributed to the death. By contrast, paragraph (e) required the court to determine any other facts which are relevant to the circumstances of the death and this wording gave the court wide scope, there being no requirement for a causal connection between the "fact" and the death. Nonetheless the facts require to be relevant to the circumstances of the death. It was submitted that a finding under this paragraph required to be based on evidence and critically required to be related to the death. Any concerns the court had which were not relevant to the circumstances of the death could properly be set out in a note appended to the formal determination without appearing as a finding in that determination. He submitted that RM was deeply concerned and agitated by the media reporting of his crime. He did not want to be labelled as "sex offender" and he considered that he brought shame to his family and those with whom he associated. He considered there was no light at the end of the tunnel for him. He vehemently denied the sexual element of his charge but from the telephone transcripts appeared to acknowledge that he would not be believed in light of the newspaper article. In short, it was submitted, considering in particular the letters he

had written and the telephone transcripts, he thought that he had no way out. It was submitted that the media reporting and the strain that this had on his relationships was the most significant factor in RM taking his own life. It was submitted that Mr Kennedy's evidence should be accepted as also that of Mr Young, although the lack of recall of the latter witness was acknowledged. It was submitted that Mr Main's evidence should be rejected as unreliable. His story had changed on no fewer than five occasions. He did not mention the allegations at the DIPLAR meeting. The first mention of any allegation of impropriety was in his section 11 application. When he made the allegation he gave no names. The trigger for the inappropriate conversation was the publication of the article in The Scottish Sun. Later he identified the prison officers as Gregor Young and Patrice Napoli. He told the police that those officers met with RM alone after which Frank Kennedy updated the narrative on PR2. It was this allegation which was the subject of SPS's Whistleblowing Investigation. At no point during that investigation did Mr Main change his story. Thereafter the solicitor instructed by Mr Main at this inquiry showed him the CCTV footage of 16 October showing neither Napoli nor Young anywhere near RM's cell. He was also given sight of Mr Thomson's addendum report. It was at that point that Mr Main changed his position and advised the court through his Note of Issues (lodged as part of the preliminary hearing) that the inappropriate meeting between the officers and RM occurred in fact on 13 October or thereabouts. This was not simply a date error as the inappropriate conversation had previously been tied to the publication of the newspaper article. Finally when Mr Main gave evidence at this enquiry his position changed again. He

said there were in fact two cell interviews which took place, one between RM and Napoli and Young and the other shortly thereafter between RM, Napoli, Young and Kennedy. This was the first time Mr Main had said that Kennedy was involved in any meeting with RM, Napoli and Young. I was also asked to accept the affidavit evidence of Patrice Napoli. For Mr Main's evidence to be accepted I would require to reject the evidence of Kennedy, Young and Napoli on a whole host of matters. I would require to ignore the various changes in Mr Main's story and the fact that he made no mention of the allegations at the DIPLAR meeting. I would also require to reconcile why RM, who Mr Main himself considered to be a prisoner who would "complain" and who would feel comfortable speaking to officers, did not mention this alleged harassment by officers to anyone. In addition, I would require to reach a different conclusion from that reached by Mr Thomson and his team who carried out the Whistleblowing Investigation who found the accused officers to be credible and for there to be a lack of any evidence whatever to support Mr Main's claims.

[39] It was submitted that even if I were to accept Mr Main's evidence that would not form the basis of a finding under section 6(1)(c)-(e). There was no evidence that any such conversation had an impact on RM let alone that it was in any way connected to the death. The evidence of the prison officers was in the days after the alleged event that there was no cause for concern and there was nothing in the telephone calls to indicate that RM was bothered by anything done or said by an officer. Indeed there was significant evidence that RM was exercised by the reporting of his crimes and by the affect that that would have on his relationships. Therefore it was submitted that there

was no evidence to suggest that any in-cell interview had anything to do with the death let alone the causal connection. It was submitted in conclusion that RM's death was a tragic but unforeseeable event. The prison officers in contact with RM were all trained in the SPS's suicide prevention strategy and went out of their way to assist RM in the days leading up to his death, trying to support him in light of the charges against him and the media reporting of his crime. It was clear that RM was significantly distressed by The Scottish Sun article and made a conscious decision to do what he did giving no indication to anyone that he was going to commit suicide.

[40] All those making submissions offered their condolences to the family and friends of RM and to all those affected by his death.

