

Under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

Determination

by

Sheriff Principal Derek C W Pyle

in the Fatal Accident Inquiry into the death of

Graham Greig Paterson

Portree, 4th December 2014

The Sheriff Principal, having heard evidence and having resumed consideration of the cause, finds and determines that

1. **In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976:**

Graham Greig Paterson, whose date of birth was 28 April 1952, and who resided at An Cala, Carbstmore, Carbst, Isle of Skye, died in Coire na Banachdich, Cuillin Mountains, Isle of Skye, at a time which has not been proved between 1pm on 27 December 2012 and 10am on 29 December 2012.

2. In terms of section 6(1)(b) of the Act:

The cause of death was a chest injury due to or as a consequence of a fall while climbing, which injury resulted in damage to a lung which resulted in the development of a pneumothorax and bleeding into the chest space, causing impaired respiration leading to hypoxia.

3. In terms of section 6(1)(c) of the Act:

The death resulted from an accident. There were no reasonable precautions whereby the accident resulting in the death might have been avoided.

4. In terms of section 6(1)(d) of the Act:

There were no defects in any system of working which contributed to the death or the accident.

5. In terms of section 6(1)(e) of the Act:

The following recommendations are made:

- (1) Consideration should be given by Scottish Government and relevant stakeholders to discovering a means, whether statutory or otherwise, to ensure that mountain guides in Scotland are properly qualified and equipped to provide a commercial mountain guiding service for adults.
- (2) The relevant authorities should inform the public of the importance for amateur climbers and hill walkers of at least two members of any party being

fully equipped to deal with the possibility of an accident occurring to the leading member of the party.

I found the following facts admitted or proved:

1. Graham Greig Paterson ("Mr Paterson") was born on 28 April 1952. He resided at An Cala, Carbostmore, Carbost, Isle of Skye;
2. Mr Paterson was self-employed as a mountain guide and traded under the name, 'Skyehi Mountain Guides'. He had twenty years' experience of climbing. He had previously been a member of the Skye Mountain Rescue Team for a period of two years. He had been a mountain guide since 2006;
3. Ms Ildiko Kerek is a qualified teacher. She lives in Bristol. She enjoyed hillwalking, but had no experience of climbing. She had walked in the Lake District and abroad in the Pyrenees. She had walked up Mount Kilimanjaro, Tanzania. Her experience of walking in winter conditions was limited and was restricted to visits to the Lake District where on one occasion she had climbed a hill with the assistance of crampons. All her previous experience had been in the company of a former boyfriend who was a mountaineer. She had no experience of hill walking in Scotland.
4. Some weeks before her visit to the Isle of Skye on 27 December 2012 she had contacted Mr Paterson by means of his business website. She communicated with him by email. He asked her what experience she had. She said that she was just a walker and that she had done only a small amount of walking in winter conditions. She said that she had never used climbing ropes. Mr Paterson agreed to be her guide on a walk in the Cuillin on 27 December.

5. On that date, Ms Kerek arrived at Mr Paterson's house at about 9am. Her equipment for the day was a down coat, a Gore-tex jacket, waterproof trousers, walking boots and a small day bag. She also had crampons. She had a map with her but Mr Paterson told her that it would not be needed. She left it behind in her car. He had a rucksack but Ms Kerek did not know what was in it. Mr Paterson had an ice axe. He gave one to Ms Kerek. On being asked, she said that she had not used one before. He also gave her a helmet which she put on. Mr Paterson was wearing salopettes, which had a layer to cover the chest area, a winter waterproof jacket, two pairs of gloves and a woollen hat. He also had with him crampons and a helmet. He said that they should go on a nice day's walk which would not be challenging for her. He mentioned the peak known as Sgurr Dearg, although Ms Kerek did not retain a memory of the name. Mr Paterson did not show Ms Kerek the intended route on a map. She said that she did not want anything that was challenging and that she did not do cliffs. They left in her car at about 9.20am. They began the walk at about 10am. The weather was dry but cold; visibility was hazy.
6. Before leaving, Mr Paterson told his wife, Mrs Annie Paterson, that it was his intention to take Ms Kerek to Sgurr na Banachdich as far as the snow line. He said that he would telephone or text her when he and Ms Kerek reached the furthest point of their walk. If he had no signal he would telephone or text her as soon thereafter as he could. This was the standing arrangement which he made when taking clients on a walk or climb. That arrangement included the understanding that if he did not return by dusk Mrs Paterson would contact

the Mountain Rescue Service unless he had forewarned her that he would arrive later than that time;

