SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2020] FAI 10

GLW-B2006-18

DETERMINATION

BY

SHERIFF LINDA MARGARET RUXTON

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

into the death of

ALAN HAY

Glasgow, 11 February, 2020.

The Sheriff, having considered the evidence, the productions, the terms of the joint minutes and written and oral submissions presented to the Inquiry, under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 FINDS AND DETERMINES:

(1) in terms of subsection (2)(a) that Alan Hay, born 30 July 1966, formerly of 4 The Meadows, Dalbeattie, DG5 4AS, died at Her Majesty's Prison, Barlinnie, Lee Avenue, Glasgow on 2 August 2016, at 18:45 hours. His life was formally pronounced extinct 19:23 hours later that evening at Glasgow Royal Infirmary;

(2) in terms of subsection(2)(c) of the said Act that the cause of death was acute peritonitis due to a perforated duodenal ulcer;

(3) in terms of subsection (2)(g) of the said Act that the following circumstances are relevant to the circumstances of Alan Hay's death:

- several warning signs in connection with Mr Hay's physical health were overlooked or misinterpreted including
  - (i) his unsettled behaviour and constant changing of position was a sign of serious illness but was dismissed as common behaviour in the custodial setting
  - (ii) profuse sweating was a sign of serious illness but was dismissed as commonly associated with lying on a plastic mattress
  - (iii) the significance of a change in Mr Hay's behaviour from constantly changing position to lying flat and still was not appreciated as a sign of serious illness in a prisoner complaining of severe abdominal pain
- staff mistakenly attributed Mr Hay's symptoms to alcohol withdrawal
- the monitoring of Mr Hay's condition was inadequate: cell checks were often perfunctory in nature
- the standard of record keeping following cell checks was substandard and there was a failure to record all significant information

- the quality of the information transmitted to other agencies was poor with an over-emphasis of matters of safety and security at the expense of health and welfare
- there was an over-reliance on earlier assessment of Mr Hay's fitness to be detained and a failure to update the risk assessment in accordance with the developing situation
- the quality of care afforded to Mr Hay was reduced because of a persistent attitude of disbelief and scepticism on the part of the staff that Mr Hay's complaints were genuine
- insulting and derogatory remarks were directed at Mr Hay by custody staff.

NOTE

Introduction

[1] An Inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 ("the 2016 Act") was held over 14 days into the death of Alan Hay at Glasgow Sheriff Court. The Inquiry commenced on 4 March 2019. Evidence was heard on March 4-6, 18-19, April 1-4, 15 and 18, July 22, October 15 and concluded with submissions on 12 November, 2019.

[2] Mr Steven Quither, Senior Procurator Fiscal Depute, appeared for the Crown in the public interest. Mr James Reid, solicitor, appeared on behalf of the Chief Constable, Police Scotland. Mr Urfan Dar, solicitor, represented the deceased's uncle, Mr Brian Corrigan on behalf of the family. Ms Catriona Robertson, solicitor, represented the

Dumfries and Galloway Health Board while Greater Glasgow Health Board was represented by Ms Katherine Shippen. Ms Jennifer King, solicitor, appeared on behalf of Dr Guy Beaumont and Dr Bernard Jones. Ms Lucy Thornton and Ms Laura McCabe appeared on behalf of the Scottish Prison Service and Ms Jillian Merchant, Ms E Goodwin and Mr Alan Rodgers variously represented the Prison Officers' Association (Scotland). No representative appeared on behalf of G4S notwithstanding repeated invitations to do so.

[3] The Inquiry heard evidence from 30 witnesses, including five skilled witnesses in an expert capacity. Their particulars are included in a schedule annexed to this Determination. Two joint minutes contained uncontroversial evidence which was agreed by all parties. The Inquiry had the benefit of direct evidence from comprehensive CCTV footage (including sound recording) and associated transcripts of events recorded during Mr Hay's period in the cells at the police station. For the sake of convenience, what was seen from the footage has been described herein using the present tense. In reaching my conclusions, I have taken full account of the written and oral submissions made by the Crown and on behalf of all interested parties.

[4] The Inquiry into Mr Hay's death was a mandatory one in terms of section 2(4) of the 2016 Act as Mr Hay was in lawful custody at the time of his death: he had appeared at Dumfries Sheriff Court on a summary complaint and been remanded for trial. However, in the course of the Crown's investigations, several areas of concern were identified which, in the public interest, raised issues that should properly be explored during the Inquiry.

The legal framework

[5] The primary purpose of a fatal accident inquiry ("FAI") is to give a public airing of the facts surrounding a death or fatal accident. This affords those with a direct interest, such as the family of the deceased, the chance to hear first-hand from witnesses and learn the full circumstances of the death as they are known.

[6] An FAI is not the place for matters of legal culpability to be explored and determined: the sheriff has no power to make a finding of fault or to apportion blame amongst persons or organisations that might have contributed to the accident. Questions of civil or criminal liability for a death are properly matters to be pursued elsewhere. Concepts such as duty of care, foreseeability and negligence have no place in an FAI. Significantly, section 26(6) of the Act sets out that the determination of the sheriff shall not be admissible in evidence or be founded on in any judicial proceedings, of any nature. Such a prohibition is designed, in part, to encourage a full and open examination of the circumstances of a death in a setting where witness should feel free to give frank evidence in the spirit of the Inquiry, untroubled by concerns about it being used in any other proceedings. Thus an FAI is not an adversarial procedure but an inquisitorial one.

[7] The scope of an FAI extends beyond mere fact-finding. It aims to restore public confidence and allay public anxiety where the circumstances of the fatal accident have given rise to serious public concern. To that end, its focus is towards the future. Where possible, such an inquiry seeks to prevent future accidents and deaths occurring in similar circumstances.

[8] While the evidence led at an FAI may be fairly comprehensive in an effort fully to inform relevant parties, it does not follow that every matter explored should be included in the sheriff's determination. Like an FAI, the sheriff's determination must be finite. Only those matters which properly fall under the provisions of sub-section 26(2) of the Act are relevant.

[9] In an Inquiry such as this, in terms of section 26(2) the sheriff must determine

- where and when the death occurred - section 26(2)(a);
- the cause of death – section 26(2)(c);
- any precautions which (i) could reasonably have been taken and (ii) had they been taken, might realistically have resulted in the death being avoided – section 26(2)(e);
- the defects, if any, in any system of working which contributed to the death – section 26(2)(f); and
- any other facts which are relevant to the circumstances of the death – section 26(2)(g).

[10] It is important to appreciate that findings under subsections (e) and (f) are entirely separate. The tests applicable to each should not be conflated.

[11] The sheriff may also make recommendations if considered appropriate in the public interest.

[12] The standard of proof that has to be met before material facts can be established in an FAI is the civil standard of proof on the balance of probabilities. Rules of evidence in civil proceedings apply: indirect evidence of hearsay may be admitted. In an FAI it is

legitimate to apply the benefit of hindsight in considering the question of reasonable precautions.

Alan Hay

[13] Alan Hay was 49 years old when he died having been born on 30 July 1966. He lived at 4 The Meadows, Dalbeattie, DH5 4AS. For the purposes of this Inquiry, it is of some importance to note that Mr Hay was well known to the police in the area. He had a history of alcohol and drug abuse and a lengthy criminal record which included violence against the police.

Background

[14] Alan Hay died while in lawful custody. He was arrested on 1 August and kept in police custody in the cells at Loreburn Street Police Station, Dumfries ("Loreburn Street"). From the outset until he left to go to court on the afternoon of 2 August, Mr Hay complained of severe abdominal pain and of feeling acutely unwell. At one point he was taken to hospital and was thereafter released with a diagnosis of gastritis. He was seen by the Force Medical Examiner ("FME" - the police casualty surgeon) later that night and telephone advice was given by another FME the following morning. He was deemed fit to be detained. He appeared at Dumfries Sheriff Court in the early afternoon, pleaded not guilty and was remanded for trial. Dumfries Prison was full to capacity which meant that Mr Hay was transported to HM Prison, Barlinnie ("Barlinnie"), a three hour journey to Glasgow via Addiewell Prison. On arrival at

Barlinnie, within minutes of getting out of the prison van, Mr Hay collapsed. He died shortly afterwards.

[15] The focus of the Inquiry was on, first, the adequacy of the medical care which he received and whether his condition should have been diagnosed; and, secondly, the quality of care and attention he received from police and custody staff while in the police cells at Loreburn Street. In particular, an important issue was whether further medical assistance should have been obtained earlier on the day of his death. These issues were primarily concerned with determining whether in terms of section (e) there were any reasonable precautions which might realistically have prevented his death. In this connection, it is convenient to consider the last hours of Mr Hay's life in eight separate periods:

1. Arrest and the period in custody between 12:45 hours until 15:45 hours on 1 August 2016 when he was taken to hospital.
2. Examination at Dumfries and Galloway Infirmary between 16:00 and 18:00 hours.
3. Return to custody from hospital at 18:00 hours until seen by Dr Jones at 21:30 hours.
4. Examination by Dr Jones
5. The period 22:00 hours overnight and the following morning on 2 August until he left for court at 12:45 hours.
6. Appearance at Dumfries Sheriff Court
7. Journey to Barlinnie Prison and his arrival at Barlinnie at 17:52 hours.

8. Collapse at Barlinnie Prison

1. Arrest until taken to hospital 12:45 to 15:45 hours

[16] Police Constable Wesley Fraser and his colleague Constable Scott were called to attend at an address in Glenshalloch Road, Dalbeatie in relation to a disturbance. In the course of the incident it is alleged that Mr Hay was aggressive and threatened police officers with a pick-axe. His behaviour was such that police had to discharge PAVA spray into his face hitting his nose and eyes in order to disable him and bring him under control. He was eventually subdued and arrested. In the journey to Dumfries police station he complained of the after-effects of the PAVA spray. His eyes were watering and his nose was running. On arrival at the police station at 12:43 hours he immediately complained that his liver and kidneys were sore which evoked the response "Oh dear – that's not so good" from the duty sergeant. He asked for a doctor.

[17] The duty custody sergeant was Donna Inglis, an experienced officer who had been in that role since 2004. She was assisted by two experienced PCSOs Margaret Irving and Donald Palmer, the latter having been a PCSO for 16 years. They both knew Mr Hay from previous periods in custody.

[18] Sergeant Inglis was responsible for receiving Mr Hay into custody and carrying out the routine risk assessment. In the course of the risk assessment Mr Hay admitted to having drunk 2 cans of cider earlier that day. He said he was prescribed 60 mls of methadone but could not remember when he had last had it and considered that he was withdrawing from alcohol at that time. He was asking for his methadone. He appeared

intoxicated. He complained of pain in his liver to which Sgt Inglis replied "It was your kidneys earlier, now it's your liver" (not actually accurate as he clearly said that he had pain in both his kidneys *and* his liver earlier on). This response was indicative of a degree of scepticism on the sergeant's part from the outset. Her attitude was the same when Mr Hay again complained that his liver was sore – "It was your kidneys earlier and now it's gone to your liver". No further clarification was sought as to where exactly Mr Hay's pain was or any further description of it.

[19] Mr Hay then proceeded to answer "yes" to all mental health questions posed in the course of his risk assessment. This caused Sgt Inglis to question the accuracy of his responses. Nevertheless, his vulnerability level was assessed as "high" and he was initially put on 15 minute observations. Sgt Inglis asked PCSO Palmer to phone the on-call FME to check his methadone prescription. (Later Mr Hay gave conflicting information about where he collected his methadone script and eventually admitted that he was not presently on methadone.) In evidence Sgt Inglis agreed that Mr Hay looked "a poor soul".

[20] It was noted on the custody record that at 13:12 hours Dr Beaumont was contacted about "meds and PAVA". PCSO Palmer spoke to Dr Beaumont explaining that "we are just looking for a fitness to be detained". In the course of a brief conversation lasting three minutes, PCSO Palmer asked the doctor to check the methadone position and explained that the prisoner had been sprayed with PAVA. Dr Beaumont did not appear to be familiar with PAVA. However, he was advised that observations could be increased to 30 minutes. No mention was made of Mr Hay's

complaint of abdominal pain. In his evidence, PCSO Palmer said that he was unaware of any complaint of pain having been made.

[21] PCSO Palmer relayed to Sgt Inglis that Dr Beaumont would check whether there was a methadone script to be issued and that he would phone back once he knew the position. Dr Beaumont, on the other hand, recalled that, rather than phone, he said he would come in to see Mr Hay after surgery, at about 4 o'clock that day. That was what he did.

[22] Shortly after Mr Hay was placed in his cell, Constables Fraser and Scott, the arresting officers, read over the charges to him. While they were doing this, Mr Hay can be heard groaning as if in pain. He tells the officers that he is in agony, that his insides are killing him and that it had been like this for weeks. He thought it was down to his drinking and the drugs. He is shouting out in pain and asking for help. Throughout the procedure Mr Hay exclaims that he is in terrible pain and that he needs to see a doctor. Neither officer reacts to this. Constable Scott simply proceeds with the charging procedure, clearly impatient to complete it. During this time Mr Hay is seen on CCTV to be restless, constantly changing position and holding his abdomen. PC Fraser returned to the charge bar and when Sgt Inglis light-heartedly asked him what he'd been doing to Mr Hay given his shouting, Constable Fraser replied, somewhat dismissively, "Oh he's in pain now". He does not elaborate.

[23] For the next hour Mr Hay is seen on the CCTV to be very restless and appears irritated. He cannot settle and can be seen constantly changing position between standing, pacing about, sitting and lying down on his mattress, squatting against the

wall or crouched over the toilet bowl. At times he is seen down on the floor on all fours, at other times he is curled up in a ball, clutching his stomach. When lying down he pulls his right leg up towards his stomach. He is shouting out in pain and asking for help. At one point his police-issue shorts fall down and he removes them leaving him naked and exposed.

[24] During this time the custody staff ignore his shouts for help and do not react to what they can see on the CCTV monitors at the charge bar. At 1327 Mr Hay is given a cup of tea. He drinks it but shortly afterwards is seen hunched over the toilet bowl as if being sick. He is shouting "Aaah! and shouting for help. This can be heard clearly in the charge bar. PCSO Irving asks "What's he greetin..?" When Sgt Inglis suggests he is in pain PCSO Palmer says "I don't believe a word that he's fucking said."

[25] Sgt Inglis went to his cell at this time. She is seen on CCTV to open the hatch door but does not go in or speak to Mr Hay. On returning to the charge bar, she mimics him drinking from a cup. The others laugh.

[26] Shortly before 14:00 hours Mr Hay is sick several times and appears clammy as if he is sweating. It is only at this stage that staff begin to take his complaints seriously. PCSO Palmer announces that he is "going to see bawsy" – presumably a derogatory reference to Mr Hay's nakedness. This provokes laughter and a comment from Sgt Inglis "Reminds me, I've got some chocolate berries in the fridge".

