SHERIFFDOM OF NORTH STRATHCLYDE AT OBAN

2011 FAI 43

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

DETERMINATION

BY

Sheriff W. Douglas Small, Advocate
Sheriff of North Strathclyde at Oban

Following an Inquiry into the circumstances of the deaths of

CRAIG CURRIE
WILLIAM CARTY
STEPHEN CARTY
and
THOMAS DOUGLAS

Oban, 10 October 2011

The Sheriff, having resumed consideration of the evidence and submissions determines as follows:-

[1] **Under section 6(1)(a)** of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (where and when the deaths and accident resulting in the deaths took place).

That Craig Currie (d.o.b. 13.4.78), William Carty (d.o.b. 17.5.61), Stephen Carty (d.o.b. 22.10.66), and Thomas Douglas (d.o.b. 10.3.76) died on 21 March 2009 at the north-east end of Loch Awe, Argyll in that area of the loch between the village of Loch Awe and the opposite shore at some point in time after 0120 hours.

[2] **Under section 6(1)(b)** of the Act (the cause or causes of such deaths and any accident resulting in the deaths) that the cause of death of Craig Curry, William Carty, Stephen Carty and Thomas Douglas was "cold water immersion".

[3] In terms of **section 6(1)(c)** of the Act (the reasonable precautions, if any, whereby the deaths and any accident resulting in the deaths might have been avoided).

(i) The deaths might have been avoided if the deceased had been wearing fully functional and properly secured and fitted lifejackets.

(ii) The deaths might have been avoided if the deceased had taken responsibility for their own safety and had taken into account the prevailing weather conditions, the lack of visibility and potential hazards on Loch Awe before embarking in their boat onto the loch.

(iii) The deaths might have been avoided if the deceased had returned to the Tight Line public house to obtain a lift back to their campsite.

(iv) The deaths might have been avoided if the deceased, as well as phoning Edward Colquhoun from their boat, had phoned emergency services.

(v) The deaths might have been avoided if the deceased had not consumed alcohol prior to taking the collective decision to take their boat onto the loch.

[4] Makes no recommendation under **section 6(1)(d)** of the Act (defects, if any, in any system of working which contributed to the deaths or any accident resulting in the deaths).

[5] In terms of **section 6(1)(e)** of the Act (any other facts which are relevant to the circumstances of the deaths).

(i) There was no register of local assistance (ROLA) available to be called upon by the rescue services at the time of the accident.

(ii) That there were communication difficulties for the emergency services in attendance. There is now a digital based system of communications in operation (Firelink System) which enables communications within the fire services, the police, and ambulance and resilient teams. This system does not extend to MCA personnel or to the mountain rescue services.

(iii) Individual crew members of Strathclyde Fire Service were not at the time of the accident personally equipped with lifejackets.

(iv) Those members of Strathclyde Fire Service who were the first to arrive at the campsite of the deceased did not source and communicate to their boat crew a suitable launch site.

(v) The Strathclyde Fire and Rescue boat was not equipped with physical markers to assist in identifying accurately those areas of the loch where debris and the bodies of Craig Currie and William Carty had been retrieved.

And further recommends

(i) That a register of <u>local</u> assistance which excludes the ambulance service be made up by Strathclyde Police and circulated to the emergency services and that the register includes the names of persons and equipment available to be called upon in an emergency rescue situation.

(ii) That in the event of an emergency involving Strathclyde Police and the MCA, Strathclyde Police should provide MCA personnel with a police radio for communication purposes.

(iii) That all Strathclyde Fire Service vehicles should be equipped with a lifejacket for each individual crew member.

(iv) That Strathclyde Fire and Rescue boats carry markers to assist in identifying areas of water from which debris or bodies of deceased are located.

(v) That in a water based incident there be a protocol in place whereby there is communication between the boat crew and those crews in attendance at the location of the incident.

NOTE

The Fatal Accident Inquiry into the deaths of Craig Currie, William Carty, Stephen Carty and Thomas Douglas took place at Oban Sheriff Court on dates between 1 June 2010 and 11 January 2011.

Representation

Mr Craig Harris – Procurator Fiscal at Oban in the public interest.

Mr Neil McLeod – Solicitor for the Scottish Ambulance Service.

Miss Asma Ali – Solicitor for Strathclyde Police.

Miss Kay Pitt – Solicitor for Strathclyde Fire Board.