### **Discussion**

[41] There was no issue in this case about what the formal findings in my determination should be under section 6(1)(a) and (b) of the 1976 Act. These I have made. It was also common ground amongst the parties to the inquiry that there should be no findings under paragraphs (c) and (d) of the Act, there being no reasonable precautions which might have prevented the death and there being no defects in any system of working which contributed to the death. The only live issue in the case, according to the parties, was whether or not I should make any findings in my determination under paragraph (e) of the sub-section. The only party that suggested I might do so was Mr Dar on behalf of Mr Main although he left it for me to decide

whether there were any facts arising from Mr Main's allegations which had a sufficient nexus or relevance to the circumstances of RM's death.

[42] The allegations made by Mr Main are very serious indeed. If true they would involve highly inappropriate conduct, not only by prison officers Young and Napoli but also in my view of prison officer Kennedy, RM's personal officer. If such allegations were established there would undoubtedly be consequences for those officers. In light of that I have felt it appropriate in this note to set out the evidence and also the submissions in some detail in order that those reading this determination can understand the full evidential picture.

[43] Much of the evidence was not in dispute, the principal issue of contention being whether an inappropriate in-cell interview took place involving prison officers Napoli and Young in the days prior to RM's death, the focus coming to be on 13 October 2014 rather than on any other date. That involves a consideration of the evidence given by prison officers Napoli, Young, Kennedy and Main. If I were to accept the evidence of Mr Main as to what transpired on 13 October I would necessarily require to reject the evidence not only of prison officers Gregor Young and Patrice Napoli but also the evidence of Frank Kennedy, RM's personal officer. Prison Officer Kennedy gave his evidence in a straight forward manner and he was able to give a fairly clear account of his involvement in events. He appeared to be an honest and reliable witness. Prison Officer Young's evidence was of more limited assistance as he had limited recall of events but it was at least consistent with Kennedy's evidence. Any wrongdoing was denied. It was of course difficult to judge the evidence of Patrice Napoli as it was given

by way of affidavit and therefore that evidence could not be tested by cross-examination. However it was consistent with the accounts of Young and Kennedy and to that extent supported their evidence. As for Prison Officer Main, it was not obvious to me from the way he gave his evidence that he was being dishonest about what occurred on 13 October. However, given the seriousness of the allegation and standing the evidence of the other witnesses, Mr Main's evidence required to be subject to the most careful scrutiny. In my view, the more serious the allegation the more cogent the evidence required to establish it on the balance of probabilities.

[44] Mr Main's allegations were not formally mentioned by him until he pursued a section 11 application in support of a claim for injury at work benefit during a period of sick leave from his employer the SPS, after a discussion with his union representative. That appears to have been in around September or October 2015, in other words around a year after RM's death. When the allegations were first made he gave no names and the trigger for the inappropriate interaction between the officers and RM was the publication of the article in The Scottish Sun on 16 October 2014. Later on (apart from the informal conversation with Russell Turnbull) he identified the prison officers as Young and Napoli and this is what he told the police in March 2016. That material was the subject of the SPS whistleblowing investigation. Mr Main did not cooperate with that investigation. The follow up investigation which was the subject of the addendum report was as a result of the further information in the police statement. That was the state of the allegations up until the eve of this enquiry. In a Note lodged in this court, prior to the enquiry proceeding, there was a change in that the events took place not on

16 October following the publication of the newspaper but three days earlier on 13 or 14 October. This was after Mr Main was shown CCTV footage of RM's cell on 16 October which showed that neither Prison Officer Napoli nor Prison Officer Young were near RM's cell on that day. He had also been given sight of the addendum report prepared by Mr Thomson which included a reference to the PR2 record of 13 and 14 October 2014, referring to the visit to the cell on 13 October. To my mind the change in dates per se is not critical in that frequently and quite naturally a witness's recall can vary and can be affected by the passage of time. However, the change here is more significant than that. The trigger event was, as I have said, the publication of the newspaper. In the new scenario the trigger event is not so obvious. It presupposes that the prison officers concerned were aware of RM's potential difficulty, in other words the sexual element involved in the charges he faced. On the evidence it is not at all clear to me that the prison officers were aware of the sexual element to the charges, prior to their meeting with the prisoner on 13 October in the prisoner's cell, or at least prior to the intercom message which Kennedy dealt with and which seems to have been overheard by prison officers in the vicinity, including Napoli. The evidence of Kennedy as supported by Young and Napoli was to the effect that RM contacted his personal officer via the intercom to clarify an issue in relation to the charges he faced and in particular to clarify with his solicitor that a sexual element to the charge had been taken out or deleted. None of them appeared to have been aware of the sexual element of the charges faced by RM prior to this. Their evidence was that there was a single visit to the cell involving Kennedy, Napoli and Young with the discussion with the prisoner being

led by Kennedy. While there was evidence that Mr Main submitted an intelligence report on 8 October 2014 regarding potential repercussions for RM in light of the charges he faced, there was no evidence that this information was disseminated or acted upon.