[27] PCSO Palmer goes to Mr Hay's cell at 13:50. He asks him what is wrong. Mr Hay replies that he has pain "all down my body". Mr Palmer tells Mr Hay that he has phoned a doctor. He asks Mr Hay to get dressed but Mr Hay says it is too warm and that

he is "not well in this cell". PCSO Palmer leaves the cell. Mr Hay pleads with him for help "Please, please – this is fucking terrible…fucking killing us …Aagh!" PCSO Palmer does not respond but returns to the charge bar, gestures that Mr Hay has been sick and mimics him asking for his methadone to the amusement of his fellow PCSO and Sgt Inglis. PCSO Palmer said nothing to Sgt Inglis about Mr Hay's complaints of pain. He accepted in the course of his evidence that this was a material change in condition that should have been brought to the sergeant's attention.

[28] There follows a brief exchange between Mr Hay and PCSO Irving who deliberately does not open the hatch but shouts to Mr Hay from the cell passageway and tells him that they are waiting to hear back from a doctor. Again, Mr Hay asks for something for the pain and again pleads for help : "Please, please God. I need my medication now. Please help. Someone…*please*!" This conversation is misleadingly reported to Sgt Inglis that Mr Hay said he was all right.

[29] Mr Hay continues to shout and can be heard groaning as if in pain. He is constantly unsettled and unable to get comfortable.

[30] At 14:20 PCSO Palmer goes to the cell and again asks Mr Hay "What's wrong?" Mr Hay appears increasingly desperate, pleading that he needs help and that he cannot cope with the level of pain that he is experiencing. He asks if he can have a shower. PCSO Palmer then misleadingly tells Mr Hay that he has phoned the doctor, that he's explained what's going on. Mr Hay continues to shout and ask for help. He is seen hunched over the toilet bowl as if being sick, and then he is down on his knees leaning forward with his forehead resting on the cell floor.

[31] A few minutes later as she is passing Mr Hay's cell, Sgt Inglis shouts to him and asks him if he is all right. He replies no, I can't cope with this and asks her for help. She asks him "what's wrong?" to which he replies "I think my liver's collapsed" but she ignores his pleas for help and continues with other duties. Among his constant shouting for assistance, Mr Hay comments "I'm just gonnae die - you've got me at the wrong temperature in here...I'm gonnae fucking die in here." He is begging to be let out of his cell to get some fresh air as he was not coping with the heat in the cell. PCSO Palmer shouts into him from the cell passageway "What's wrong?" and Mr Hay again pleads for help.

[32] Sgt Inglis has a further conversation with Mr Hay during which she encourages him to put clothes on. He complies. Shortly thereafter he is violently sick again and is seen to be lying on his back retching and vomiting green bile. He is coughing and choking. It is at this point that the staff take him seriously and he is placed under constant observation to prevent him from choking.

[33] At 15:20 hours PCSO Palmer noticed that there was blood in Mr Hay's vomit and immediately reported that to Sgt Inglis. During conversation Mr Hay makes the comment that he is "dripping with sweat" and needs to cool down.

[34] At that stage, no-one doubted that Mr Hay was in pain and was very unwell. An ambulance was summoned but because of other commitments could not attend. Accordingly, arrangements were made for police officers to take him to Dumfries and Galloway Royal Infirmary. In the meantime, Mr Hay was moved to another cell and given some care. PCSO Palmer stayed with him and moved him on to his side as he was

choking and vomiting. From the CCTV footage, a slightly more sympathetic approach from the staff is evident.

[35] Mr Hay was escorted to hospital by Constables Wightman and Clark. They left the police station at 15:45 hours. The journey was uneventful although Mr Hay continued to retch. They arrived at Dumfries and Galloway Royal Infirmary where Mr Hay was quickly triaged and seen by a doctor, Dr Zayed Bayaty.

2. Treatment at Hospital 16:00 to 18:00 hours

[36] Mr Hay gave a history of abdominal pain and vomiting (Dr Bayaty had seen bowl containing the vomit streaked with blood which had accompanied Mr Hay to hospital). Mr Hay was complaining of generalised pain all over his body. He advised that he had not taken his methadone for several days and his presentation was consistent with someone withdrawing from drugs. Thus, according to Dr Bayaty, there were two separate issues: drug withdrawal and abdominal pain and vomiting.

[37] Dr Bayaty found it difficult to examine Mr Hay's abdomen because he was clenching and tensing his muscles. The focus of the examination was on the abdominal pain and vomiting. He was looking for signs of peritonitis but could find none. Mr Hay's temperature, pulse and blood pressure were all within normal limits.

[38] Dr Bayaty put the streaks of blood in Mr Hay's vomit down to a Mallory-Weiss tear in the lower oesophagus caused by vomiting. He considered that it had no clinical significance. Dr Bayaty diagnosed gastritis (an inflammation of the lining of the

stomach) and Mr Hay was kept under observation for an hour to see if there would be any further vomiting.

[39] Dr Bayaty administered a high dose of omeprazole (an acid suppressant) to treat the gastritis, an anti-spasmodic for the abdominal pain and oromorph (morphine) to help alleviate any withdrawal symptoms. Within six minutes of receiving a high dose of omeprazole, Mr Hay immediately settled. This perhaps demonstrated the psychological power of the placebo as in reality it would not have worked quite so quickly. As soon as the oromorph was given, Mr Hay calmed down and was discharged to the custody of the police at 17:40 hours. Dr Bayaty commented that he was able to walk out comfortably.

[40] Dr Bayaty provided a written summary to the police and advice as to Mr Hay's future care: if Mr Hay's abdominal pain continued or worsened the FME should be contacted but if he vomit blooded again, he should be returned to hospital. Otherwise, he was fit for continued detention.

[41] In retrospect and in the knowledge of the post mortem findings, Dr Bayaty considered that it was possible that Mr Hay's abdominal pain had been from the duodenal ulcer. However, at the time of examination he had shown no clinical signs of a ruptured ulcer. In particular there was no evidence of peritonitis. Moreover, according to Dr Bayaty, if his ulcer had perforated Mr Hay would have walked differently whereas he was able to walk out quite comfortably and unaided. At no time did Mr Hay's condition signal any "red flags" that something serious was going on.

3. Return from hospital to examination by Dr Jones 18:00 to 22:00 hours

[42] According to Constable Anna Clark, Mr Hay seemed better on the journey back from the hospital. He was not happy about being returned to custody and in the course of the journey was shouting and swearing. This, she said, was more in accordance with his normal behaviour. At the police station he was angry and kicked a door and told PC Clark to "fuck off".

[43] CCTV footage records their arrival back at the charge bar at 17:57 hours. Custody Sergeant Carolyne Crozier was now on duty having taken over from Sgt Inglis at 18:00 hours, minutes after Mr Hay's return. PCSOs Derek Howson also came on duty. He had been a PCSO for two years and knew Mr Hay.

[44] Sgt Crozier requests an update from the escorting officers. Constable Wightman initially inaccurately describes the diagnosis as "gastroenteritis", a condition very different from gastritis. Later on that was corrected. Mr Hay is returned to his cell whereupon he can be heard shouting and moaning. This prompts a remark from PC Clark "He does put on a good show for you!" Mr Hay is given some water.

[45] PC Clark gives an update to the sergeant and to PCSO Howson. During this she comments that "basically the doctor said he thinks he's just playing at it" and that Dr Bayaty thought that Mr Hay was "just basically complaining of the pain to escape custody and go to hospital". PCSO Howson comments that Mr Hay is like that a lot when he is in police custody. PC Clark relays Dr Bayaty's instructions that if Mr Hay continues to complain of pain the way he had been and if he kept "spasm-ing up and stuff like that" then the FME should be called but if he started to vomit blood again he

should be returned to hospital. In response to Mr Hay's shouts which can be heard clearly in the charge bar, PC Clark says "He puts on a good show, like. He was proper diving about the bed and like…" to which PC Wightman comments "Oh he's a good actor. He can act, the boy." which prompts the comment "Aye, he could be on the stage." from PC Clark. PC Clark thinks that the doctor "wasn't interested".

[46] Constable Clark's remarks undoubtedly conveyed the impression to the staff responsible for Mr Hay's ongoing care and welfare that a medical practitioner had thought that Mr Hay's symptoms were either faked or exaggerated. In her evidence, she said this scepticism did not change the way he was treated. However, she accepted that it sent the wrong signal to Sgt Crozier and might have coloured the attitude of the custody staff. On reflection, she appreciated that the comments were inappropriate and that she should not have made them. Sgt Crozier was of the view that Mr Hay clearly thought he was "on a promise at the hospital" and that it was his "get out of jail card".

[47] In the course of the conversation among constables Clark, Wightman, Sgt Crozier and PCSO Howson during which they tried to de-cypher Dr Bayaty's writing, a number of mocking and derogatory remarks directed at Mr Hay were made. This included Sgt Crozier gesturing towards the CCTV saying "Look – he's not well. Mocking the afflicted" and laughing.

[48] CCTV recorded My Hay during the ensuing period behaving much as before: shouting out as if in pain and constantly switching position – alternating between lying on top of his mattress and sitting on a pillow placed on top of the toilet. He appears irritable and unable to settle. He was mostly looked after by PCSO Howson who knew

Mr Hay and was able to establish a degree of rapport with him. PCSO Howson showed some concern for Mr Hay.

[49] At 18:25 he checks Mr Hay through the cell hatch. In a ten second conversation, Mr Howson asks Mr Hay how he is to which and Mr Hay responds "All right". This exchange lasts for three seconds.

[50] Mr Hay, however, continues to shout. During the next half hour, Mr Hay can be seen constantly changing position, getting on and off the mattress, crouching down, curling up in a ball on the floor and sitting on the pillow on top of the toilet. He is offered and given water during this time.

[51] Mr Hay continues shift position between the mattress and curling up in a ball on the floor. He seems irritable and shouts "Oi!" to attract attention. His shouting is ignored.

[52] At 18:38, PCSO Howson opens the cell hatch and asks Mr Hay if he would like another cup of water which he accepts. Mr Hay can be heard shouting "oh!" and "ahh". PCSO Howson records that he is shouting out in pain and that water has been provided. Mr Hay continues to walk slowly around his cell, lowers himself carefully to the floor and curls up into a ball.

[53] PCSO Howson carries out a further check shortly after 19:00. He speaks to Mr Hay through the hatch and checks that Mr Hay has not been sick again. No response can be heard but the inference can be drawn that Mr Hay is feeling sick as he is offered and accepts a sick bowl.

[54] During the next while, CCTV footage shows Mr Hay continually changing position. He has some difficulty getting to his feet but once on his feet seems steady. He alternates between his mattress and sitting using the toilet as a seat. At times he gets down on all fours and crouches on the cell floor.

[55] Sgt Crozier and PCSO Howson discuss changing Mr Hay's observations but opt to keep him on 30 minute checks. PCSO Howson comments that Mr Hay "has really gone downhill these past few months". They monitor his movements on the CCTV camera.

[56] At 19:34 hours, Mr Howson checked Mr Hay. He opens the hatch and asks "How is it Alan?" Mr Hay does not appear to respond. Half an hour later, at 20:05 hours, he speaks to Mr Hay, this time through the cell door. On the CCTV footage, Mr Hay can be seen lying on the mattress on his side. Through the cell door it becomes apparent that Mr Hay is complaining of worsening pain. PCSO Howson then opens the hatch and asks "how much worse is it?" to which Mr Hay replies "Ten times worse..." and is seen to rub his abdomen.

[57] This is recorded and immediately relayed to Sgt Crozier. After discussion, the decision is taken to contact the duty FME in accordance with the advice from the hospital. PCSO Howson explained the background to Dr Jones who was on-call that evening. Even then, Mr Howson comments that he was unsure whether he was "putting it on" because he was a heavy drug user or whether he was genuinely in that much pain. He completed the call in the following terms "I don't know if he's at it. That's the problem because he does get at it sometimes when he's in here." However, it was clear

that by the end of the conversation Dr Jones thought that he should probably go to hospital.

4. Examination by Dr Jones FME

[58] Dr Jones attended at the police station and commenced his examination of Mr Hay at 21:27 hours. Dr Jones had in mind possible perforation of an ulcer or a bowel obstruction, both of which would explain the continuing abdominal pain and would require surgical intervention. He was aware of what had happened at hospital and of Dr Bayaty's findings. He understood from staff at the station that they were not sure whether he was exaggerating his symptoms but on his way in to see Mr Hay, Dr Jones had fully expected that he would be admitting him to hospital. However, as soon as he saw that Mr Hay was able to walk in to the examination room independently he revised his opinion. Although Mr Hay looked dishevelled and in discomfort, he was not doubled-up in pain or in acute distress.

[59] On examination, he found Mr Hay's pulse and blood pressure to be normal. Significantly, his oxygen levels were good – if there had been a significant problem where pain had caused him to take shallow breaths, his oxygen saturation might have been affected. His temperature was slightly elevated at 38.8 which did not quite fit in with the overall picture of his demeanour and the other observations. He questioned Mr Hay to see if anything would account for this, for example, whether he felt he had a cough or a cold coming on. In the absence of any obvious reason, Dr Jones noted a

healing abscess on Mr Hay's left forearm and thought that this, together with the tensing of his abdominal muscles, *might* have accounted for the slightly raised temperature.

[60] Mr Hay was reluctant to lie back during the examination and was holding himself in a crouched position tensing his muscles. That he could do so excluded inflammation outside the bowel but was suggestive of irritation to the lining of the abdominal cavity. Had there been irritation within the abdominal cavity, Mr Hay would have tended to lie flat and still. With distraction, Dr Jones found Mr Hay's abdomen to be soft with no involuntary guarding or hardening of the abdominal muscles. There was nothing remarkable about his abdomen and no evidence of peritonism. (Peritonitis was something Dr Jones had been considering before he even set eyes on Mr Hay.) Mr Hay's normal pulse and blood pressure gave no sign of physiological shock. Although the healing abscess and the increased muscular activity from tensing up *might* have explained his raised temperature, Dr Jones recorded it as a finding not strictly in keeping with the diagnosis.

[61] Dr Jones concluded that Mr Hay's presentation was consistent with the after effects of a severe episode of vomiting and associated bowel spasms from his empty stomach as a consequence of inflammation of the stomach wall. He diagnosed a resolving situation rather than an evolving one.

[62] Dr Jones administered an injection of Buscopan to help with the spasms and some paracetamol for pain. He advised Mr Hay to keep drinking fluids. The FME reported his findings to the custody staff with instructions that Mr Hay could have paracetamol as required and 2 x co-codamol with his morning medication. Observations

should continue at 30 minutes but could be increased to hourly if he settled over the next 3 hours.

[63] Dr Jones explained in evidence that there were a number of confounding factors including Mr Hay's lifestyle, his alcohol and drug addiction and the medications that had been given at hospital which might have had a bearing on how he was presenting. For example, morphine could mask symptoms. Although the clinical findings were not classic of a perforation, in retrospect, Dr Jones agreed that the symptoms, including the raised temperature, could have been early signs of a perforated duodenal ulcer and peritonitis.