Mr David Stevenson – Solicitor for the Royal National Lifeboat Institution.

Miss Mary Maitland – Solicitor for the Maritime and Coastguard Agency.

The Crown led evidence at the Inquiry from the following witnesses:-

Waveney Crookes – Divisional Inspector of Lifeboats for Scotland.

Patrick Donnelly – Previous owner of the boat used by the deceased.

Anthony Payne – Tourist and guest at the Loch Awe Hotel in Loch Awe village.

Brian Sommerville – Publican, Tight Line Public House in Loch Awe village.

Roderick O'Neill – Customer at the Tight Line Public House in Loch Awe village.

Edward Colquhoun – Friend of the deceased who accompanied the deceased to Loch Awe and who remained at their campsite, when the deceased went to the Tight Line public house.

Ian Gemmill – Deputy leader (Dalmally) Strathclyde Fire and Rescue Service.

Elizabeth Cattenach – Volunteer firefighter (Dalmally) Strathclyde Fire and Rescue.

George Dow – Volunteer firefighter (Dalmally) Strathclyde Fire and Rescue.

Neil Armour – Retained firefighter (Inveraray) Strathclyde Fire and Rescue.

Alan McDonald – Retained firefighter (Inveraray) Strathclyde Fire and Rescue.

Flight Lieutenant Daniel Shane Crawford RAF – Controller for the Aeronautical Rescue Co-Ordination Centre.

Lieutenant Commander Brian John Nicholas – Commander HMS Gannet.

William Harrison – Paramedic with the Scottish Ambulance Service.

John Brisco – Retired watch commander Strathclyde Fire and Rescue, Oban.

Graham Waters – Maritime and Coastguard Agency.

Inspector Alan Keith – Grampian Police.

Alan Cameron – Firefighter Strathclyde Fire and Rescue, Oban.

Jamie Watson – Firefighter, Strathclyde Fire and Rescue, Oban.

Robert McInnes – Firefighter, Strathclyde Fire and Rescue, Oban.

Marie Coyle – Watch Commander Strathclyde Fire and Rescue, Johnstone.

Gordon James Spence – Firefighter, Strathclyde Fire and Rescue, Renfrew.

Graham Taylor – Crewman, Strathclyde Fire and Rescue, Renfrew.

Brian Winter – Group Commander, Strathclyde Fire and Rescue, Renfrew.

John Grieve – Team Leader, Glencoe Mountain Rescue.

Damon Powell – Team Leader, Oban Mountain Rescue.

David Gordon Gray – Police Constable and member of Strathclyde Mountain Rescue Team.

Donald McDonald – Retained firefighter, Inveraray, Strathclyde Fire and Rescue.

Craig Cameron – Retained firefighter, Inveraray, Strathclyde Fire and Rescue.

Neil McKechnie Anderson – Retained firefighter, Inveraray, Strathclyde Fire and Rescue.

Stuart Borthwick – Retired Superintendent with Strathclyde Police.

David Bryce – Volunteer auxiliary coastguard, MCA Oban.

Alexander Duncan McNab, Volunteer auxiliary coastguard, MCA Oban.

Kenneth Devine – Sector manager with MCA Oban.

Alan Gray – Land owner and owner of the land on which the deceased set up camp.

James Lockhart – Fisherman who found the bodies of Stephen Carty and Thomas Douglas.

Mark Aitkenhead – Volunteer auxiliary coastguard with MCA, Oban.

James Livingstone – Volunteer firefighter, Strathclyde Fire and Rescue at Oban.

David Dick – Police Inspector, Strathclyde Police (in charge of air support).

Paul Connolly, Area Commander for Argyll and Bute, Strathclyde Fire and Rescue.

Michael Tipton – Professor of Human and Applied Physiology at Portsmouth University.

Police Sergeant Alan Bowater – Strathclyde Police.

Kevin Devine – Team leader and technician with the Scottish Ambulance Service at Oban.

David Wardlaw Wood – Technician with the Scottish Ambulance Service, Oban.

Carol Keeley – Emergency Planning Officer with Argyll and Bute Council.

Douglas Stewart – Volunteer firefighter, Strathclyde Fire and Rescue at Dalmally.

Frank Thomas Rogers – Volunteer with the Loch Lomond Rescue boat.

Police Constable Martin Arbuckle – Strathclyde Police Underwater Search Unit.