7. After two hours, Mr Paterson and Ms Kerek reached the snow line. Snow began to fall. The terrain was a boulder field. The rocks were slippery because of snow and ice. It began to snow heavily. They began climbing up a steep scree slope which was covered in ice. At about 1pm they stopped on a ledge for lunch, although Ms Kerek was unable to eat her sandwiches because they were frozen solid. They began climbing up a gully with a frozen waterfall. The gully slope was covered in ice and snow. They were both using their crampons and ice axes. Ms Kerek complained that it was too steep and difficult for her. She said that she wanted to go back down. She began to do so, but immediately noticed that Mr Paterson had slipped and began falling very rapidly down the slope.
8. Ms Kerek was very frightened. Nevertheless, albeit with considerable difficulty, she managed to retreat downwards and eventually found Mr Paterson behind a rock. He was in a kneeling position. It was obvious to her that he was badly injured. She said that she would go for assistance. She asked him which mountain they were on but he was unable to speak in reply. One of his hands was uncovered. She tried to cover it with a woollen glove.
9. Ms Kerek began her descent. She had no idea in which direction to go. It was still snowing and very cold. Visibility was very poor. She frequently reached ledges where the area below them was covered in cloud. She had no way of knowing if going over the ledge would be a safe option. She tried to use her mobile telephone but there was no signal. At one point she decided to follow the path of a burn but it led to an area with steep rock on either side. She had

to scramble back up and try to find an alternative route. She eventually reached the foot of the mountain and her car after about 1 ½ hours. It was dusk. She met a gentleman who raised the alarm at about 2.40pm.

10. Shortly thereafter members of the Skye Mountain Rescue Team gathered at their hut at Glenbrittle. Ms Kerek was unable to give them accurate information on Mr Paterson's location. She had no grid reference. She drew a rough sketch of what she recalled of the terrain, but it proved to be of little use. Her description led the rescue team to think that she was referring to a bealach known as Bealach Coire na Banachdich. The rescue team began their search. During it winds were gusting at about 70 mph. Snow was falling horizontally. The search proved negative and was abandoned at 5am on 28 December. The search began later that morning. The temperature was much higher than the previous day but the search had to be abandoned because of high winds. The following day the search began again. The conditions were benign. Mr Paterson's body was found at about 10 am on a rocky slope to the west of the top of Sgurr Dearg. Further up that slope there was found his hat and gloves and about 200 metres further up from that his ice axe, orange bag and Hero 2 camera device. At 12.23pm a doctor with the rescue team pronounced Mr Paterson's life as extinct;
11. The cause of his death was a chest injury due to or as a consequence of a fall while climbing, which injury resulted in damage to a lung which resulted in the development of a pneumothorax and bleeding into the chest space, causing impaired respiration leading to hypoxia;

12. Mr Paterson's rucksack contained a flask and sandwiches. No map was found in his possessions;
13. The slope which Mr Paterson and Ms Kerek were climbing when the accident happened was a technical climbing route which was grade 4 in winter conditions. The route was wholly unsuitable for a novice climber like Ms Kerek.

I found all of the witnesses to the inquiry to be credible and reliable. I do not intend to go through their evidence in detail. Rather, I will refer to such evidence as it falls under various headings.

Reasonable Precautions

In terms of Section 6(1)(c) of the 1976 Act I am required to determine what reasonable precautions, if any, could have been taken whereby the death and any accident resulting in the death might have been avoided.