[64] Mr Hay was returned to his cell where initially he continued to shout out and appeared restless and in discomfort. Gradually he seemed to become more settled.

5. Period overnight until Mr Hay left for court 22:00 to 12:45 hours on 2 August

[65] Custody Sergeant Lorraine McHarrie took over responsibility from Sgt Crozier at the shift change at 22:00 hours. She did not know Alan Hay at all. She was assisted by PCSOs Ian Maxwell and Rebecca Gardiner during the night shift. (PCSO Gardiner was not a witness at the Inquiry.) PCSO Maxwell, then an experienced PCSO of some 15 years knew Mr Hay from two previous dealings with him. He had found him to be quite a humorous character. He recalled that Mr Hay could be "shouty" when under the influence but when sober he was amusing, joined in banter and engaged. He would not have described Mr Hay as needy or attention-seeking. They usually had good conversations.

[66] During the fairly full handover between the two sergeants, Sgt Crozier informed Sgt McHarrie about the background to Mr Hay's arrest, including the fact that he had been on the receiving end of PAVA spray. She described how Mr Hay had been brought in "really abstrenuous *(sic)*, came in here and was a complete prat." (That did not accord with what was captured on CCTV.) She went on to describe how he had "spewed all over the cell" and had been "rolling around the floor squealing like a pig" and had been moved to another cell where he spewed all over that one too. (At no time had Mr Hay be seen "rolling around the floor and squealing like a pig".) She explained, inaccurately, that he had been taken to hospital, diagnosed with "pretty much gastroenteritis" and returned to custody. She commented that the doctor "wasn't convinced he wasn't at it" but he had no concerns and passed him fit for custody. She commented that although they were not sure if he was "at it", at times it sounded like he was in a lot of abdominal pain.

[67] She continued to advise her colleague that once back in a cell Mr Hay was protesting that he should not be there and squealing in pain. He was rolling about on the floor and squealing periodically so he was put on 15 minute observations. She described how he was unsettled and appeared to be more comfortable sitting on a pillow on the toilet. He would then get up, lie down, wriggle about and get up again. Because he was moving about, he was changed to 30 minute observations. She told Sgt McHarrie about Dr Jones' visit and that he had been given an injection of anti-spasmodic Buscopan and paracetamol to settle him. She also passed on the original instruction from Dr Bayaty in the following terms: that if Mr Hay was in pain - if it was just pain relief that was

needed – the FME should be phoned. If Mr Hay vomited up blood or was "throwing up" he had to go back to hospital.

[68] At the same time PCSO Howson gave a handover to PCSO Maxwell. This was a comprehensive handover restricted to accurate factual information without any suggestion of scepticism.

[69] Sgt McHarrie chose not to visit Mr Hay herself as he appeared to be sleeping and she felt he should be left to rest. She did, however, put the CCTV images of Mr Hay on the largest screen so that he could be easily visible to all staff from the charge bar, effectively placing him under constant supervision.

[70] At that point, Mr Hay seemed more settled. CCTV footage shows him lying on his back apparently sleeping. Perfunctory checks continued over the next few hours. He remained like that until PCSO Gardiner checked him at 22:44 hours. She is seen to open the hatch to his cell and shout "are you okay?" to which she gets no response. She then bangs on the door shouting "Alan, are you okay? Are you all right?" Again there is no response captured by the CCTV which shows Mr Hay lying on is back on the mattress, unmoving. The relevant entry on the cell log notes that the prisoner was awake and that a verbal response was received. The extent of this check to establish the prisoner's welfare took all of ten seconds during which Mr Hay was lying, unmoving, on the mattress.

[71] Mr Hay looked more restful as if he might have been asleep over the next few hours. Shortly before the next check at 23:33, Mr Hay is seen moving and taking a drink out of a cup. He is still lying down when PCSO Maxwell shouts to him asking if he is all

right. He cannot hear the response and so he goes into the cell. He has a brief conversation with Mr Hay and speaks about seeing a doctor tomorrow. PCSO Maxwell shows some concern and tells Mr Hay to get well and to give him a shout if he needs anything. Mr Hay thanks him. PCSO Maxwell reports the conversation to Sgt McHarrie.

[72] Mr Hay appeared to be fairly settled and sleeping for the next hour. A further cursory check is made at midnight by PCSO Maxwell. This lasts for seven seconds. "OK" is recorded on the log. An hour later, PCSO Gardiner shouts in "You ok?" No audible reply is recorded on CCTV but she enters "OK" on the log. The check lasted all of two seconds. Mr Hay appears to be sleeping on CCTV.

[73] At about 02:00 hours, things change. Mr Hay is awake and unsettled again. CCTV captures him getting on to his knees and curling up into a ball. Over the next hour he becomes increasingly restless, rolling over, bending his legs up towards his chest, sipping water and striking his hand against the cell wall. He is often seen holding his stomach.

[74] At 02:50 hours PCSO Maxwell carries out an hourly check. He opens the hatch and shouts "Are you all right there pal? Are you okay Alan?". There is a muffled response which prompts PCSO Maxwell to ask "What's up?" and go into the cell. He asks "What's the matter with you?" Mr Hay asks for a drink and complains that he has a sore belly. PCSO Maxwell leaves the cell and comes back with a cup of water, opens the hatch and says "Okay Alan, come and get it!" Mr Hay can be seen rolling over – painfully slowly - on to his knees. He has difficulty getting up and appears unsteady on his feet. He manages to retrieve the cup and drinks from it before returning to lie down

on his mattress. He asks the time: it is five to three in the morning. The record of the visit simply notes "water given". No mention of his complaint of abdominal pain is noted nor any reference to his restless condition. In evidence, PCSO Maxwell could not explain the omission and accepted that the complaint of abdominal pain should have been recorded. He recalled that Mr Hay was lying prone – flat out – and absolutely still. He asked him to come and get the water to make sure that he was able to get up. He was happy with the visit and had no concerns.

[75] Over the next two hours, Mr Hay continues to be restless, holding his stomach. At the hourly check just before 04:00, although there is no exchange between PCSO Maxwell and Mr Hay, the record notes "asleep and ok." He left Mr Hay to rest.

[76] At the next routine check just before 05:00, breakfast is offered to Mr Hay which he accepts. He is offered a wash and is accompanied to the shower. He appears to have difficulty standing but walks slowly but steadily to the shower, unaided. Wet staining can be seen on the back of his trousers.

[77] While in the wash room, Mr Hay is seen bent over grunting with pain. He can barely manage to bend down and pick up a towel from the floor. He is moving very slowly and deliberately. He says "This is fucking agony!" PCSO Maxwell asks him if he is feeling rough and Mr Hay confirms that he is feeling terrible and repeats this. He is only in the shower for just over a minute and seemed only to splash his face: it seems the water is cold. He then walks slowly but steadily back to his cell. There is no other questioning by PCSO Maxwell. Mr Hay sits on the mattress and very slowly puts his clothes on. He then lies back, appears in pain, clutching his stomach. No reference to the

pain or discomfort expressed by Mr Hay is recorded on the cell log and, again, in evidence PCSO Maxwell accepted that it should have been.

[78] Between 05:15 and 06:00 he remains restless and in discomfort, switching position, crouching on the floor and leaning over the toilet as if being sick. He is shouting out as if in pain.

[79] During the 06:00 check, PCSOs Maxwell and Gardiner give Mr Hay his medication. He is told to sit up but appears to have difficulty in doing so and is groaning as if in pain. PCSO Maxwell asks him what the matter is and points out that he walked to the shower "no bother". PCSO Gardiner informs Mr Hay that they watched him on CCTV walking up to press the buzzer "and you were fine". They remove Mr Hay's untouched breakfast meal. They appear impatient.

[80] They then proceed to carry out the pre-release risk assessment ("PRRA") which basically focuses on risk of suicide and self-harming. It is a pro-forma questionnaire and the procedure is a tick box exercise. No reference is made to Mr Hay's condition, his abdominal pain or the fact that he had been to hospital and seen since by the FME. He is simply assessed as not at risk of suicide. The entry on the cell log sheet reads "Meds and PRRA done – no issues". The comment noted on the Transaction Summary Report by PCSO Maxwell is "PRRA complete – no issues – feeling good today". To suggest that Mr Hay was "feeling good today" was fundamentally misleading.

[81] At the shift change at 07:00, Sgt Lyndsey Nicolson took over from Sgt McHarrie assisted by PCSOs Bryan Sinclair and Iain McCartney. Sgt Nicolson received a detailed handover from Sgt McHarrie, although much of the information she passed on was

second hand as she seemed to have had little to do with Mr Hay overnight. Indeed, in his evidence PCSO Maxwell could not recall Sgt McHarrie having visited the cells at all and commented that she was through in the duty sergeant's room which was located through several doors and a 30 second walk from the charge bar. She herself said in evidence that she could not recall having spoken to Mr Hay at all.

[82] Sgt Nicolson had last seen Mr Hay about two years earlier. Although the cameras were still showing Mr Hay at the charge bar, she did not recall much of the footage that was played to her in court. The footage depicts Mr Hay moving about and changing position constantly, clearly in discomfort and holding his abdomen. He is seen to be sweaty. Her comment on seeing the footage was that he appeared "a wee bit restless". She was not concerned about the damp patches on his clothing and the fact that he was sweating: she was aware that he had issues with alcohol and thought that he could have been withdrawing. She noticed that he appeared subdued.

[83] Sgt Nicolson did not immediately go to see Mr Hay for herself. That, she said, was because she had observed him on CCTV and he appeared to be sleeping. As far as monitoring his condition, Sgt Nicolson said that she would have been in and out of the custody area. Otherwise, she relied on reports from the PCSOs.

[84] PCSO McCartney first checked Mr Hay at about 07:00. At this time CCTV footage shows that Mr Hay's clothing around the upper shoulder area, his neck and his hair appear wet. He opens the hatch and asks "Are you all right man?" No reply is picked up by the recording equipment but "Aye" is recorded on the log. The visit took three seconds. In evidence PCSO McCartney did not recall having been made aware of

any particular issues with Mr Hay. The CCTV camera screens were on but he was not paying particular attention to them. As far as he was concerned, Mr Hay was on routine hourly observations. He checked the prisoner log and there was nothing on the earlier entries that led him to think that this was a custody with any serious issues.

[85] The 8 o'clock check again lasts for a matter of seconds. PCSO McCartney opens the hatch door and asks "You ok, man?" no reply can be made out. The log entry reads "Aye" as the response.

[86] At 09:00, PCSO McCartney again visits Mr Hay. He shouts through the hatch "You okay bud?" The reply is inaudible on CCTV but is recorded as "Yes". Again, the whole visit takes three seconds.

[87] Sgt Nicolson first visited Mr Hay shortly after at 09:10. She introduces herself to Mr Hay and makes conversation with him. During her visit, Mr Hay complains of having a sore stomach. The sergeant asks him if it is the same type of pain as before and whether it has got any worse. She promises to keep an eye on him and tells him to buzz if it gets any worse. She recorded the complaint of stomach pain, "same as previous and no more pain than previous" on the prisoner contact record. In court she described Mr Hay as calm, lying still and speaking normally.

[88] Shortly before 10:00, PCSO Sinclair checked Mr Hay. Through the hatch she asks Mr Hay "You okay?" The response noted is "Aye". The check lasts for six seconds.

[89] At 10:45, PCSO Sinclair attended at Mr Hay's cell in response to the buzzer. At that time CCTV records Mr Hay rolling off the mattress on to his knees with great difficulty before standing and walking very slowly to the cell call button. His clothing

appears wet down the length of his back and around his collar. Mr Hay informs him that he is sick, does not feel well and needs a doctor. PCSO Sinclair records "Being sick - I need a doctor" on the prisoner log. He could not remember what he did in response to this complaint but thought that he probably would have told the sergeant. The CCTV shows that he returns to the charge bar but he makes no mention of Mr Hay's complaint and, specifically does not report it to Sgt Nicolson. She confirmed in evidence that she was not told about this until later.

[90] At the next hourly check shortly before 11:00, PCSO Sinclair opens the hatch and tells Mr Hay that he will be going down to court shortly and can see a doctor after court. He is offered a cup of tea. Mr Hay remains on his back throughout lying completely still. A cup of tea is brought to him with medication. There then follows an exchange that demonstrates a wholly unsympathetic and impatient approach from PCSO Sinclair:

Sinclair: Here's your tablets. You come and get them.

Are you going to come and get these tablets? With your cup of tea?

Come on!

Hay: … move

Sinclair: Well you could move before to press the buzzer and come up to the door.

Hay: … I'm very sore

Sinclair: Well I'm not coming in. You need to get up.

Hay: … inaudible

Sinclair: You need to get up. I'm not coming in.

Hay: … pain

Sinclair: Right, well these painkillers will help. You got up before to press the buzzer.

Hay: ... inaudible

Sinclair: Are you going to get up and get these?

Hay: ... inaudible

Sinclair: Aye, well.

[91] PCSO Sinclair then closes the hatch and leaves the tea and medication outside the cell, outwith Mr Hay's reach. Mr Hay throughout was lying, unmoving, on his back. PCSO Sinclair records that Mr Hay is "refusing" to get up to for his medication and tea.

[92] A few minutes later, Mr Hay is seen to get up to his feet and walk slowly towards the cell door where he stands with both hands placed on either side of the doorway. He appears unsteady on his feet and his clothing is wet around the collar and on his back. PCSO Sinclair then returns shortly after 11 and hands Mr Hay his paracetamol and some cold water. He also gives him a cup of tea. He reports that to Sgt Nicolson and that Mr Hay has pain in his stomach.

[93] In court PCSO Sinclair said that although he had not had time to familiarise himself with what had been happening previously with Mr Hay, he had seen him moving around and saw no reason why he could not get up, even though he was in pain: "To be honest, I thought that he just couldn't be bothered to get up". He did not go into the cell for safety reasons because he was on his own. He admitted in evidence that he was not convinced that Mr Hay was genuine.

[94] Immediately after that Mr Hay can be seen sitting on his pillow on top of the toilet. He takes a drink of water and then leans forward on to his hands and knees with his forehead resting in the floor. He is watched on the screens by Sgt Nicolson and PCSO Sinclair. The sergeant is heard saying "I'm not sure what he's up to now… he's on his hands and knees." There follows a conversation in which Sgt Nicolson describes how Mr Hay is lying on his back. She opines that if you had stomach pains you would want to "kind of cuddle in - in a crunched position, not stretched out". PCSO Sinclair agrees. It is then that he tells Sgt Nicolson that Mr Hay said that had been sick but dismissed that by saying that the marks on his clothing were like water marks, not sick. (At no point on the recorded footage was Mr Hay seen to pour water over himself. He had nothing in his stomach and had been vomiting bile the previous afternoon. It is likely, therefore, that he was simply vomiting watery fluid.)