Police Constable Kenneth Freeman – Strathclyde Police Underwater Search Unit.

William Ruck – 'First Marine Limited'.

Police Sergeant Ian Bell - Strathclyde Police Underwater Search Unit.

Police Sergeant Ian Oliphant – Strathclyde Marine Policing Unit.

Dr Julie Bell – Pathologist.

Dr Julie McAdam – Pathologist.

Dr Hazel Torrance – Toxicologist.

David Wilson – Local boat yard owner.

Police Constable George Craig – Grampian Police Underwater Search Unit.

Ian McKinnon – Volunteer coastguard rescue officer.

David Goodhew – Director of Operations, Strathclyde Fire and Rescue.

John Munro Ironside – Area Commander with Strathclyde Fire and Rescue Service.

Lewis George Edward Ramsay – Assistant Chief Officer with Strathclyde Fire and Rescue Service.

Charles McGratten – Retired Deputy Director of Operations with Strathclyde Fire and Rescue Service.

John Walker – Former Director of Operations with Strathclyde Fire and Rescue Service.

Detective Sergeant Alistair Davidson – Strathclyde Police at Oban.

Police Sergeant Eric Smith – Strathclyde Police Area Control Room at Pitt Street, Glasgow.

Police Constable Andrew Robert Simpson – at Strathclyde Police, Oban.

Police Sergeant Daniel McGeachy – Strathclyde Police, Lochilphead.

James McIlwraith – Naval Architect and Chartered Engineer and Marine Surveyor with "Survey One".

Police Constable Gillian Shields – Strathclyde Police, Oban.

Police Constable Jeremy Moore – Strathclyde Police, Oban.

Police Constable Gregor Bryce – Strathclyde Police, Lochgilphead.

Chief Inspector Mosley – Strathclyde Police, Dunoon.

Inspector Judy Wilson – Strathclyde Police, Oban.

Chief Superintendent James McKechnie – Divisional Commander for Operational Support, Strathclyde Police.

Patrick Lindsay Tomkins - QPM – Retired Chief Inspector of Constabulary for Scotland and author of the "Tomkins Report".

In addition to the evidence of the above witnesses there was lodged with the Inquiry an affidavit by Ian McKinnon giving details about the operation of the Loch Watch Loch Awe Scheme together with a Joint Minute of Agreement between the Parties.

List of Abbreviations

ARCC – Aeronautical Rescue Coordination Centre.

SAS – Scottish Ambulance Service.

MCA – Maritime Coastguard Agency.

ROLA –Register of Local Assistance.

SFRS – Scottish Fire and Rescue Service.

POLSA – Police Search Advisor.

ROV – Remotely Operated Vehicle.

MRT – Mountain Rescue Team.

Background

Craig Currie, William Carty and his brother Stephen Carty, Thomas Douglas and Edward Colquhoun were well known to each other and had in the past often fished together. On 20 March 2009 the five men travelled from Glasgow in two separate vehicles to fish on Loch Awe. Stephen Carty and Thomas Douglas travelled with Edward Colquhoun in Thomas Douglas's car and William Carty and Craig Currie travelled in William Carty's van. The group had with them a small fibreglass boat which had been given to Thomas Douglas six weeks before the accident by a friend, Patrick Donnelly. The boat was powered by an outboard motor.

William Carty and Craig Currie were the first to arrive at the Loch in the late afternoon. They set up camp on land owned by Mr Alan Gray which is situated on the south shore of the Loch at a point adjacent to Kilchurn Castle and beside the A819 Inveraray to Dalmally road. Stephen Carty, Thomas Douglas and Edward Colquhoun arrived later on that day at dusk. After Stephen Carty, Thomas Douglas and Edward Colquhoun had arrived at the campsite a meal was cooked on a campfire. The group ate a trout which had been caught earlier and drank some alcohol. It was not possible to establish at the Inquiry precisely how much alcohol was consumed by each individual but there was evidence of the recovery of empty cans and bottles being found later at the campsite. In addition there was evidence from Edward Colquhoun that Craig Currie drank four cans and one bottle of lager which he may have shared with other members of the group. There was also evidence that William and Stephen Carty drank some whisky mixed with a soft drink and that Thomas Douglas drank some rum mixed with cola.