[45] Further, it emerged during evidence given by Mr Main in the course of the enquiry that he was alleging that there had been two visits to the cell, the first involving Young and Napoli and a subsequent visit by Kennedy following a suggestion by witness Main that something ought to go on record after what he perceived as an inappropriate in-cell interview between Napoli and Young and the prisoner. This contradicted the evidence of Kennedy that his visit to the cell was prompted by an intercom message as already explained. The PR2 record itself is consistent with the evidence of Kennedy, Young and Napoli.

[46] To accept Mr Main's evidence about what happened would therefore involve Mr Kennedy in a conspiracy with Napoli and Young to cover up an inappropriate in-cell interview. That is something which I have great difficulty in accepting on the evidence.

[47] It is also of some significance that there is nothing in the letters of RM, the note left in his cell nor the transcripts of telephone calls between RM and his sister and also his girlfriend on 16 October which refers to any inappropriate behaviour by prison officers. It was clear from the evidence that RM was offered the opportunity to go to "protection" in the interview in his cell, also in an interview in a classroom at which time he was given opportunity to read the article in the newspaper published that day and that was also discussed later in the day with Russell Turnbull. He declined the offer of a move to another hall. The impression he gave to the officers was that he could

handle whatever came his way and indeed threatened violent behaviour to others if he was moved.

### **Conclusions on Prison Officer Main's Allegations**

[48] When the evidence is scrutinised and Mr Main's account tested, I am unable to be satisfied on the balance of probabilities that the allegations he makes about what occurred on 13 October 2014 are established. The weight of evidence is to the contrary. The weight of evidence is to the effect that the prison officers who came into contact with RM in the days prior to his death did what they could to take steps in the interests of his personal safety and wellbeing on the basis of the information they had about the charges he faced and the consequent risk to the prisoner. It is possible that Mr Main did speak to Napoli at around the time of the visit to the cell by Kennedy, Young and Napoli, and may have mentioned the intelligence regarding RM's vulnerability to assault, but even if that did happen, I cannot be satisfied on the evidence, and when Mr Main's evidence is tested, that Napoli had said that he was going to "terrorise" or had "terrorised" RM.

### **Factors relevant to RM's death**

[49] On the evidence, it is clear that RM decided to take his own life as a result of his perception that others would consider him to be a sex offender. The report in The Scottish Sun newspaper contains a reference to there being a sexual motive for the crime. This was notwithstanding that the statutory sexual element of the charge was removed

prior to his plea of guilty on 14 October at a preliminary hearing at the High Court in Glasgow. The charge had been amended to remove that element so that the charge was one of common law assault, that is assault with a knife to severe injury, permanent disfigurement, permanent impairment and to the danger of life. It was clarified to me by the Crown that the reference in The Scottish Sun newspaper to a sexual motive was accurately taken from the Crown narration at the time of the plea and must therefore be taken to have been agreed. However that may be, the sexual element appears to have been a bone of contention on the part of RM.

[50] It is clear from the letters that he wrote and the transcripts of the telephone calls of 16 October that being put in the category of a sex offender was for RM a step too far and something he could simply not tolerate. The publication clearly produced a reaction in others as is evident by the threatening note put through his door. Although two prisoners were subsequently charged and acquitted of threatening or abusive behaviour in relation to this incident, it is reasonable to infer that the note was passed under the door by other inmates. It is difficult to know how much he was concerned by that given evidence that he was a robust character. More to the point was his perception of what his family and friends thought about the nature of this crime and that is something that he could not live with. It appears from his last communications that he felt he would not be believed.

[51] It is also clear from the evidence that the prison officers (including Mr Main) who came into contact with RM had no concerns whatever for the wellbeing of RM in the sense of being liable to self-harm. All were trained in Act 2 Care, which was designed to

look for “cues and clues” in relation to suicidal ideation. RM was offered protection in the sense of being moved to another hall. He did not wish to be moved and indeed evinced some ill will to any sex offenders that he may encounter if transferred.