[95] During the routine check just before midday, Mr Hay is asked if he wants some lunch. He says "yes, please". He is still lying down. A few minutes later, PCSOs Sinclair and McCartney approach the cell with two cartons of pot noodle and tea. PCSO McCartney shouts in "Do you want this?" but Mr Hay remains lying on the mattress and says that he is ill and needs a doctor. PCSO McCartney asks him if he is feeling sick. Twice Mr Hay says that he needs a doctor and that he is "…sick" He says he has alcohol poisoning. Mr Hay does not move and prompts the comment from PCSO McCartney "Eh, it's no' room service, pal". Mr Hay says he cannot move and is challenged by PCSO McCartney that he was "just up a minute ago". He then says "Listen, I'm no' as green as I'm cabbage looking" and in response to something not picked up on the CCTV says

"Fine" and closes the hatch. PCSO Sinclair then says, impatiently, "Just gie it to him" and both then enter the cell. PCSO McCartney asks "what's wrong with you?" to which Mr Hay then discloses that he was drinking aftershave the previous Saturday. As the officers leave the cell PCSO Sinclair says "Fanny!" as he is closing the door – a comment for which he apologised in court. Mr Hay remains on his back, unmoving.

[96] There then follows a conversation between them which suggests that both think he is "fucking at it". PCSO McCartney decides to speak to the sergeant about it. The decision is taken to contact the on-call FME, Dr Beaumont. Sgt Nicolson said that she wanted to be on the safe side and run it past a doctor.

[97] In her evidence, Sgt Nicolson again commented on the fact that she found it strange that Mr Hay was lying flat on his back whenever she looked at the camera. She did not interpret that as someone struggling in pain.

[98] At midday, PCSO McCartney contacts Dr Beaumont. He explains that the custody has already been to hospital and diagnosed with acute gastritis. He reports that he was given omeprazole and oral morph "and the rest of it" and was also seen by Dr Jones. He tells Dr Beaumont that Mr Hay is "still complaining about it now but says he's got alcohol poisoning and he was drinking aftershave on Saturday". He continues "I know it's something or nothing but we are waiting on him to go to court but he's not away yet. So - just wanted to run it past you." PCSO McCartney explains that Mr Hay "says he's been sick but there's no sign of it in the cell although he was sick in two other cells after being PAVA'd last night". He explained "I just wanted to run it past you anyway – I didn't expect anything fae you – for you to rush up or anything…"

[99] Apparently during the call Dr Beaumont had identified that the prisoner they were talking about was Alan Hay. There was some laughter in response to a remark made by Dr Beaumont that he was "an arse". It was reported to Sgt Nicolson that he could have "a wee swig of that Gaviscon stuff…but apart from that he's an arse and he'll be leaving for court." PCSO Sinclair then calls Mr Hay "a fucking dick" and suggests he tries "Brute" next time. He agrees that he is "a fucking arse". During this time, Mr Hay remains lying unmoving on the mattress and his food and drink remain untouched.

[100] PCSO McCartney goes to Mr Hay's cell at 12:10 to offer him some Gaviscon/Peptac Liquid. Mr Hay remains flat on his back, lying completely still. PCSO Sinclair is watching on the screens at the charge bar and comments that "I think he's definitely acting it a bit because he was up pressing the buzzer and suddenly he cannae move". PCSO McCartney leaves the cell and Mr Hay can be seen lying down attempting to retrieve the Gaviscon that has spilled, using his hands to scoop it up and put it in his mouth and licking the mattress. He cuts a truly pathetic and desperate figure as he does so. On return to the charge bar the PCSO mimicks Mr Hay's voice asking for co-codomol whereupon PCSO McCartney reported telling him "I says that's what you're getting. Drink it!"

[101] Sgt Nicolson told the court that she had not seen the Gaviscon being given and on viewing the CCTV footage during the Inquiry said that she would have been concerned that he was left to do that and concerned that he did not sit up to drink it. She agreed that Mr Hay looked unwell, that he was sweating and was pale and clammy. She put that down to alcohol withdrawal.

[102] At the one o'clock check, PCSO McCartney opens the hatch and asks "You all right? Still got stomach pains?" Mr Hay does not respond but lies unmoving on the mattress. The entry on the prisoner Contact Record reads "lying on his back moaning". The check takes thirteen seconds.

[103] At 13:30 a call comes through to the custody suite that G4S officers are on their way to pick up the two remaining custodies for court. PCSO Sinclair goes to see Alan Hay and tells him that he needs to get himself woken up and sit up – to get himself prepared to move. He is told through the door to get up. On the other side of the door, Mr Hay is remains lying on the mattress, not moving at all.

[104] In the meantime, G4S officers arrive. One of them, PCO Christie, asks what Mr Hay has been like to which PCSO McCartney responds "He's just started acting up…. Just kind of playing up. Moaning that he said he's been drinking aftershave on Saturday…take it with a pinch of salt though." PCO Christie asks if he is fit to be detained to which PCSO McCartney replies "Oh yes". As this is being said, CCTV records Mr Hay getting to his feet with difficulty, standing with his back against the wall and holding his abdomen. He is breathing heavily and is unsteady on his feet. The back of his upper clothing is extremely wet.

[105] PCSO Sinclair goes to the cell to bring him through to the front office. At that point Mr Hay says "I feel sick, sir", "I'm feeling sick now". PCSO Sinclair asks him what he wants to do – stay here or go to court. Mr Hay opts to go to court.

[106] Sgt Nicolson told the court that she was unaware that Mr Hay had complained that he felt sick. Had she known she would have been concerned about the G4S officers.

She thought she would, perhaps, have put a delay on Mr Hay leaving for court because she considered he should have gone back to hospital. In retrospect Sgt Nicolson wondered if she should have phoned a doctor earlier but she relied on the experienced PCSOs to bring matters to her attention if they had any concerns. She said that she had not been aware of any of the complaints of abdominal pain overnight. If she had known that Mr Hay was feeling so bad and had been feeling so bad overnight then she might have contacted the FME earlier. As it was, she was unaware of these issues. Likewise, Mr Hay's later complaints that he could not move and was very sore were not communicated to her. In the course of her evidence, she accepted that the checks carried out on Mr Hay were the bare minimum.

[107] CCTV shows PCSO Sinclair escorting Mr Hay to the charge bar where he comments, twice, that "He stinks of pish". Mr Hay walks very slowly and his fast and shallow. As he is handcuffed he says "I don't feel well – I'm going tae…" PCO Christie asks him if he is feeling ill to which Mr Hay says "aye".

[108] As Mr Hay leaves Loreburn Street, the last comment made by PCSO Sinclair as he points to the back of Mr Hay "He's shat himself". PCSO McCartney says "Aye, I see that". PCSO Sinclair repeats "He's shat himself tae" and laughs. PCO Christie returns to collect the second custody and comments that Mr Hay is "barking". PCSO Sinclair agrees.

[109] It was PCSO McCartney's position in court that a lot of prisoners who are alcoholics wet and soil themselves. He attributed these signs on Mr Hay to alcoholism. Likewise he was not concerned about the sweating which, in court, he said he must have

noticed. It happens, he said, to people who lie on mattresses for a long time. People also lie prone on mattresses without moving so he had no thoughts I that matter. He had seen worse than Mr Hay – "we deal with a lot of people who look and act the same way". He was not concerned about Mr Hay. The entries above his in the cell log led him to believe that this was a custody with no issues. He had been seen by doctors. He only looked at the cameras infrequently. PCSO McCartney's attitude came across in court as very unsympathetic and dismissive.

[110] PCSO Sinclair was similarly unsympathetic and dismissive. He, too, was not concerned about Mr Hay. He saw that Mr Hay was sweating profusely but took this to be a sign of alcohol withdrawal. He did not look at the cameras. Mr Hay had been seen by a doctor at hospital and again by the FME and they were more qualified than he was. He looked like someone who was withdrawing from alcohol and had a sore stomach.

[111] Sgt Nicolson was shown the CCTV footage of Mr Hay shortly before he left the police station in which he is seen leaning against the wall, holding his abdomen, breathing heavily and unsteady on his feet. His condition, she said, should have been conveyed to her. Had she known, she would have stopped the proceedings to see if he was fit to go to court. She did not recall any derogatory remarks being made. She certainly would not have let him leave the building had he soiled himself – she acknowledged that it would not have been appropriate to let him leave police custody in that condition. Notwithstanding her evidence, the CCTV footage clearly shows her standing behind the charge bar in close proximity to Mr Hay and the other officers. She appears to be watching and listening. She does not respond when the derogatory

remarks are made and makes no effort to intervene and halt the proceedings. She simply watches as Mr Hay leaves for court.

6. Appearance at Court until arrival at Barlinnie 14:00 to 18:00 hours

[112] PCO Christie is an experienced officer. He recalled that it was particularly busy that day and that Mr Hay did not get picked up until the afternoon at about 13:15 hours. Normally those tasked with transporting prisoners get some information about the custodies, including written information called "route sheets". He could not remember getting any such information about Alan Hay.

[113] He recalled that he had been told that Mr Hay had been PAVA-sprayed – he remembered speaking to two custody officers and being given a sealed bag containing his contaminated clothes. Mr Hay did not look good. He asked if Mr Hay had been passed fit for court and was told that he had. He was told that Mr Hay had been at hospital for a couple of hours but beyond that could not recall any detail of what was said. When he saw Mr Hay he noted that he did not look good on his feet. He noted wet patches at his collar which he thought might have been water but remembered that Mr Hay's hands were really cold – with sweat. He had seen a prisoner in a similar state before and thought that Mr Hay was probably suffering from severe alcohol withdrawal. He recognised Mr Hay – they both lived in Dalbeatie - and he was aware that Mr Hay had an alcohol problem. Even so, he had "never, ever, seen him like that before". He thought that his condition might have been due to a mixture of PAVA spray and alcohol withdrawal.

[114] Every custody is accompanied by documentation known as a Personal Escort Report or "PER". The relevant form for Mr Hay was produced in court. Part A of the form was completed by the night shift staff and signed by PCSO Sinclair. The form itself is designed to contain risk information about the prisoner being transported. It contains several categories which are marked as relevant by a cross in a box under three separate headings: "medical", "security" and "other". Mr Hay's form identified several risk factors. Under the medical heading it was noted that medication had been issued and that he had been seen by a doctor/nurse. No entry was made in the box entitled "medical condition". Under the security heading, risks that he was violent, conceals/carries weapons were noted. Under "other" it was noted that he had drugs/alcohol issues that force/restraint had been applied and that PAVA spray had been used. Under a separate part of the form headed "Risk – additional information" the following entries were made: RegSO (registered sex offender); Weapons; Violent. PCO Christie advised that court that the fact that restraint and PAVA had been used would make him cautious and he explained that he had been briefed about the incident that had led to his arrest. He had not seen any documentation from the hospital or any other medical information from the FME. He thought that would be useful information to have.

[115] The officer could not recall if Mr Hay appeared to have soiled himself when he was collected from the police station. If that were the case they would be looking to have him changed before taking him to court.

[116] The journey to court took about five minutes. PCO Christie recalled that he might have had to take hold of Mr Hay's hand to help him down the steps of the van. The officer reported to the Court Manager. He thought that he explained to the manager what he had been told: that Mr Hay was fit to appear in court; that he was not requiring medication and that none had been supplied; that there was sweat on his collar and cuffs and that he was cold and clammy. The manager was aware that he had received medical attention. Mr Hay was quiet and compliant throughout. He made no specific complaint of feeling unwell. PCO Christie and the other escorting officer, Graham Ross, decided to take Mr Hay up to court in the lift as he was "not too great on his feet". Mr Hay made a brief appearance in court where he pleaded not guilty to the charges and was remanded in custody.

[117] At that time, PCO Ross was relatively new to the job having been in post for less than a year. His duties that day involved transporting prisoners from HM Prison Low Moss to Dumfries and returning prisoners there as Dumfries Prison was at full capacity. Prisoners were being diverted to Barlinnie. When he first saw Mr Hay coming out of his cell he noted that he seemed a bit unsteady on his feet. Nothing else about his appearance gave cause for concern. Because there was a problem with Mr Hay's mobility, he was taken up to court in the lift rather than by the stairs. He walked slowly. Otherwise, there were no issues with him. Mr Hay was very compliant and made no complaints.

[118] The Logistics Manager for G4S was Miss Tammy Rice. On 2 August 2016 she was the team manager at Dumfries Sheriff Court with responsibility for overseeing the cell

area, security and the care and welfare of prisoners. Mr Hay was placed in a single cell on arrival at court as he was known to Miss Rice. From her previous dealings with him, she knew him to be quite unpredictable and volatile. She was aware from intelligence received prior to his arrival that he had been PAVA-sprayed which meant that he had been involved in a struggle during which the police had to use force. It was also known that he had alcohol issues and a tendency to be violent.

[119] She arranged for Mr Hay to be put through the court quickly. She noticed that he had recently lost weight and that he looked a bit off-colour. He was not well but was responsive and answered her questions. The escort said that he was a bit clammy. However she did not notice any marks on his clothing and did not remember him to be sweating profusely. She recalled having some information from a doctor from the Infirmary (Dr Bayaty) but she could not read the writing. She could not say what document this was. Her memory was that it recorded that Mr Hay had been admitted to hospital due to acute stomach pain possible due to the ingestion of PAVA spray. She thought there was information on the sheet that he had vomited blood.

[120] Miss Rice only saw Mr Hay for a few minutes. She noticed that he was slightly unsteady on his feet. For that reason he was taken up to court in the lift. No concerns were brought to her attention and Mr Hay made no complaint of stomach pain or discomfort. She did notice him with his arm across his abdomen but thought nothing of it. He was still clammy. She thought that he was suffering from alcohol withdrawal. She deemed him fit to leave: she was satisfied from the information given to her by the police that he was fit to be detained. His condition had not deteriorated and Miss Rice

knew that he would be seen by a nurse on arrival at Barlinnie. At no time did Miss Rice actually ask Mr Hay how he felt.

[121] Nor did the duty "turnkey" officer at the cells in the court house notice anything about Mr Hay that caused him concern other than the fact that he did not engage in any conversation. PCO Paul Bell knew Alan Hay from previous appearances at court. He was either quiet or loud – if loud, he was known to shout and kick the cell door and on occasion had to be restrained. At other times he was quiet and compliant. On this occasion he was very quiet and unresponsive. He did not engage in any conversation which was unusual. However, Mr Hay appeared fine on his feet and did not appear unwell to PCO Bell. He asked for and was given a cup of water which he took and never said a word. He walked from the middle of the cell to the door to take it and gave no indication of discomfort. Had there been any complaint of being unwell, PCO Bell would have reported it to his manager. In the course of cross-examination the officer accepted that he gave a police statement in which he said that Mr Hay was unsteady on his feet and used the lift for that reason but he could not now recall that.

7. Journey from Dumfries to Glasgow

[122] Mr Hay and two other prisoners were in the custody of PCO Bell and his colleague Charles Robertson, an experienced G4S officer then of some twelve years. He was driving. PCO Robertson had checked the paperwork on Mr Hay once he knew he was to be transported to Barlinnie. He was interested to find out as much as he could about the prisoner who was to be in his care. Mr Hay was not known to either officer.