Shortly before 11 pm that evening, Craig Currie, William Carty, Stephen Carty and Thomas Douglas set out to visit the Tight Line Public House which is in Loch Awe village on the opposite shore to where the men had set up camp. Edward Colquhoun stayed behind to look after the campsite. The proprietor of the Tight Line Public House, Mr Brian Sommerville, knew all four men as they had in the past been regular and welcome visitors to his premises when fishing on the Loch. It was Mr Sommerville's evidence to the Inquiry that in the past the men would sometimes walk to the Tight Line from their campsite. On other occasions a member of his staff or himself would collect them and drive them home at the end of the evening.

That evening however the deceased made the decision to take the small boat which had been acquired by Thomas Douglas to the Tight Line. They crossed the Loch, which is a distance of approximately 500 metres from their campsite, without difficulty and arrived at the Tight Line at 11.01 pm. The timing on the CCTV footage recovered from the Tight Line after the accident (Crown Production 7), although running an hour and sixteen minutes fast, shows the men entering the Tight Line at 11.01 hours and leaving at 1.05 hours on the morning of 21 March after the discrepancy has been accounted for.

When the men crossed the Loch the weather was dry and clear[1]. The CCTV footage shows the men socialising and playing pool in the Tight Line. The clothing worn by them can be seen clearly in the CCTV footage and was agreed in the Joint Minute of Agreement. In the CCTV footage Craig Currie, William Carty and Stephen Carty can be seen to be wearing Wellington boots over their trousers. It is not clear from the footage if Thomas Douglas is wearing shoes or Wellington boots. Edward Colquhoun was unable

[1] Transcript – 1/6/2010, pages 165 to 166

to assist on this matter[1]. In his evidence to the Inquiry Brian Sommerville described the men as wearing good weather protection suits and appropriate cold weather gear[2]. The CCTV footage does not show the men carrying their lifejackets or buoyancy aids inside the Tight Line Public House and the fact that these items were recovered suggests that they had been left in the boat after the men had disembarked.

During the time the men were in the Tight Line they bought four rounds of drinks. Mr Sommerville told the Inquiry that the first and second round of drinks comprised two pints of lager, a bottle of Becks lager and a pint of John Smith's bitter. The third round comprised one pint of lager, a pint of John Smith's bitter, a vodka and coke and a Morgan's Spiced rum and coke. Mr Somerville thought that there had been a fourth round which comprised the same as the third[3]. He described the men when they left the Tight Line on the morning of 21 March 2009 as being "not heavily influenced by alcohol…compos mentis and very very much looking forward to their fishing the next day."[4]

At about midnight on 20 March 2009 Edward Colquhoun, who had gone to bed, received a call on his mobile from Stephen Carty asking him to put some more wood onto their campfire and to put some petrol into their lantern. Edward Colquhoun told the Inquiry that at that time he could still see across the Loch and could see the Loch Awe Hotel which is situated on the opposite side of the road from the Tight Line. After he had spoken to Stephen Carty he went back to bed and fell asleep. He awoke again after 2 am

[1] Transcript – 2/6/2010, page 140
[2] Transcript – 1/6/2020, page 193
[3] Transcript – 1/6/2010, pages 195 to 196
[4] Transcript – 1/6/2010, pages 198 to 199

and noticed three missed calls on his mobile phone. The last of the calls he said had been made at 2 am or 2.13 am and was from Stephen Carty[1].

It was clear from the evidence that during the time the men were in the Tight Line weather conditions outside deteriorated dramatically from being dry and clear to being exceptionally misty and foggy. Mr Sommerville, who could see the Loch from his position behind the bar, spoke of a mist suddenly coming down and of not being able to see the Loch. It was his evidence that he "had never seen mist like it or ever since"[2]. Roderick O'Neil, the barman at the Loch Awe Hotel, told the Inquiry that he had lived in the vicinity of Loch Awe for some thirty years. He described visiting the Tight Line after he finished work at the Loch Awe Hotel at 11.30 pm on 20 March 2009. He described the weather conditions when he left the Tight Line five minutes after the deceased as being like a "pea-souper"[3]. The last time he had experienced similar weather conditions had been eight years previously. Mr O'Neil described the temperature at the time as being "chilly". Similar descriptions of the extreme weather conditions were given by all of the witnesses who spoke at the Inquiry. Anthony Payne, who was a guest in the Loch Awe Hotel at the time of the accident, described conditions at 11.00 to 11.30 pm on the evening of 20 March 2009 as being clear. He described being wakened between 1 am and 2 am on the morning of 21 March 2009 when he heard what he thought was shouting coming from the Loch. He said that when he looked out from his hotel bedroom window he could see nothing because of the mist. He estimated that visibility extended to only nine feet.[4]

[1] Transcript – 2/6/2010, page 149
[2] Transcript – 1/6/2010, page 199
[3] Transcript – 2/6/2010, page 23
[4] Transcript – 1/6/2010, pages 165 to 169.