I am satisfied that there were no such precautions. There was some medical evidence – from Dr Gary Kerr, a consultant in emergency medicine at Raigmore Hospital, Inverness – about the statistical probability of Mr Paterson's survival given the description of his injuries in the post mortem report. But, as Dr Kerr readily conceded, he lacked important information, such as Mr Paterson's body temperature, in order to reach any definite conclusions. He also pointed out that the statistical foundation of the calculation of survivability was based upon patients who had been brought to hospital and who survived for at least 15 minutes in the emergency department. Accordingly, there was a lack of information about Mr Paterson's condition,

never mind the application of the research in an outdoor environment. I therefore hold that nothing conclusive can be drawn from Dr Kerr's evidence. Indeed, to seek to do so would become a speculative exercise. We simply do not know the exact moment when Mr Paterson died. It follows therefore that there would be no purpose in speculating whether an accurate description of his whereabouts, which might have resulted in him being found quickly after the first search began, would have meant that he would still have been alive and been able to be given medical treatment.

There was no suggestion in the evidence that Mr Paterson was not adequately equipped himself for the climbing which he did. That is not to say that he was comprehensively equipped for all aspects of the venture, a point which I deal with later, but on the specific point of what might have prevented the fall there was no evidence to suggest that any other equipment would have made any difference. There was, for example, no evidence that he should have been using climbing ropes. I was not invited to speculate about that. On the face of it, he was adequately clad, had proper boots and was wearing a helmet.

Defects in System of Working

I am also required to determine, in terms of Section 6(1)(d) of the Act what defects, if any, in any system of working which contributed to the death or any accident resulting in the death. Again, there was no evidence to suggest that any such defects existed.

Other Relevant Facts and Circumstances

In terms of Section 6(1)(e) of the Act, I am required to determine any other facts which are relevant to the circumstances of the death. That requires me to analyse the steps taken by Mr

Paterson to ensure in the interests of his client, Ms Kerek, what was supposed to be a hill walk was safely conducted. As will be seen, I have reached certain conclusions which are critical of what Mr Paterson did. I do not do so lightly, not least because I run the risk of adding to the grief and feelings of loss which his widow and family must be suffering. But in my judgment I have to face up to that task to ensure that lessons are learned for the future in the hope that the circumstances of this case do not arise again.

Evidence was given by Mr Matthew Barratt. He was an impressive witness. He is aged 37 and has been climbing since he was very young. He is a self-employed mountain guide based in Skye. He is well qualified for his chosen profession. He holds the Mountain Instructor Certificate which is the highest UK based mountaineering qualification for both summer and winter climbing. He also holds the Mountain Instructor Award and the Mountain Leader Award. All of these awards are obtained under the auspices of the body known as Mountain Leader Training Scotland. He is a member of the Association of Mountain Instructors, which gives him access to competitive rates for insurance, which I took to refer to employer's liability insurance and insurance against accidents occurring to his clients. He is a member of the Skye Mountain Rescue Team. He described in some detail how he conducts his guiding business and what safety precautions he takes in the interests of his clients and himself. Before he takes clients on a walk or climb he enquires about their experience. He looks at their equipment to evaluate the amount and quality of it. He then assesses what might be safe routes for the calibre and experience of the clients. Particularly in winter, he studies the weather forecast on the day. He assesses what the snow pack has been doing. He discusses the routes with the clients and will go over the options under reference to a map. As he sets off and during the early period of the day he continually assesses the fitness and performance of the clients. He

also makes frequent reference to the map so that the clients are clear what points they have reached and where they are going. Indeed, he said that in winter conditions he sees his role more as an instructor than a guide. His fundamental rule is never to climb near one's limit. He applies that to himself as much as to the clients. Once the route is decided upon, he leaves full details of it with a nominated person. That will include expected return times. The nominated person is given a written plan in the event of an emergency, which will include a note of the time or times when he can expect a phone call or text and what to do if they are not received.

At one point in his evidence I described to him the circumstances of the day as spoken to by Ms Kerek. Mr Barratt said that the point where Mr Paterson had fallen was a technically challenging route which he categorised as a grade 4 winter climb. The route from there to safety would be challenging and complex, given that it would appear as if there were several routes but which would all look the same. In his view, Ms Kerek should not have been where she was: "if someone is asking to go winter walking, it should be winter walking".

On any walk or climb, particularly in winter and for a small group, essential equipment was extra clothing, a first aid kit, a survival bag, spare hats and gloves. Clients should certainly have a survival bag in their rucksacks.