Officer Robertson familiarised himself with the PER form and noted the various parts that had been highlighted including the security risk assessment. He was concerned by the number of boxed ticked which was unusual in his experience. He was concerned about how they were physically going to deal with this custody and whether additional manpower would be required to control him. He made the automatic assumption that if Mr Hay was in custody then he was fit to be detained. Any questions of fitness to be detained would already have been dealt with before a prisoner is handed over for transport. Such was PCO Robertson's concerns about safety and security issues that he raised the matter with one of the team managers.

[123] This was before he had seen Mr Hay. From the accompanying documentation, he was expecting an angry man - "a raging bull" – to be coming. When he saw Mr Hay he was shocked by his presentation. Far from being the raging bull, Mr Hay looked like an old man of 95. He was bent over and according to PCO Robertson he looked pretty done-in, worn down and exhausted. He was very lethargic and slow in his movements. He was sweating profusely and was wet with sweat. Despite his appearance, PCO Robertson was not concerned about taking him on the van. He thought that Mr Hay's symptoms were down to alcohol withdrawal.

[124] Mr Hay had been put on to the van by other officers and was already on the vehicle when the Officers Robertson and Bell were ready to leave so neither of them saw Mr Hay leaving the court and getting on to the van. According to PCO Bell, no welfare check was made before they left – he commented that such assessments were not always carried out. PCO Robertson, on the other hand, recalled that Mr Hay was

asked if he was okay and if there was anything they could do for him. He just asked for water and was given it.

[125] The G4S van left Dumfries shortly before 15:00 hours. It was a four-cell van and the prisoners were placed in individual cells. Mr Hay was put into the cell furthest away. PCO Ross said he could not see into his cell from his front passenger seat although it was his colleague's evidence that officers could both see and communicate verbally with prisoners. Some vans have cameras fitted for monitoring purposes but the camera on this vehicle was not working.

[126] At the commencement of the journey, a safety disc was played giving certain instructions to the prisoners. This included that if anyone felt unwell, they should shout to the officers to let them know. Prisoners being transported are checked every 30 minutes. These are fairly basic checks: officers do not get out of their seats to make a physical check on the prisoners. They merely shout out something like "Okay? Everyone fine?" before waiting for a verbal response from each individual prisoner. The result is then recorded on the Record of Events form.

[127] Five checks were noted as having been made with Mr Hay. On each occasion the response was recorded simply as "appears ok". There was nothing noted about what response was made by him or the basis upon which that assessment was made.

[128] During the three-hour journey, Mr Hay asked several times for the air conditioning to be switched on. This in itself was not an unusual request from passengers. The air conditioning was switched on and off four or five times in the journey – because the van gets quite cold and it is important to keep the van at a decent

temperature. PCO Ross had not noticed anything in particular about Mr Hay to cause him concern – Mr Hay never complained about any pain or discomfort whilst en route to Glasgow.

[129] The van made a stop at Low Moss prison to drop off one of the prisoners. This was at about four-ish according to PCO Robertson and 17:00 hours according to his colleague. No reference was made to the Low Moss stop in the Record of Events. PCO Ross accepted that the stop-off should have been noted as should Mr Hay's requests for water.

[130] There was some conflicting evidence about what happened while the van was stopped at Low Moss. There was a long delay before the prisoner was allowed in. PCO Ross went into the prison to do the necessary paperwork while officer Robertson stayed in the back of the vehicle. He did his "walkabout" and spoke to Mr Hay who asked for a drink and was given some water. Mr Hay may have had his top off. According to Mr Moffat, one of the other prisoners in the van, Mr Hay asked to be let out of the van to get some air. He thought that he was allowed to get off the van and sit outside. PCO Robertson's recollection was that he did not let Mr Hay out of the van: that would have been against company policy and, in any event, he was there on his own. He did, however, recall that Mr Hay had asked to be let out and that he may have opened the door to let more air in.

[131] According to Mr Moffat, Mr Hay should never have been put on the bus. He looked ill: he was pure white and sweating. During the journey he was always asking for water and saying he was "roasting". When the van stopped off at Low Moss, the

officers took him off to let him sit outside. He was sure that he got to sit outside the van. Mr Hay took his top off and said he was really roasting. No way, he said, should he have been put on "the bus" to Glasgow. He should have been sent to Dumfries Hospital. He was grey and dripping with sweat and was "balking and retching". Something should have been done.

[132] PCO Robertson was by now very concerned about Mr Hay. He was seriously overheating and was sweating really badly – his clothes were all wet. He looked exhausted. PCO Robertson recognised that Mr Hay was overheating but, again, interpreted his appearance as due to drug and/or alcohol withdrawal.

8. Collapse at Barlinnie Prison

[133] The van arrived at Barlinnie at 17:52 hours after a three hour journey. Mr Hay was taken off last shortly before 18:15. He had his top off again and was stripping off in the van. He was told to put his clothes back on. Although he eventually complied, he did not immediately respond and had to be told several times to do so. At this point, according to PCO Robertson, Mr Hay seemed a bit incoherent. He got off the van. He was very slow and lethargic and unsteady on his feet, so much so that both officers went on either side of him and walked him in. PCO Bell's evidence was that Mr Hay looked fine and was "talking away" quite normally and giving no cause for concern until he was off the van. I did not accept that. In his police statement, the officer had said that Mr Hay appeared wee bit incoherent and slightly agitated and was mumbling. From the CCTV footage, that description seemed accurate.

[134] All three men walked a few steps with Mr Hay being supported by both officers. They stopped and hesitated as Mr Hay started swaying on his feet before collapsing on to his knees. The officers called for help and several prison officers in the reception area immediately ran to assist. Mr Hay was brought into the reception area and lowered on to a chair. He was noted to be grey and sweaty and from CCTV footage it could be seen that his breathing was fast and shallow. He was leaning over and clutching his abdomen.

[135] Nurse Gillian McNally, one of the nurses in the prison health centre was summoned. Initially she was assessing Mr Hay with a view to judging if he was fit to be admitted or whether he should go to hospital for further assessment. He complained of abdominal pain. He was moved to one of the nearby reception holding cells so that she could get a full set of observations and take a history from him. Nurse Donna Marr also attended. Whilst in the cell he was slouched to one side and very weak. Mr Hay's blood pressure was recorded at 156/88 and his pulse was very fast at 156 bpm. His temperature was low at 33 degrees. He then started to be sick, vomiting clear fluid – possibly water – from his nose and mouth. There was no smell from the vomit. Nurse McNally considered him to be very poorly and the intention was to try to stabilise him to prevent his condition deteriorating. She initially thought that he might be experiencing acute alcohol or drug withdrawal.

[136] He began to become rigid. Fearing that he might have a seizure, Nurse McNally asked that he be moved into the corridor and put into the recovery position to prevent choking. By this time Mr Hay was very cold, particularly at his extremities and it was

clear that he was experiencing a degree of peripheral shut down. This made getting readings difficult.

[137] Once Mr Hay was lying down, Nurse McNally was able to get a blood sugar reading: it was extremely low at 2.1 and she immediately administered a glucosate gel by rubbing it on to the mucosa on the inside of his mouth. His oxygen saturation was very low at 70% on air and he was given oxygen by mask. His saturation gradually improved to 90%. However, his breathing became irregular and slowed down.

[138] At 18:32 Nurse McNally put out a Code Blue emergency call and a "blue light" ambulance was called. Mr Hay continued to vomit and remained unresponsive. Ambulance paramedics arrived at 18:40 (and a second crew arrived at 18:46). Mr Hay was barely breathing by then and had a thready pulse. Within seconds of the paramedics arriving, Mr Hay went into cardiac arrest. Chest compressions and full CPR were commenced by Nurse Marr. According to the time noted on the CCTV footage, cardiac compressions started at 18:45.

[139] Paramedic Christine Buchanan confirmed that Mr Hay was not breathing and had no cardiac output. CPR was continued and he was removed by ambulance to Glasgow Royal Infirmary, arriving there at 19:06. Mr Hay had no heart beat throughout the journey.

[140] The receiving doctor at the Infirmary was Dr Fiona Ritchie, Consultant in Emergency Medicine. By the time he arrived, Mr Hay had been asystolic with no heart beat for some time. Resuscitative efforts were continued for a further thirteen minutes but were futile. His blood results were grossly deranged and incompatible with life.

Mr Hay was formally pronounced dead at 19:23 hours. In reality, he was already dead when he arrived.

Post-mortem examination and Cause of Death

[141] The circumstances of Mr Hay's sudden death were reported to the Procurator Fiscal who instructed a post mortem examination. It was carried out at the Queen Elizabeth University Hospital, Glasgow on 9 September 2106 by Dr Marjory Turner. Her principal findings were noted as follows.

[142] There was no evidence of any significant natural disease. However, examination of the abdomen revealed a large volume of fluid (in excess of 1.5 litres) in the peritoneal cavity, an area that should have been essentially dry. This fluid was streaked with pus. The gastric mucosa was normal but there was a 0.5cm ulcer in the anterior wall of the first part of the duodenum which had perforated through to the peritoneal cavity allowing the stomach contents and intestinal contents to leak into the cavity. The body's response was to send in inflammatory cells which form pus. This is what is known as acute peritonitis.

[143] That the gastric mucosa was normal might suggest that Mr Hay had not been suffering from gastritis as diagnosed by Dr Bayaty. However, Dr Turner explained that although the signs of gastritis were sometimes discernible at autopsy, they were not always evident. Therefore a person might have had clinical gastritis in the absence of any sign at post mortem.

[144] Mr Hay's liver was a normal size and showed no evidence of cirrhosis nor of fatty changes. These were significant findings given Mr Hay's history of drug and alcohol abuse but the fact that no abnormalities were noted at autopsy did not rule out that there may have been a degree of functional impairment of his liver which would have added to the stresses his body was under at the time of his death. Histological examination of the liver did show mild congestion and chronic inflammation which, in Dr Turner's opinion, was consistent with a history of drug abuse and hepatitis C infection.

[145] Toxicology analysis identified only therapeutic levels of codeine and paracetamol. There was no evidence of alcohol, prescription drugs or drugs of abuse.

Death Certification

(a) Date, Time and Place of Death

[] From the information provided to her, Dr Turner certified that death occurred on 2 August 2016 at Glasgow Royal Infirmary at 19:23 hours, being the time at which Mr Hay was officially declared dead.

(b) Cause of Death

[146] Dr Turner certified the case of Mr Hay's death as follows:

1a: Acute peritonitis

due to

1b: Perforated duodenal ulcer.

Cause and mechanism of death

[147] In the course of the procurator fiscal's investigations, a potential conflict of medical opinion emerged as to the cause of death. The pathologist Dr Marjorie Turner had certified Mr Hay's death as acute peritonitis due to a perforated duodenal ulcer. However, one of the other expert witnesses, Mr Andrew de Beaux, considered that the more likely cause of death was hypoglycaemia due to the effects of acute alcohol poisoning. Accordingly, in terms of Rule 4.19 of the Fatal Accident Inquiry Rules 2017, evidence was presented concurrently from both witnesses in an effort to resolve these apparent differences. This meant that both experts gave evidence in court together at the same time rather than one after the other. The procedure is designed to encourage and facilitate dialogue and debate between the witnesses in an effort to establish common ground.

[148] In the event, there was much common ground between Dr Turner and Mr de Beaux. They gave evidence in an expert capacity. Dr Turner is a consultant forensic pathologist and is Head of the Forensic Pathology Service at Glasgow University. She has carried our 12-13,000 autopsies and has given expert evidence in a number of forums. Mr de Beaux is a consultant general and upper gastro-intestinal surgeon at the Royal Infirmary in Edinburgh having held that post since 2001. His post involves a significant element of training. I was entirely satisfied that both these medical witnesses were well qualified to give evidence of opinion as skilled witnesses.

[149] Dr Turner spoke to her principal findings at post mortem examination as already described. She confirmed her opinion as to the cause of death.

[150] In reaching his conclusion that hypoglycaemia was the primary cause of death, Mr de Beaux had taken note of information that was in a police statement provided to him which led him to believe that Mr Hay had been drinking to such an extent that he developed hypoglycaemia due to the effects of acute alcohol poisoning, compounded by the stress of the developing peritonitis from the perforated ulcer and poor fluid and oral intake whilst in police custody. However, there was no evidence before the court of any sustained or drinking such that would support an inference of clinical alcohol poisoning. Although he himself suggested to the police custody officers that he had "alcohol poisoning" he related this to having drunk some aftershave on the previous Saturday. The consumption of aftershave was dismissed by Dr Beaumont.

[151] In the absence of clear evidence of acute alcohol poisoning, Mr de Beaux qualified his opinion and in the course of their simultaneous evidence, during which there was some discussion and debate, both he and Dr Turner came to a shared opinion as to the *mechanism* and *cause* of death. They agreed that the primary cause of death was as certified by Dr Turner but also that hypoglycaemia played a fundamental role in the mechanism of death. This was important in informing any decision about whether there were any reasonable precautions whereby the death might realistically have been prevented.

[152] Mr de Beaux explained that hypoglycaemia is a complex condition. The body seeks to regulate and maintain blood sugar by sending signals to the brain to convert

stored glycogen to glucose. The liver pays a major role in this. Signals are sent from the liver to mobilise the stored glycogen and convert it to glucose. The body will go to great lengths to maintain the blood sugar and will often maintain it at all costs until all the resources are used up. At that point there is a rapid deterioration which Mr de Beaux described as "a fall off a cliff".

[153] Mr de Beaux explained that it is very unusual for a patient to deteriorate quickly, become unresponsive and then suffer cardiac arrest from a perforated duodenal ulcer alone. Some other mechanism had to account for that. In his opinion, that mechanism was hypoglycaemia. Very low blood sugar will lead to impaired brain function, light-headedness, collapse and impaired muscle function such as the heart which in turn causes cardiac arrest.

[154] In the absence of hypoglycaemia, it was Mr de Beaux's opinion that Mr Hay's clinical picture of peritonitis would have developed and would have been picked up during his time in jail when he would have been transferred to hospital for surgery. There was still time to make the diagnosis of a perforated duodenal ulcer when he died. Surgery would have been undertaken and he would have survived. However, patients who attend with peritonitis with the complication of a very low blood sugar have a high risk of morbidity. Hypoglycaemia is a recognised risk factor of a poor outcome.

[155] Some of his sweating may well have been a sign of hypoglycaemia. If so, then even with earlier intervention, Mr Hay had a very poor chance of survival.

[156] Although, typically the effect of peritonitis is to release stress hormones which cause the blood pressure to elevate above normal in a fight or flight response, low blood

sugar is typically a sign of functional liver failure. Thus, although the liver might look normal, it was not doing its job.

[157] Having heard the concurrent evidence and the debate between Dr Turner and Mr de Beaux, I was persuaded that hypoglycaemia was an important feature in Mr Hay's death. Accordingly, it would have placed him in a category where his chances of survival were slim.