Events after the deceased left the Tight Line Public House

When the deceased arrived on the shores of Loch Awe village, they left their boat at the pier next to the Loch Awe Hotel before heading up to the Tight Line.[1] Their route to the Tight Line would have taken them across a railway bridge and up seventy nine steps to the roadway. The sequence of events that occurred after the men returned to their boat when they left the Tight Line were spoken to by Anthony Payne, Edward Colquhoun and those members of the rescue services who were to attend at Loch Awe. Anthony Payne and his wife were guests in the Loch Awe Hotel at the time of the accident. They were on an organised bus tour and were staying in a first floor room facing onto the Loch. At some point between 1 am and 2 am on the morning of 21 March 2009 Mr Payne was awakened by the sound of shouting coming from the Loch. He described the shouting as being "like someone who was shouting up and down the Loch. One minute you could hear it and it faded and then came back again." Mr Payne described getting up but being unable to see anything on the Loch because of mist. He described the mist as being so thick that he could "just see the tops of the coaches" which were parked in the car park below. He estimated visibility at no more than nine feet. He went back to bed and fell asleep but was again wakened by the sound of somebody "shouting for help" or shouting "Do you need help?" or "Hello, is anyone there?". Mr Payne described the shouting as sometimes being distinctive and at other times fading. He thought there were a couple of voices. On the second occasion that he heard shouting he went downstairs to the reception area of the hotel but returned to his bed when he could not find a member of staff. Mr Payne could not be positive about times.

[1] Brian Sommerville – Transcript 2010, page 194

He thought he wakened again at about 4 am. This time the noise was of someone shouting, as if calling for someone else. He woke his wife who tried, unsuccessfully, to phone reception. Mr Payne told the Inquiry that at the time his wife phoned reception they could hear a helicopter above the Loch.[1]

On the other side of the Loch Edward Colquhoun had gone back to bed and fallen asleep after having received a phone call from Stephen Carty at around midnight. He woke up after 2 am to discover three missed calls from Mr Carty (*supra* page 14). At that point he went to the tents to check if his companions had returned. On finding that they had not he went down to the shoreline of the Loch and shouted onto the water. He described the weather at this point as being "foggy and chilly" with visibility restricted to about four metres. He could hear cries for help coming from the Loch. He heard William Carty and Craig Currie shouting "Dial 999" and "Get help". He did not hear the voices of either Stephen Carty or Thomas Douglas. Mr Colquhoun was able to hear William Carty telling him to turn on the lights of their van. He described running to the van and finding it to be facing in the wrong direction and onto the road. Despite that he turned on the lights before trying to illuminate the shoreline of the Loch by throwing petrol onto it and setting it alight. At this stage Mr Colquhoun could not hear the noise of the boat engine nor could he hear any splashing on the water.

In a state of panic he phoned 999. His emergency call was put through to Strathclyde Fire and Rescue Services and was logged as having been received by them at 0340.20 hours. No emergency calls were logged as having been received from any of the deceased.[2]

[1] Transcript - 1/6/2010, pages 167 to 174
[2] Marie Coyle (Watch Commander) – Transcript – 14/6/2010, page 176

A recording of Mr Colquhoun's emergency phone call to Strathclyde Fire and Rescue Services was played to the Inquiry and a transcript was lodged (Crown label 8, Crown Production 47). The recording was harrowing for all to hear, particularly so for the relatives of the deceased who were present at the Inquiry. In the recording a voice is clearly heard to be shouting for help, while, at the same time, Mr Colquhoun can be heard asking his friends if they are "alright" and if they can "see or hear him".