Robert Telfer is the Depute Head of Inspection for the Adventure Activities Licensing Service which is contracted to the Health and Safety Executive. He manages inspections and compliance for Scotland under the Adventure Activities Licensing Regulations 2004 which are derived from the Activity Centres (Young Persons' Safety) Act 1995. Like Mr Barratt, he

holds the Mountain Leader Award. That and other awards, namely the Mountain Instructor Award and the Mountain Instructor Certificate, are awarded by Mountain Leader Training Scotland. To obtain these awards requires considerable experience and study. The cost of going through the qualification and assessment process is high. He and his four inspectors carry out regular inspections of commercial enterprises which provide outdoor activities for children under the age of 18 years. The enterprises require to register in order to be allowed to provide certain outdoor services, such as climbing and abseiling. The test of an applicant for registration is a competence based one. It is unnecessary to have a formal mountaineering award, but the effect is the same, in that the competency bar is set at a similar high level. The registered provider will be expected to own or be able to hire all the necessary equipment to act as a guide. For the Cuillin it would be expected that the guide had a properly documented risk assessment with details of the specific risks of the range and how such risks would be managed. The need for such documents applies only to enterprises which have a minimum of six employees. But any enterprise would be expected to have generic risk assessments, as well as dynamic risk assessments as the day of the activity progressed. The guide should fully brief the clients on the day, discuss what the clients' responsibilities are, explain the route under reference to a map and identify possible escape routes. It is also good practice for the guide to give the clients a standard card showing how to summon help in an emergency and giving contact details. (Mr Telfer supplied an example of a suitable card, which is appended to this determination.) The guide should be properly equipped with, among other things, a first aid kit, an emergency shelter (which in modern times has replaced survival bags), spare food, spare clothing, a whistle and a torch. The client should have spare food, spare clothing and a whistle. Mr Telfer initially thought that the client did not need a torch although he eventually appeared to accept that it might be a good idea.

He has been an enthusiastic mountaineer all of his life. He considered that a balance needed to be struck between, on the one hand, freedom and independence and, on the other, encroachment of regulation. In his view, it was better to analyse benefit and risk rather than risk alone – in other words, if the potential benefit was great, one should perhaps take a higher risk. The benefits of mountaineering are endless, but include the sense of freedom or challenge. In the adventure activity sector, engaging with risk is the attraction. The purpose of the regulations is to prevent death or disabling injury for children. Risk management is a life skill; the more we prevent children taking risks, the more vulnerable we make them. In restricting the age limit to 18 years, the statutory regime, in his view, was accepting that adults are able to make judgments themselves in identifying and managing risk.

He was firmly of the view that Mr Paterson should not have been up Sgurr Dearg with a novice climber like Ms Kerek, who had either no or very limited experience of using crampons and an ice axe.

While I accept that the evidence of what was discussed between Ms Kerek and Mr Paterson and what thereafter occurred came only from her, it is clear that he should not have allowed her to embark on what ended up being a winter climb rather than a winter hill walk. She did not remotely have the necessary skill or experience to embark on such a venture. Indeed, as matters turned out, she was very fortunate to have survived at all. Mr Barratt called the manner in which she managed to retreat down the mountain as impressive. It is to her credit that she was able to remain in a mental state, never mind a physical one, to find safety. It is of great concern that she did not know where she had been, with the result that the search proved

fruitless for so long. That also put at risk the members of the search party. Nor was she properly equipped for the circumstances which arose. She had no map, whistle, torch, bivvy shelter or food. It is unlikely that she would have survived a night on the mountain, a fact which she herself recognised during the course of her evidence.

In my judgment, the underlying cause of the risks to which she was exposed was the unregulated nature of mountain guiding in Scotland. During the course of the evidence of Mr Niall Miller who is a principal inspector of the Health and Safety Executive, I discussed with him various options for possible reform, including the introduction of a statutory regime of registration of commercial providers of outdoor activities for adults, including mountain guiding. Questions were raised about the practicality of such a regime, not least because of cultural resistance from the hill walking and climbing community. I do not consider that the limited nature of the evidence over a two day fatal accident inquiry would entitle me to come to any firm conclusions or to make any specific recommendations.