[158] The mechanism as well as the cause of death were of critical importance in terms of establishing whether there were any reasonable precautions which, if taken, might realistically have avoided Mr Hay's death. Much depended on the likely timing of the perforation and the associated peritonitis.

Timing of perforation

[159] Looking back, the consensus of medical opinion was that it was likely that Mr Hay had suffered from a duodenal ulcer for some time, consistent with his description of having had pain for weeks. They also agreed that the most likely timing of the perforation was shortly after he was accepted into custody. In the absence of any other explanation discovered at autopsy, it seems almost certain that the blood in his vomit was as a result of the perforation. The raised temperature recorded by Dr Jones at 22:30 that evening was indicative of a developing peritonitis notwithstanding that Mr Hay was showing no other signs of that. That peritonitis was therefore developing over the ensuing hours while he was in custody overnight. His condition was steadily deteriorating. He was seriously ill throughout that time and almost certainly moribund by the time he left court and began his journey to Barlinnie, if not before.

[160] Given the likely timing of the perforation, should his condition have been diagnosed earlier? Two aspects of that require to be addressed: first, whether Dr Bayaty and Dr Jones should have acted differently and, secondly, whether the custody staff should have obtained further medical attention for Mr Hay while they remained responsible for his welfare in the 15 or so hours between his last examination by Dr Jones and his departure for the sheriff court. The actions of the doctors and the custody staff were reviewed by experts in the relevant fields.

[161] From their qualifications and experience, I was satisfied that each of the medical experts were able to give opinion evidence as skilled witnesses. In addition to Dr Turner and Mr de Beaux, two other medical experts gave evidence. Dr Katherine Morrison has been a clinical forensic and general medical practitioner for over 30 years with lengthy experience as a police surgeon. Dr Michael Johnston has been an experienced consultant in Emergency Medicine since 1994 at Ninewells Hospital and Medical School in Dundee.

Should the diagnosis have been made earlier?

[162] The medical examinations and treatment received by Mr Hay were reviewed by senior clinicians. Dr Morrison reviewed the two police surgeons, Doctors Beaumont and Jones while Dr Bayaty's assessment and treatment of Mr Hay was reviewed by Dr Johnston. Mr Andrew de Beaux also commented on the medical treatment Mr Hay had received.

[163] It is important to appreciate that any analysis of the medical treatment received by Mr Hay should take some account of the context in which it was delivered as part of

what Dr Morrison described as "custodial medicine". A high proportion of those persons in police custody have mental health problems, drugs and alcohol addictions and often poor general health and poor lifestyles. As Dr Morrison put it, these patients are the bread and butter work of the police surgeon or force medical examiner.

[164] In particular, drug-seeking behaviour is recognised as a common feature and the desire to avoid custody drives some of the complaints. There is, therefore, a high risk of false or exaggerated symptoms. More so than in the community, the doctor's job involves distinguishing the fake from the genuine. This presents a challenge to police surgeons and hospital doctors in Accident and Emergency departments alike. While, of course, it does not affect the quality of treatment such a patient should receive, the additional complexities must be taken into account.

[165] In this connection, Dr Morrison explained that doctors have to be very careful in accepting what a patient says. The rule of thumb for the GP in the community is to believe what the patient says unless there is good reason to think otherwise. That approach does not apply to the same degree in the custodial setting. Accordingly, doctors rely more on documented medical history, and physical examination. The most important factor is how the patient presents at the time. Similarly, Dr Johnston emphasised the importance and complexities of drug-seeking behaviour in emergency medicine and the significant difficulties inherent in an assessment of drug-dependent individuals whose illness behaviour can be very different from the norm, making clinical assessment very difficult. It can be very difficult in such circumstances to gain

the patient's cooperation and get consistency in responses to questioning against a background of addiction.

[166] There was some evidence that suggested that Mr Hay had in the past indulged in drug-seeking behaviour. He had been asked to leave his previous GP practice because of such behaviour and associated aggression. He was known to have been trying to get methadone which had been refused. In June Dr Beaumont had seen him when he was in custody and had given him some methadone then. He had been concerned that Mr Hay was still abusing heroin and alcohol and had informed a local addiction service about his concerns. Indeed shortly before his death he had been transferred to Dr Beaumont's practice. Dr Beaumont was therefore aware of Mr Hay's background.

[167] Coincidentally, Dr Bayaty also knew Mr Hay. He had seen him at the Hepatitis C clinic and was likewise already aware of his addiction background. Dr Jones had not met Mr Hay before he examined him on the evening of 1 August.

[168] From the evidence before me, I was satisfied that, initially, there was an element of drug-seeking behaviour on Mr Hay's part. He would have realised that he would not have access to street drugs or, more particularly, alcohol during his period of remand. He may also have been experiencing some symptoms of withdrawal from alcohol and / or drugs which he was able to recognise. He had also given conflicting information to Sgt Inglis about whether he was then currently on methadone and some of his answers to the risk assessment were clearly not accurate. There were reasonable grounds for the officers' initial scepticism about his complaints of pain. That made subsequent judgment calls all the more challenging. However, I am satisfied that as matters progressed and

Mr Hay's physical condition worsened, that his complaints of pain, his requests for pain-relief and to see a doctor were genuine and should have been identified as such by the custody staff charged with looking after his welfare.

Examination and Treatment at Hospital by Dr Zayed Bayaty

[169] Dr Bayaty's examination and treatment of Mr Hay were reviewed by Dr Johnston. He agreed there was nothing about Mr Hay's condition to suggest that this was someone in trouble and he had no criticism of Dr Bayaty's examination, diagnosis or treatment. In particular there were no findings which would have suggested a perforated duodenal ulcer or peritonitis.

[170] Dr Johnston explained that peritoneal inflammation leads to a reflex contraction of the muscles which causes involuntary "guarding" whenever the abdomen is palpitated. This strongly suggests the presence of an underlying surgical problem. This involuntary muscle contraction was not present.

[171] A Mallory-Weiss tear was also considered to be a reasonable diagnosis. Such a tear is classically found after repeated bouts of retching, for any reason, but often following too much alcohol. It was diagnosed clinically on the basis of a small volume of blood-steaked vomitus.

[172] Dr Johnston considered that Dr Bayaty's diagnosis of gastritis and the treatment and advice given were entirely appropriate. Knowing that Mr Hay was going back to custody, possibly withdrawing from alcohol and with no methadone, it was reasonable

to prescribe a dose of oromorph with the intention of warding off and treating the symptoms of withdrawal.

[173] In retrospect, given the post mortem findings, Dr Johnston also thought it entirely possible that when Mr Hay was seen by Dr Bayaty his symptoms were associated with the early stages of a leak from a perforated duodenal ulcer. The severity of the ensuing peritonitis and associated sepsis would gradually have increased over the next 24 hours or so culminating in severe septic and hypovolemic shock and the terminal event of asystolic cardiac arrest.

[174] Dr Morrison agreed. In her opinion, although vomiting of blood was a potentially serious sign, Mr Hay's observations were normal and remained stable over a period of time. Thus they were not in keeping with a story of an acutely perforated ulcer which classically gives rise to sudden and catastrophic pain all over the abdomen with associated board-like rigidity, a lowering of the blood pressure and a raised pulse.

Examination and Treatment by Dr Jones

[175] Dr Jones' dealings with Mr Hay at the police station on the evening of 1 August were reviewed by Dr Morrison. She considered that Dr Jones had conducted a very clear examination: he had taken a good history and carried out a very thorough assessment. A patient feeling unwell with continuing stomach pain would be consistent with gastritis, a very common complaint. What Dr Jones was looking for was something way out of proportion with normal gastritis. In particular, he was looking for peritonitis. He did not find it – the findings on examination were not in keeping with that diagnosis. A classic

sign of peritonitis would be a patient lying still, not walking about, standing up or letting anyone touch his abdomen.

[176] Although, in retrospect, the raised temperature was probably indicative of a perforation and the onset of sepsis, Dr Morrison was satisfied that Dr Jones had made an effort to find a source to explain it. There was nothing to sound any alarm bells and Dr Jones' conclusions were entirely reasonable. Mr de Beaux agreed. That the abdomen was soft with no evidence of peritonism was a positive feature which was very reassuring that there was no acute surgical issue relating to infection in the abdominal cavity. Similarly, the fact that Mr Hay was walked unaided and was moving was a reassuring sign that it was not peritonitis as was the fact that he was noisy when in his cell. A patient with peritonitis will generally keep still, taking little shallow breaths to minimise pain. On the contrary, it would not have been a good sign had he been lying flat, not speaking or shouting.

[177] Dr Jones' examination of Mr Hay was captured on CCTV. Although there was no sound on the footage, it was clear that Dr Jones carried out a very thorough examination and listened carefully and patiently to what Mr Hay was saying. He spent some time with him.

[178] Having regard to the evidence of the two doctors themselves and the expert assessments, I am entirely satisfied that Dr Bayaty and Dr Jones performed appropriate and comprehensive examinations. Both doctors were actively looking for but were able to exclude peritonitis on the basis of their findings. Again, it has to be emphasised that Mr Hay did not present with classic symptoms which would have enabled an accurate

diagnosis to have been made at those two earlier stages or that would have suggested a need for his admission to hospital for further tests. Moreover, none of the medical experts considered that there was any indication that Mr Hay's blood sugar should have been tested during these examinations. There was no reason to do so: Mr Hay was fully conscious and alert and showed no symptoms suggestive of hypoglycaemia.

Telephone Consultations with Dr Guy Beaumont

[179] Dr Morrison also reviewed Dr Beaumont's involvement. He had no direct dealings with Mr Hay and at no stage did he physically examine him. His involvement was restricted to two brief telephone conversations with the PCSOs. By the time he arrived at the police station to examine Mr Hay on the afternoon of 1 August, his patient had already left for hospital.

[180] The first contact with any medical practitioner following Mr Hay's arrest was by PCSO Palmer who called Dr Beaumont. Essentially this was a call to clarify whether Mr Hay was in receipt of methadone and, if so, from which pharmacy. It was also to ascertain whether he was fit to be detained. There was little conversation about Mr Hay's actual physical condition other than that he had been sprayed with PAVA. In particular, no information was provided about any complaint of abdominal pain. In these circumstances, Dr Morrison was content that Dr Beaumont's response had been reasonable. There was no information that suggested that an urgent visit was warranted. Any visit could properly have waited until after surgery.

[181] Dr Beaumont had no further input into Mr Hay's care until the following morning when he was contacted by PCSO McCartney. Again, this was a brief conversation. Although only one side of the conversation could be heard on the CCTV footage, the light-hearted tenor of the conversation (which included some shared derogatory comments about Mr Hay) clearly indicated that there was no suggestion of real concern on the part of the officer. It was, as he said, simply a matter of running something by the doctor in view of the disclosure about drinking aftershave. No information was provided to Dr Beaumont about his condition overnight. Specifically, there was no mention of his sweating, difficulty in moving nor the fact that he was by then lying absolutely still. In the circumstances of the limited information given to Dr Beaumont, he could not have appreciated that there was any need for further medical intervention beyond his instruction to give some more Gaviscon. Accordingly, I agreed with Dr Morrison's assessment that Dr Beaumont had acted reasonably in the context of the facts as they were made known to him.

[182] Neither the procurator fiscal or any other party sought to criticise the medical treatment given to Mr Hay while he was in custody at Loreburn Street. I was not invited to make any findings in that connection.

[183] I am satisfied that there was no basis on which the diagnosis of a ruptured duodenal ulcer and consequent peritonitis could reasonably have been made at the stage when he was examined by Dr Bayaty and Dr Jones. Earlier diagnosis by the two doctors who examined Mr Hay was not a reasonable precaution whereby Mr Hay's death might

realistically have been avoided. Accordingly, I make no finding in terms of section 26(2)(e) of the Act.

[184] For the sake of completeness, on the subject of medical treatment, I should add that nothing but praise was expressed for the efforts of the two nurses at Barlinnie, especially Nurse McNally. They did what they could in an emergency situation but it was clear that by the time he arrived at Barlinnie, Mr Hay was dying and, sadly, was beyond all attempts at resuscitation.

[185] The next question that arises is whether Mr Hay's death might have been avoided if custody staff had obtained further medical advice or had called an ambulance to have him taken to hospital at some time in the period after Dr Jones' examination. Inevitably, the focus shifted to the actions of the custody staff overnight and throughout the following morning while Mr Hay was delayed at Loreburn Street waiting to go to court. Given the circumstances of Mr Hay's death, the actions of the four custody sergeants and the various PCSOs who were responsible for his welfare came under close scrutiny. Chief Inspector Gordon Milne of Police Scotland gave evidence as an expert witness and reviewed the actions of the custody staff from the point of Mr Hay's arrest. Chief Inspector Milne has extensive experience of the custodial setting and had conducted a root and branch review of custody arrangements in Tayside. I was satisfied that he had sufficient knowledge of these matters both from a practical level and in connection with policy considerations at local and national level.

Review of the actions of the custody staff

[186] Guidelines – Standard Operating Procedures - are in force to assist police and custody staff who are required to look after persons in custody. Those in force at the time of Mr Hay's death were contained in the 2016 Standing Operating Procedure: Care and Welfare of Persons in Custody. These were referred to in the course of the Inquiry and contain a number of fundamental principles which are worth setting out in the context of assessing Mr Hay's care. The following general principles are of particular relevance.

5.1.3 Custody officers must inform the custody supervisor immediately of any information that may have a bearing on the care and welfare of a person during their time in custody.

5.3 Handover Procedures and Briefing of staff

Effective briefing and debriefing of custody supervisors and custody staff is essential when handing over the responsibilities for custodies. This ensures that all relevant information in relation to the care and welfare of custodies is passed on to and understood by the staff assuming responsibility.

15.2.2 Recording of Visits

Any material or unusual change in personality or behaviour of a custody must immediately be brought to the attention of the custody supervisor. The circumstances should be recorded on the custody computer system, together with any action taken.

[187] Chief Inspector Milne examined Mr Hay's treatment from the point at which he arrived at Loreburn Street. He was content that Mr Hay's initial reception into custody

was dealt with in an entirely satisfactory manner. Specifically, he was afforded the correct aftercare for a prisoner on whom PAVA spray had been used.

[188] The risk assessment process was then examined. Chief Inspector Milne explained that risk assessment is one of the fundamental stages of custody management designed to gauge the risk from a combination of threat and vulnerability: the extent to which a prisoner poses a risk to others and the extent to which he himself is at risk. He stressed that risk assessment is a dynamic process reflecting the fact that risk is an evolving, not a static, situation. He likened the assessment of risk to colouring in a picture: the more colour applied, the better the picture.

[189] Mr Hay had properly been assessed as being at high risk. He was clearly a vulnerable prisoner. The only criticism of the assessment was that the complaint of abdominal pain made by Mr Hay from the outset had not been included. Chief Inspector Milne confirmed that it should have been noted under section 10 or 13 of the assessment document. Otherwise, he was satisfied that the assessment process had been carried out appropriately.