[52] While the common position of the parties was that there should be no findings under section 6(1)(c) or (d) of the 1976 Act, I have nonetheless considered whether there should be, but in the circumstances am unable to find and determine that there were any reasonable precautions whereby his death might have been avoided or defects in any system of working which contributed to his death. In relation to section 6(1)(e), I have not found that there was inappropriate behaviour on the part of prison officers prior to RM’s death as alleged by Mr Main. Had I done so, such behaviour might well have been relevant to the circumstances of death under this provision, rather than under section 6(1)(c) or (d). However, I have found it appropriate to record a finding under section 6(1)(e) that the publicity surrounding the crime to which RM was convicted is relevant to those circumstances for the reasons given above, and in particular that the publicity was the main factor in RM’s decision to end his life.

#### **Further observations**

[53] I have already indicated that this is not a public inquiry into the prison system or even such an inquiry into the system at HMP YOI, Polmont, but I wish to make some further observations in the hope that they may be of assistance in the future.

[54] As indicated, there was no evidence as to what came of Prison Officer Main’s Intelligence Report of 8 October 2014. He indicated that this was submitted (presumably

anonymously) to the “risk management team”. There was no evidence about whether or in what manner that intelligence was acted upon. Its existence appears to have been acknowledged in the DIPLAR report. There is no evidence that Prison Officer Kennedy, or any other prison officer dealing with RM, was aware of this intelligence and I infer that it was not passed on to them. I would express a hope that such information, provided it is significant and relevant to the care of a prisoner in custody, would be communicated to those who are responsible for the prisoner’s care. In particular I am thinking of a prison officer acting as the prisoner’s “personal officer”. As will be apparent from what I have said, however, I am not satisfied that the threats to RM in themselves caused him to do what he did.

[55] Further, it seems to me that if the prison authorities have information which is potentially relevant to the care of a prisoner either because of the nature of the charges an accused faces or has been found guilty of or because of the nature of certain information in other documents, such as a background report prepared by social workers (e.g. personal difficulties, susceptibilities, anniversaries of deaths of close family or friends), then there should be a procedure or protocol whereby such information is shared with those with the responsibility of caring for the prisoner. As indicated, this was one of the matters that were addressed at the DIPLAR Review and I express the hope that it has been acted upon. While it appears that the anniversaries of the death of RM’s sister and grandfather were approaching, I am not suggesting that such information would have made a difference if it had been available, but it can be imagined that it may be relevant for staff to know in the appropriate case.

[56] As for the DIPLAR review, I do find it odd that, while certain information was clearly obtained from him, Frank Kennedy, RM's personal officer, was not at the review meeting in January 2015 and there was no real explanation of why he was not there. He would, I would have thought, provided valuable insight into RM's situation, albeit he was unaware of the particular difficulty affecting him until 13 October 2014, and that would have been relevant to those considering what could be learned from this event.

[57] My final observation relates to the management of the scene following the death of RM. It appears that this young man's body was left in place for some considerable time to await police or forensic investigation. Further, it appears that the staff that arrived to remove the body were not sufficient in number and did not have the necessary equipment. Apparently, they proposed dragging the body through the hall. The situation was such that prison officers felt compelled to take matters into their own hands so that RM could be carried from the hall with dignity. It is evident that this situation caused distress to prison officers and it is not difficult to imagine that it would have caused distress to other inmates in the hall. Again the DIPLAR Review recommended that the SPS consider management of the scene following an incident of this sort and I would express an earnest hope that steps are taken, involving the SPS, police and related services, so that the necessary investigations are carried out expeditiously, without undue delay and that adequate resources are made available to remove deceased persons with dignity.

[58] This is a very sad case. RM was 17 years old when he died. He experienced a difficult family upbringing. He was accommodated by the local authority and

experienced significant family losses, notably his mother when he was 9 and one of his sisters a few years later, followed closely by the death of his grandfather. Following the death of his mother he was cared for by his sister until he was accommodated by the local authority. He was approaching the end of a 21 month sentence and was simultaneously awaiting sentence for an assault involving a knife. He had previously received a community based sentence for another crime. He was a young man who had the propensity for violence but also, it would seem, the propensity to care deeply about others, notably those close to him. His death was a tragic but an ultimately unforeseeable event.

[59] I would simply conclude by offering my condolences to the family and friends of RM and to those who have been affected by his death.