The history of mountaineering in Scotland tells us that it is often out of tragedies such as this one that change takes place. I am reminded of the tragedy in 1971 on the Cairngorm plateau, which resulted in the death of a teacher and some of her pupils. That helped to change the culture and, it will be recalled, resulted in the demolition of some mountain bothies. Mr Paterson's death, while tragic, was no more than a fatal consequence of what most, if not all, climbers regard as a necessary risk in pursuit of their sport. But the position of Ms Kerek is not the same. It is one thing to weigh up the balance of benefit and risk; it is quite another to do so without any appreciation of either. That was Ms Kerek's position on the day. She was

entitled to be able to rely on her guide to do that for her. Indeed, that would be the sole reason for employing a guide in the first place.

It seems to me that it is incumbent on policy makers to discover a means by which mountain guides in Scotland are properly qualified and equipped to provide the service which they promote and which they operate for commercial gain.

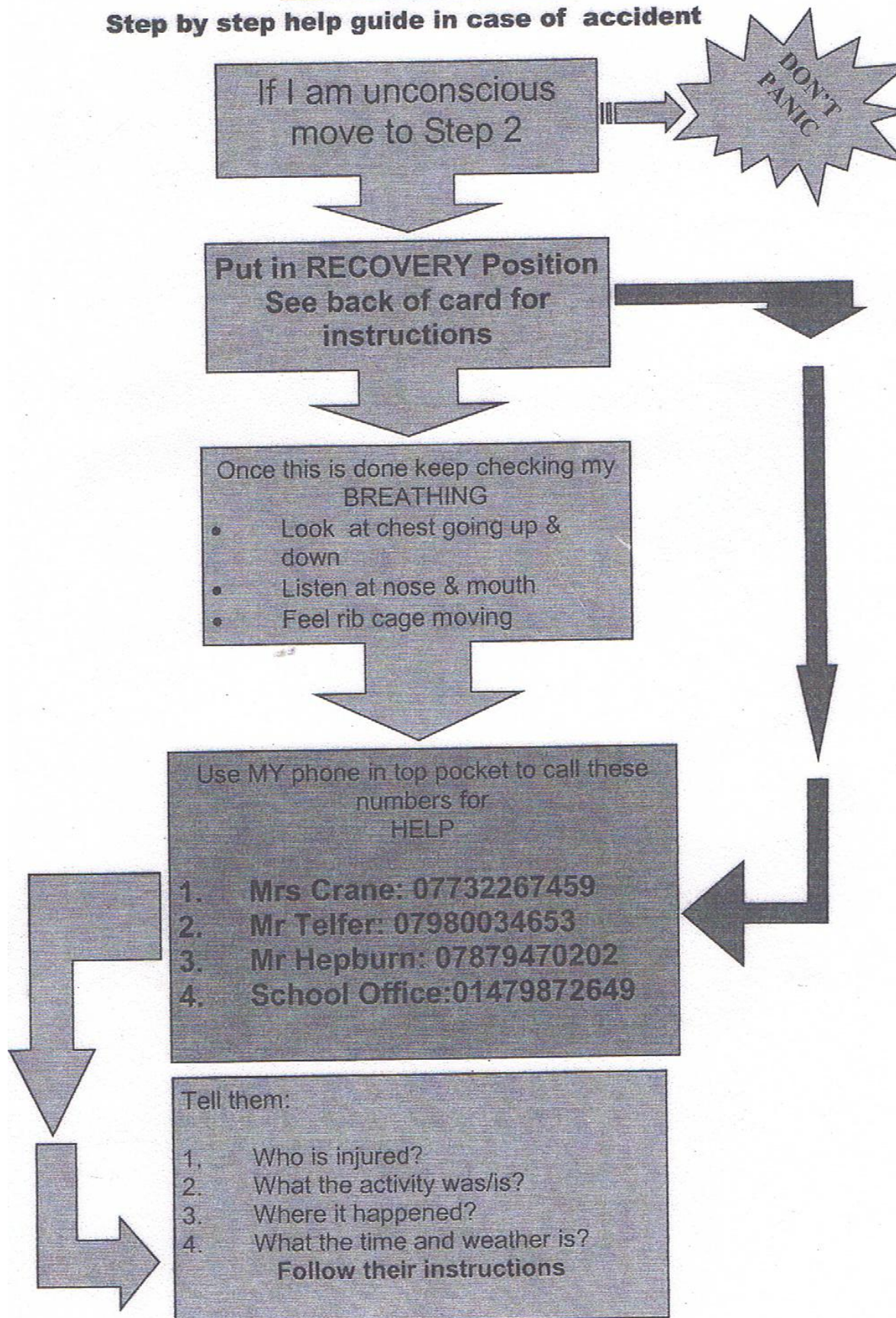
Lessons should also be learned by hill walkers and climbers generally. In saying that, I should declare that I have been a hill walker myself for over 40 years. I well understand Mr Telfer's description of some of the benefits being the sense of freedom or challenge. It is well known that members of mountain rescue teams are slow to criticise those they rescue, not least because they themselves enjoy the sense of achievement to be enjoyed from the sport. On the other hand, there is no virtue in not taking reasonable precautions. It is sometimes said that some precautions detract from the feeling of being in the wilderness. That is perhaps part of the culture to which Mr Miller referred. There is in my view little difference between that attitude and the one which complained that motor cyclists should not be required to wear crash helmets.