[190] Subject to comments noted below, the chief inspector was content that the care plan for Mr Hay had been properly adhered to. He noted their initial scepticism about Mr Hay's complaints but felt that officers reacted appropriately as they became increasingly anxious about him. By the time he was vomiting blood they properly made urgent arrangements to convey him to hospital.

[191] In the hours that followed his return, Chief Inspector Milne was satisfied that Sgt Crozier acted appropriately. In his opinion, custody staff could be reassured on his

return from hospital that a diagnosis had been made and that they had received instructions about what to do in certain circumstances. It was legitimate for them to wait and see if his symptoms settled and to allow some "soak time" for the medication that he had been given to work. Sgt Crozier's shift would take confidence from the fact that he had been at hospital and had been returned fit for continued detention.

[192] Likewise, he was satisfied that staff acted in accordance with Dr Bayaty's instruction once Mr Hay's pain worsened by contacting Dr Jones. Again, following his attendance, the night shift staff would take some comfort from the fact that there was nothing suspected to be seriously wrong with Mr Hay.

[193] Subject to certain observations made below, I was satisfied that the custody staff on Sgt Inglis' shift and Sgt Crozier's shift had obtained medical assistance and advice for Mr Hay when necessary and had acted appropriately. I accepted that in the periods following both medical assessments they were entitled to rely on the fact that he had been seen by doctors who had declared him fit to be detained. He did appear to settle for a while. The real focus of the Inquiry was on the period from about 0200 hours onwards when Mr Hay again became restless, behaving in the manner described and clutching his stomach. It should have been obvious then that something was not right and they should have become increasingly worried about him. It is, therefore, from that point onwards that the actions of the custody staff merit closer scrutiny.

[194] Chief Inspector Milne agreed that staff concerns should have been increasing from the early hours of the morning and certainly from about 04:00 hours. He was critical of the quality of recording on the cell log which was simply "the usual

shorthand" used by PCSOs. The entries did not record complaints of pain, the restless behaviour or that Mr Hay was sweating and distressed. They should have done. As time went on, the chief inspector considered that there was an increasing need to go into Mr Hay's cell to engage with him and to question him further about how he was feeling. He would have expected staff to have a more pro-active approach and to have made further inquiries. He would also have expected Mr Hay's complaints and his behaviour to have been reported to the sergeant and discussed. He criticised the quality of the information written on the cell sheets which he described in somewhat understated terms as "not as good as it might have been".

[195] He considered that the observed behaviour at 06:15 (when Mr Hay was crawling on the floor) should have been noted and brought to the attention of the sergeant. So, too, should the fact that he was sweating profusely by 07:00 hours. Concern should have been escalating. There was a clear indication that something was not right and that the situation warranted further investigation.

[196] Chief Inspector Milne recognised that, as he put it, the pendulum was swinging between disbelief with the suspicion that Mr Hay was faking his symptoms and concern that his symptoms and behaviour were genuine. He would have expected more in the way of direct observation and questioning of Mr Hay in an effort to determine what was going on. As time went on, he recognised that there was an element on the part of the staff of wanting to get him off to court and thereby handing over responsibility to G4S officers. However, he emphasised that obtaining medical help for a prisoner must

override getting him to court, even if that results in a delay and a further 24 hours in custody.

[197] I, too, was less than impressed by the care and attention afforded to Mr Hay by the custody staff at Loreburn Street, particularly as time went by. It was easy to monitor Mr Hay simply by watching the screens at the charge bar. Indeed at the commencement of her shift Sgt McHarrie had put Mr Hay on to the main screen for that very purpose. No-one seemed particularly interested in doing so. Had they watched Mr Hay's behaviour closely, they would have seen a man in obvious pain and distress. Although officers seem to suggest to Mr Hay on various occasions that they have seen him on camera and he appeared to have been "moving fine", "able to get up fine" at no time was seen to move freely or with ease. On the contrary his movements were consistently laboured and careful. He moved very slowly and gingerly at all times. His signs of pain and distress persisted throughout. He never appeared well and looked increasingly exhausted. This behaviour was constant.

[198] From the evidence it appeared that Sgt McHarrie, who was ultimately responsible for Mr Hay's safety and welfare, did not even visit him and so had little first-hand knowledge of Mr Hay's condition throughout the night. This was surprising given that he was one of only a few prisoners in custody at that time (and he was presumably the only one who had already required a visit to hospital and, later, an examination by the FME). One would have expected a more pro-active concern on her part. She clearly relied on the PCSOs to advise her of any problems which, for some hours, they did not do.

[199] I appreciate that the fact that Mr Hay had opted to go for a shower and accepted breakfast might have been interpreted as encouraging signs that things were improving. However, given his condition shortly thereafter together with the fact that his food remained untouched, any such optimism should have been short-lived.

[200] In reality, no further medical assistance was sought for Mr Hay after Dr Jones' visit. The telephone call to Dr Beaumont was simply a tick box procedure limited to the aftershave disclosure. No concern was expressed about Mr Hay or any suggestion that the officers were worried about him. It was a light-hearted, superficial discussion limited to a single issue. It was not made in response to officers' general concern about his health and well-being.

[201] It was clear to me that Mr Hay was not fit to be allowed to leave Loreburn Street for Dumfries Sheriff Court. By that time he should have been in hospital. At the latest, in the hours between 06:00 and 07:00, further medical advice should have been obtained or an ambulance called. That would without doubt have led to his emergency admission to hospital. It was likely that his abdominal examination would have been different from the previous evening and that his clinical observations would have been abnormal, if not deranged. Peritonitis would have been suspected. As Dr Morrison said, an ambulance should have been summoned as there was nothing the duty FME could have done for Mr Hay in the cells. Therefore I was satisfied that any telephone advice from the duty FME would have been to call an ambulance, provided, of course, that the doctor was given a full and accurate account of Mr Hay's condition.

[202] Accordingly, I have concluded that it would have been a reasonable precaution to have obtained further medical advice or to have phoned for an ambulance to take Mr Hay to hospital from 0600 hours onwards. As his condition deteriorated, there was an increasing urgency to obtain further medical assistance.

[203] Having established the existence of a reasonable precaution, the next step is to determine whether, had that precaution been taken, Mr Hay's death might realistically have been avoided. That, in turn, depended on his survival prospects.

Was Mr Hay's condition survivable?

[204] Mr Hay's condition was a complex one. As Dr Turner said, there was a lot going on. It is not possible to determine the exact point at which Mr Hay's blood sugar started to fall or when he developed a profound hypoglycaemia. The telling symptom of profuse sweating was equally consistent with a developing peritonitis and sepsis and might have been due to either or both conditions. It appears likely that when Mr Hay's behaviour changed from shouting and restless to quiet and still he was showing the classic behaviour of someone with peritonitis. Moreover, whenever he was seen standing or walking he was bent over. This was several hours after his ulcer had perforated so it is likely that by then his peritonitis was fairly well established. That would bring with it additional stresses on his body. His already-compromised liver would be struggling to compensate and sustain his blood sugar level. As noted by Mr de Beaux, the situation was compounded by his poor fluid and oral intake and his background of drug and alcohol addiction, none of which it is possible to quantify. He

thought that around lunch-time might have been an opportunity to address matters but if the sweating was caused by hypoglycaemia then Mr Hay already had a very poor chance of survival.

[205] Given these complex circumstances, there was little clear evidence about Mr Hay's outlook. Mr de Beaux considered, without the element of hypoglycaemia, if Mr Hay's peritonitis had been picked up during his time in custody there was a reasonable chance that he would have survived surgical intervention. That opinion was echoed by Dr Morrison and Dr Johnston. Dr Turner confirmed that deaths from peritonitis following a perforated duodenal ulcer are not common – she sees only one or two a year. Dr Morrison described them as rare. That lends support to the involvement of the serious complication of hypoglycaemia in Mr Hay's case. Moreover, Mr de Beaux was doubtful that the rapidity of Mr Hay's death could be explained simply as a result of peritonitis. That he deteriorated and died so quickly pointed to hypoglycaemia. Hypoglycaemia was a serious complication which would have placed Mr Hay in a very bad category to survive surgical intervention.

[206] Dr Morrison explained that mortality caused by peritonitis increases rapidly the longer treatment is delayed. The combination of sepsis and low blood sugar means that the person is critically unwell with a mortality rate of 90%. Although he was in no doubt that the underlying cause of death was the perforated duodenal ulcer, Dr Johnston considered that the process was a combination of factors with other things going on in the context of the developing significant sepsis. Other factors, including the sepsis itself, may well have contributed to a low blood sugar.

[207] Only Mr Dar, on behalf of the family, sought to have a finding made under section 26(2)(e). He argued that there was evidence on which I could conclude that there might have been a 50% chance based on Mr de Beaux's evidence of the morbidity being between 50 and 90%. If 50%, he submitted that it could be argued that earlier intervention might realistically have resulted in Mr Hay's death being avoided.

[208] There was no basis on which I could prefer one figure over another with any degree of confidence. That would have been a matter of guesswork and speculation. There were a number of factors which, in combination, contributed to Mr Hay's condition. In an attempt to stablish what was going on, two features are of particular importance: the profuse sweating and the change in Mr Hay's behaviour when he began to lie still and quiet.

[209] While I was satisfied that the latter was clearly a sign of established peritonitis, the significance of the profuse sweating was less clear. As Dr Morrison explained, profuse sweating could have been due to a very high temperature or as a result of the autonomic nervous system being in overdrive in response to a threat to the body. It is a symptom of peritonitis and sepsis and also of hypoglycaemia. It could have been as a result of either or both. Mr Hay's chances of survival would have been much higher if the complication of hypoglycaemia had not been a feature.

[210] I cannot pinpoint with any accuracy when the serious complication of hypoglycaemia entered the equation. Accordingly, it is impossible to rate Mr Hay's survival chances at any specific point in time beyond the obvious conclusion that the earlier the intervention the more chance of survival and vice-versa. The crucial fact is

that persons with peritonitis and hypoglycaemia have a very poor chance of survival. Although I have concluded that it would have been reasonable to have sought further medical advice as early as a full 12 hours before his death, the evidence suggests that even at that time his condition may already have been critical. By the time Mr Hay was sweating and lying silent and still on his mattress, the odds were stacked against him.

[211] On that basis, I cannot say that had the officers taken the reasonable precaution to send Mr Hay to hospital during the morning of 2 August there was a realistic chance that he would have survived and thus his death would have been avoided. The term "realistic", as introduced by the 2016 Act, implies more than a mere possibility that the fatal outcome might have been avoided. There has to be a tangible chance of that. On the basis of the expert medical evidence before me, I am unable to conclude that was a *realistic* chance that Mr Hay's death might have been avoided in these circumstances. Thus the second part of the test in section 26(2)(e) is not met and can I make no positive finding in that connection.

[212] There were clearly other opportunities once Mr Hay left Loreburn Street to have obtained medical assistance. I have already concluded that Mr Hay was not fit to go to court. There was an opportunity for G4S officers to question his fitness at that stage. Others had responsibility for his welfare at the sheriff court. It follows that neither was he fit to travel from Dumfries to Glasgow and that staff responsible for his welfare at court and those escorting him on his journey should have realised this and acted accordingly. However, although it is concerning that no-one apparently took the time to enquire further into Mr Hay's condition, it is clear that by the time he left Dumfries his

chances of survival were vanishingly slim. Obtaining medical assistance or taking him to hospital at that time would have made no difference to the outcome. But it could have saved Mr Hay a great deal of suffering.

[213] Finally in considering potential findings under section 26(2)(e), reference should be made to the evidence about arrangements currently in place across Scotland whereby an NHS nurse is employed in the custody suite. Had such arrangements been in place in Dumfries that would have amounted to a precaution whereby Mr Hay's death would almost certainly have been avoided.

[214] Chief Inspector Milne described how such an arrangement worked. In several custody suites across Scotland NHS custody nurses are deployed on a 24 hour / 7 days a week basis and work within the cell area. There are clear advantages to such a system.

[215] These nurses provide a ready source of advice and guidance to supervising officers and to the PCSOs on matters of physical and mental health. They have full access to the prisoner's medical records via the NHS computer system and are able to dispense medication. They can monitor prisoners closely, particularly those assessed as highly vulnerable and accurately assess whether further medical intervention is required. As such they deliver a type of on-site triage facility. Where further medical assessment or hospital admission is required, there is enhanced communication between nurses and fellow health care professionals. Significantly, nurses are qualified to carry out examinations and take baseline observations including temperature, pulse, blood pressure, blood sugar and the like. The custody nurse provides an effective gateway to all aspects of care and welfare for the prisoners. The on-site availability of a qualified

nurse is particularly valuable as a significant percentage of persons going through the custody experience have a number of medical and mental health conditions.

[216] I have little doubt that if a nurse had been monitoring Mr Hay's health that he would have been in hospital at a very much earlier stage, possibly as early as between 02:00 and 03:00 when his condition started to become more unsettled. He would have been looked after and closely monitored. His worsening condition would have been recognised. Had his vital signs been recorded, any rise in temperature, change in blood pressure and lowering of blood sugar would have been discovered and promptly acted upon. It is likely that any basic abdominal examination might also have raised concerns. Changes in Mr Hay's condition such as profuse sweating and his obvious difficulty with movement would not have been dismissed but would have been recognised for the warning signs that they were. Had there been a nurse on hand, I think it likely that Mr Hay would have had a realistic chance of survival.

[217] Chief Inspector Milne explained that the provision of such services is paid for by the police and involves negotiation between the police and each of the fourteen health boards across Scotland. I had no specific information before me as to why no such facility was available in Dumfries but in general terms I was advised that negotiating with so many health boards was problematic, there were regional variations, logistical, geographical and, of course financial implications which were matters for Police Scotland and the various NHS boards.

[218] In the absence of clear information, I am not in a position to reach any conclusion as to the reasonableness of the provision of such a facility in Dumfries. Therefore I

cannot conclude that their availability in Dumfries would amount to a *reasonable* precaution in terms of section 26(2)(e). Nor in the absence of evidence concerning the logistical and financial feasibility of such a facility in Dumfries, can I make any formal recommendation that these arrangements be rolled out further. However, given the circumstances of Mr Hay's death and the likelihood that he would have survived had that facility been available, I have instructed that a copy of my determination be sent to the Chief Constable which, should he wish, he may pray in aid in support of the extension of these most valuable and effective arrangements.

Findings under section 26(2)(f): any defects in the system of working that contributed to Mr Hay's death

[219] Although there were clear shortcomings in the manner in which officers executed their responsibilities in looking after Mr Hay's welfare, none reflected any failures in the actual system of working within the custody suite at Loreburn Street. The standard operating procedures are clear. The fact that performance of these procedures sometimes fell short of the expected standard was a failure on the part of individuals rather than a failure of the system itself. Accordingly, I was satisfied that there was no basis for a finding under subsection (2)(f).