This inquiry illustrates what can happen if the leader of a party, particularly a small one, has an accident. It is, in my view, insufficient for only the leader to have all the equipment necessary for safe passage. One other within the group should be similarly equipped. That would include such basic equipment as a torch and a bivouac shelter, which each member of the group should have, a whistle, a map, and a compass (albeit that would not work in the

Cuillin). Each member of the group should be clear about the proposed route, including escape routes in the event of an emergency.

Mr Miller had also researched what communication technology was available. The evidence of Mr Barratt and Mr Telfer was that satellite telephones were prohibitively expensive. In fact, according to Mr Miller, they cost only a few hundred pounds. He also suggested the use of a spot locator which sends a distress signal and would assist greatly in identifying the whereabouts of an injured climber. The cost of such equipment, he advised, was about £150. On any view, either of these options seems to be a reasonable expense for a commercial enterprise to incur – and indeed might be a sensible investment for the amateur hill walker.

Mr Paterson, I can surmise, loved his job. I have no reason to think that he set out with the aim of causing his client to be faced with unnecessary risks. I have however concluded that he made errors of judgment. That ought to be the extent of the criticism which he now receives. I did not have the benefit of hearing from Mrs Paterson. There is, however, a reference in the papers before me that it is some comfort to her that he died on the mountains he loved. Whether one ventures or not into the hills of Scotland, it is easy to sympathise with that sentiment. I give my condolences to her and her family for their loss.

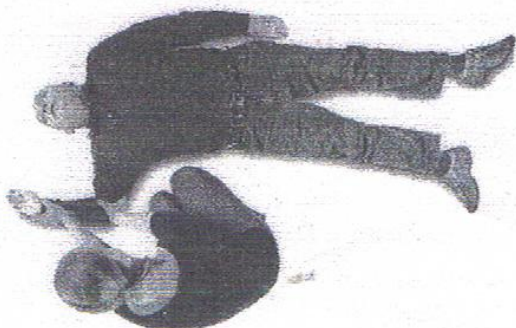
OUTDOOR HELP CARD**Step by step help guide in case of accident**

The recovery position



When a person is unconscious and lying on their back, the airway can become compromised by the **tongue** touching the back of the throat, or **vomit** if the casualty is sick. Placing the casualty in the recovery position protects the airway from both of these dangers – the tongue will not fall backwards and vomit will run out of the mouth.

1



- Remove the casualty's glasses and straighten both legs.
- Move the arm nearest you outwards, elbow bent with palm uppermost.

2



- Bring the far arm across the chest, and hold the back of that hand against the cheek.

3



- With your other hand, grasp the far leg just above the knee, and pull it up, keeping the foot on the ground.
- Keeping the casualty's hand pressed against their cheek, pull on the leg to roll them towards you, onto their side.

4



- Adjust the upper leg so that the hip and knee are bent at right angles and tilt the head back to keep the airway open.
- **Call 999/112 for emergency help.**
- Check breathing regularly. If you are in any doubt about the presence of normal breathing, start CPR (see page 4).