Other facts relevant to the circumstances of the death

[220] In terms of section 26(2)(g) the sheriff may include in the determination any other facts which are relevant to the circumstances of the death. Several issues arose in

the course of the Inquiry which merit inclusion under this subsection. There are clearly some lessons to be learned from the circumstances of Mr Hay's death. In the public interest it is appropriate to mention these here.

(i) Warning signs overlooked or misinterpreted

[221] Several of the officers commented that many prisoners are unsettled in their cells and this was supported by Chief Inspector Milne. While that may be so, Mr Hay's inability to settle was obviously not simply a matter of a lack of comfortable surroundings. Had custody staff monitored him closely on the CCTV screens, they would have seen the constant and persisting behaviour of someone in distress. The manner in which he constantly changed positions was worrying. He would variously lie flat, curl his legs up to his chest, roll off the mattress on to the floor, crawl on all fours, kneel with his forehead resting on the floor while kneeling, all the while clutching his abdomen. He seemed to obtain some respite sitting up on the toilet using his pillow as a cushion but that never lasted for very long. This was a man who was unwell and in considerable pain and distress. To dismiss this behaviour simply as a common feature in the custodial setting was a mistake.

[222] Another common feature observed in those persons who spend some time in custody is that they sweat. That led to a failure to appreciate the significance of sweating in Mr Hay's case. From the outset he was complaining of overheating in the cell. As time went on, he began to sweat profusely. He described himself as "dripping with sweat". His sweating was dismissed as nothing unusual: prisoners sweat when they lie

on the plastic mattresses for prolonged periods. However, Mr Hay's sweating was excessive and was an indicator of serious illness. It was a mistake to dismiss it as commonplace. Sweating – particularly profuse sweating - is a very important sign that someone is generally unwell. As Dr Morrison explained, sweating is a response of the autonomic nervous system. It is not something under a person's conscious control and they can neither start it nor stop it at will. When a person who is unwell is noted to be sweating, it is a sign that the body is responding to some stress such as infection. It is part of the body's fighting response. If someone who is unwell is "dripping with sweat" it is a sign that the autonomic nervous system is in overdrive and the body is recognising a threat and is trying to compensate. It pumps out adrenalin. Therefore, sweating is a major objective sign that something is not right. In Mr Hay's case it would have merited him going back to hospital immediately. Officers need to be alert to fact that abnormal sweating, particularly in the case of a prisoner who is unwell, is a warning sign to be taken seriously and acted upon.

[223] The change in Mr Hay's behaviour and presentation was another warning sign that was overlooked or misinterpreted. It was a dramatic change from a restless, noisy prisoner to one who was still and silent. From constantly moving around, Mr Hay lay stretched out and flat on the mattress, barely moving. Although there had been a period of comparative rest after Dr Jones' visit, Mr Hay then became unsettled once more, complaining of pain before his demeanour changed. It was a significant change which ought to have been noted and which warranted further investigation. Officers should

have gone into his cell to make closer inquiry when it should have been obvious that he was very unwell.

[224] When, eventually, it was brought to the attention of Sgt Nicolson, it was misinterpreted. Officers could not reasonably have been expected to appreciate the clinical significance of this altered state (i.e. peritonitis). However, they chose to consider his behaviour and place their own interpretation on it. While specifically discussing it round about 11 o'clock Sgt Nicolson expressed her opinion that if a person had abdominal pain then they would curl up in a "crunched" position for comfort. They would not stretch out flat like Mr Hay was doing. PCSO Sinclair agreed with her. This mistake not only contributed to the suspicion that Mr Hay's complaints were not genuine, it allowed an important change in presentation to be dismissed as unimportant. Custody staff dealing with ill prisoners complaining of abdominal pain would do well to be aware of the long-standing surgical aphorism quoted by Mr de Beaux: beware of the still, quiet patient as they may well have peritonitis.

(ii) Assumptions about alcohol withdrawal

[225] Chief Inspector Milne and the custody staff themselves were at pains to point out that they are not doctors and cannot be expected to diagnose what is wrong with a prisoner. However, throughout Mr Hay's time in custody, the staff, including G4S officers and staff at the sheriff court, appeared to do just that as, time and again, they attributed Mr Hay's condition to alcohol withdrawal. While that *might* have contributed in some small way to his symptoms, it was a dangerous assumption to have made and

was not one that they were entitled to make. In any event, as Dr Morrison explained, alcohol withdrawal itself is a serious condition which can lead to fitting. In her opinion, given that there were quite a few hours until Mr Hay was due to appear in court, staff should have been consulting a doctor to attend in connection with any withdrawal.

(iii) Inadequate monitoring

[226] From what could be seen on the CCTV footage, there was no real indication that Mr Hay's condition was being properly monitored. There was evidence that the cells were not busy – for some time Mr Hay was the only custody. There was ample opportunity to monitor him. He could have been observed on the CCTV screens – indeed Sgt McHarrie had put the view of his cell on the big screen for the purpose of keeping him under constant observation. There was little evidence that much attention was paid to the screens. Cell checks were carried out in the most cursory fashion. They were completed in a matter of seconds and were mostly done through the hatch. Indeed, these superficial checks seemed to demonstrate little more than that the inmate of the cell was still alive and breathing. In Mr Hay's case, that was not enough.

[227] Although there were occasions when a single PCSO went to speak to Mr Hay alone, there were many visits which were conducted through the hatch where the PCSOs should have made further enquiry by entering the cell. It was suggested that it was not appropriate to enter the cell to enquire into Mr Hay's condition because of personal safety issues for the officers. There was some support for this view from Chief Inspector Milne although he agreed that there were times when he would have expected

the officers to go into the cell. It was obvious that in his weak and exhausted condition he was unlikely to pose any real threat to officers as time passed. There was no reason not to have gone into Mr Hay's cell to speak directly with him and assess his welfare. Accordingly, officer safety was a poor excuse for failing to enter the cell. (In any event, it was possible for two officers to go into the cell if that was deemed necessary – it was not busy that night.)

(iv) Inadequate record keeping

[228] Not only did officers fail on several occasions to make proper inquiry into Mr Hay's condition, they failed to record important observations on the cell log. The standard of record keeping was deficient. Chief Inspector Milne considered that the quality of the recorded information was substandard. There were many occasions when complaints of pain and requests by Mr Hay to see a doctor were not recorded. It was accepted that this might have created a misleading impression for staff on subsequent shifts. There was a lack of qualitative information on the log. Mostly the entries were perfunctory in the extreme. Important information was omitted. The result was to create a misleading impression of Mr Hay's condition overnight and for much of the following morning. It was accepted on behalf of the Chief Constable that the record keeping was deficient.

(v) Inadequate communication with other agencies

[229] Concerns were also raised during the Inquiry about the quality of information passed on to other agencies that, in turn, were responsible for Mr Hay's welfare. Risk assessment, so the court was told, is a dynamic process which should be reassessed as circumstances change. The Mr Hay who left Loreburn Street to go to court was a very different man from the Mr Hay who had arrived the day before having been subdued by PAVA after allegedly fighting with police officers. Yet his risk assessment had not been reviewed and amended accordingly.

[230] The principal source of information that accompanies a prisoner when he leaves police custody is contained in the PER (prisoner escort record). In Mr Hay's case, the PER had been completed during the night shift. It was an opportunity to review and update the position. However, it was simply a repeat of the information contained in the original risk assessment which had been produced shortly after Mr Hay's arrest without any reference to his condition over the ensuing 24 hours. As such it was inaccurate and misleading. It created a very wrong impression of the risk posed by Mr Hay as was strikingly demonstrated during the course of PCO Robertson's evidence. There was an over emphasis on security matters at the expense of important information about health and welfare. As a result, material information about Mr Hay was not passed on to those who assumed responsibility for his care.

[231] Several witnesses expressed the view that it would have been helpful to have had more in the way of information about Mr Hay's medical condition. There was some confusion about what actual information did accompany Mr Hay. Miss Rice

thought she could remember having seen Dr Bayaty's notes but other witnesses, including Mr Robertson, were sure that they had not seen that. There was a need to ensure the transmission of accurate and relevant information.

(v) Over-reliance on earlier assessments of fitness to be detained

[232] Too much reassurance was taken from the knowledge that Mr Hay had been assessed as fit to be detained by doctors. Several times in the course of his evidence, Chief Inspector Milne referred to the fact that the custody staff were entitled to rely on the fact that doctors had declared Mr Hay fit to be detained. That was, as he described it, their "touchstone". In his opinion, staff were properly reassured.

[233] I was not convinced by that. While in the period immediately following upon medical assessment it was reasonable that the custody staff should feel reassured, as time went on and things did not improve that confidence should have diminished. Dr Jones was the last doctor who properly assessed the question of fitness. That was some 14 hours before Mr Hay left for court. During that period, the question of his continuing fitness to be detained should have been actively considered. Continued unquestioning reliance on previous fitness assessments made many hours earlier was unjustified in the context of the evolving circumstances of Mr Hay's physical condition.

[234] The same was true of the G4S staff and the various officials at the sheriff court who also had a duty to satisfy themselves as to Mr Hay's continuing fitness to be detained, particularly where he faced a long journey by road in the back of a cell van. They proceeded on the basis that fitness to be detained could be taken as read. Any

concerns about that would have been dealt with at the police station. In Mr Hay's case, that assumption was ill-founded. All officers who accept responsibility for a prisoner's welfare should make proactive enquiries and ensure that they have sufficient reliable information to satisfy themselves that the prisoner is fit for the next stage in the process. Unless and until they are so satisfied, they should not accept the prisoner into their custody until their concerns have been addressed.

(vi) Scepticism on the part of the custody staff

[235] One of the most disturbing feature of this Inquiry was the attitude adopted towards Mr Hay by many of the custody personnel. As has been observed, a healthy scepticism is an inevitable consequence of working as a custody sergeant, a PCSO and, indeed, in the context of custodial medicine. Some would say it was a necessary qualification for anyone working in that setting. Some doubt about the genuineness of Mr Hay's presenting complaints was justified and officers were right to bear that in mind. They knew Mr Hay and he was known to have indulged in drug-seeking behaviour in the past. However, as has been seen, that scepticism persisted in the face of Mr Hay's deteriorating condition and obvious distress. It permeated the whole approach taken by the custody staff and this insidious atmosphere of disbelief and doubt diluted the quality of care he received. The scepticism also contributed to the failures and misinterpretations identified above and doubtless contributed to the poor record keeping and the shortcomings in the welfare checks. It also meant that very little genuine sympathy was shown toward a man who was seriously ill and in need of help.

(vii) Unacceptable behaviour

[236] There was a further disturbing feature captured on the CCTV footage. That concerns some of the comments made by custody staff in the course of their duties. Chief Inspector Milne referred to that as "industrial language" which, he explained, unfortunately reflects the atmosphere in which the staff work. He made no apology for it in appropriate circumstances against a backdrop that the custody area is not a pleasant place to work and not a nice place to be held in. However, the disturbing feature arose not in relation to the day-to-day rough language that was being used but concerned remarks made that were derogatory, mocking, offensive and insulting. These have already been reported in some detail and need not be repeated. Chief Inspector Milne was highly critical of such behaviour, describing it as wholly inappropriate and unprofessional. As such, it could not be condoned, a point that was properly conceded on behalf of the Chief Constable. The remarks made were disgraceful and created a very poor impression indeed.

Concluding remarks

[237] I should like to record my appreciation to the procurator fiscal depute and all those representing the interested parties for the courteous manner in which the Inquiry was conducted. I am particularly grateful to Mr Quither for his well-organised and meticulous presentation of many hours of CCTV evidence together with the associated transcripts.

[238] The court viewed many hours of harrowing CCTV footage showing much suffering on Mr Hay's part. It must have been particularly difficult for Mr Corrigan to view such upsetting material. He did so with great fortitude and quiet dignity. I wish formally to record the Court's sympathy and condolences to Mr Hay's family.

[239] Finally, it is to be hoped that some of the matters raised in this Determination will provide a basis for training material for all those who have responsibility for the care and welfare of persons in custody. There a many lessons to be learned from the distressing circumstances of Alan Hay's death. While I have concluded that there were no reasonable precautions which, if taken, might realistically have resulted in Mr Hay's death being avoided, there were steps that could and should have been taken which would undoubtedly have spared Alan Hay a great deal of suffering.

ANNEXATION

LIST OF WITNESSES TO THE INQUIRY

1. Wesley Fraser, Constable, Police Scotland
2. Donna Mary Inglis, Sergeant, Police Scotland
3. Donald Palmer, Police Custody and Security Officer
4. Derek James Howson, Police Custody and Security Officer
5. Anna Clark, Constable, Police Scotland
6. Carolyne Crozier, Sergeant, Police Scotland
7. Lorraine McHarrie, Sergeant, Police Scotland
8. Ian Maxwell, Police Custody and Security Officer
9. Iain McCartney, Police Custody and Security Officer
10. Lyndsey Nicolson, Sergeant, Police Scotland
11. Bryan Sinclair, Police Custody and Security Officer
12. Gary James Christie, Police Custody Officer, G4S now GeoAmy
13. Paul Stuart Bell, Police Custody Officer, Dumfries Sheriff Court
14. Tammy Helen Rice, Logistics Manager G4S now GeoAmy at Dumfries Sheriff Court
15. Graeme Ross, Custody Officer G4S now GeoAmy
16. Charles McGowan Robertson, Custody Officer, G4S now GeoAmy
17. Robert David Cruden, Prison Officer, Scottish Prison Service
18. Gillian Andrea McNally, Registered General Practitioner Nurse, H M Prison, Barlinnie

19. Donna Marr, Senior Practitioner Nurse, H M Prison, Barlinnie

20. Barrry Moffat, c/o Police Scotland

21. Kirsteen Buchanan, Paramedic, National Health Service, Greater Glasgow

Medical Witnesses

22. Zayad Bayaty, MBChB etc., Accident and Emergency Department, Glasgow Royal Infirmary

23. Christopher Guy Beaumont MBChB etc,. General Medical Practitioner and Force Medical Examiner, Dumfries and Galloway

24. Bernard George Jones MBChB, etc., General Medical Practitioner and Force Medical Examiner, Dumfries and Galloway

25. Fiona Anne Ritchie, MBChB etc., Consultant in Emergency Medicine, Royal Infirmary, Glasgow

Expert Witnesses

26. Katherine M Morrison MRCGP, MFHom, DRCOG, DCCH, DMJ, Clinical Forensic/General Medical Practitioner, Ballochmyle Medical Group, Mauchline

27. Michael Anthony Johnston FCEM, FRCS, RCPS (Glasg) DA(UK), Consultant in Emergency Medicine, Ninewells Hospital, Dundee and Perth Hospital

28. Andrew Charles de Beaux MD, FRCS, MBChB, Consultant General and Upper Gastro-Intestinal Surgeon, Royal Infirmary of Edinburgh and Spire Murrayfield and Shawfair Park Hospitals, Edinburgh

29. Marjory Turner MBChB, FRCPath DipFM, Consultant Forensic Pathologist, University of Glasgow

30. Gordon Milne, Chief Inspector, Police Scotland