The various rescue services were alerted to the incident and attended at the Loch. Their logs of the incident were lodged as productions. It was of assistance to the Inquiry to have a "timeline" of the events which was compiled by Miss Ali from the different logs. Miss Ali's timeline (attached to her written submissions) begins with Mr Colquhoun's 999 call at 0340 hours to Strathclyde Fire and Rescue Services and ends with an entry at 07.05 hours from the Underwater Search Unit of Strathclyde. The timeline shows that the Coastguard were notified of the incident at 0345 hours on the morning of 21 March 2009 and the ambulance service at 03.46 hours. Strathclyde Police were notified at 03.48 hours. The timeline shows also that at 03.46.16 hours the local fire and rescue crews at Dalmally, Inveraray and Oban were informed and the Renfrew Fire and Rescue crew were advised at 03.50.08 hours.

Dalmally Fire and Rescue Service were first to arrive at the Loch. Unfortunately, but understandably so Mr Colquhoun's description of the exact location of the campsite was unclear and the crew initially went to the road leading to Kilchurn Castle. When they arrived at that location there was no sign of Mr Colquhoun. James Livingstone, one of their crew who had travelled separately to the locus in his works van, took it upon himself to travel along the A819 road to Inveraray in order to see if he could find

Mr Colquhoun. He found him standing on the road near to the campsite and immediately contacted his colleagues who, in turn, radioed back the location to their control centre. Other local fire and rescue services were then informed of the location as were the police.

The Inveraray fire appliance was the first to arrive at the road beside the campsite. They arrived at 04.11.44 hours. Neil Anderson, their crew commander, estimated that his appliance had lost a "good ten minutes" in getting to the locus because of the fog which he described as being "very bad". It was his evidence to the Inquiry that he had never seen fog so bad and he estimated visibility at just ten metres.[1] The Oban fire appliance was next to reach the locus, arriving at 04.16.23 hours. They were followed by the Dalmally fire appliance which had made its way back from the road leading to Kilchurn Castle. At this stage John Brisco, Watch Commander with Oban Fire and Rescue Service, took charge of the situation before handing over to the police when they arrived. The fire services were followed shortly after by ambulance crews from Oban and Inveraray, who arrived at 04.26 hours. At 04.20 hours and 04.29 hours Police Sergeant Davidson and Police Constable Simpson arrived from Oban Police Station followed by Sergeant McGeachy from Lochgilphead who arrived at 04.49 hours.

All of the emergency services, including the police, spoke of driving to the scene at reduced speed because of extreme weather conditions. Kevin Devine, an ambulance crew member, estimated that the journey took an extra ten minutes[2] and Sergeant Davidson remarked that there was "an intensity of fog and mist" which restricted the speed at which they were able to drive to "thirty miles per hour maximum".[3] Chief

[1] Transcript – 16/6/2010, page 10
[2] Transcript – 24/6/2010, page 4
[3] Transcript – 14/7/2010, pages 143 to 144

Inspector Judy Wilson from Oban took over control of the incident from Chief Inspector Mosley when she came on duty on Monday 23 March 2009.

As regards the other rescue services attending at the incident the timelines (*supra*) show that the MCA arrived at the scene at 04.44 hours. They had put out a request before their arrival to Aeronautical Rescue Co-Ordination Centre for helicopter assistance at 04.12 hours.[1] As a consequence of their request a Royal Navy Mark 5 Sea King Helicopter (Rescue 177) was deployed from Prestwick at 04.44 hours and arrived over Loch Awe at 05.45 hours. Unfortunately because of poor visibility the rescue helicopter was unable to descend to a sufficient height for a search to be carried out. It landed nearby before making another unsuccessful attempt at a search at 07.23 hours. It eventually returned to Prestwick at 09.38 hours.

Neither the Glencoe Mountain Rescue Team nor Oban Mountain Rescue Team were involved in the rescue operations, although they did become involved in the recovery part of the operation. The potential to have these organisations involved in future rescue operations was considered by the Inquiry (*infra*).

The attempts to find and rescue the deceased began when Mr Livingstone, of Dalmally Fire and Rescue (*supra*), accompanied Edward Colquhoun to the loch side. The other fire and rescue services began to arrive as he was doing so. On the shore Mr Livingstone spoke of seeing a "glint" from two lights when scouring the water. He thought the lights were moving.[2] In addition Mr Livingstone spoke of hearing shouting which he took to be shouts for help. He spoke about time intervals between the shouts increasing. He thought that the shouts were coming from someone in the water. He

[1] Transcript – 10/6/2010, page 37
[2] Transcript – 18/06/2010, page 165

formed this opinion from the way the lights were moving. Ian Gemmill, the Deputy Leader of the Dalmally Fire Crew, who was also scouring the water from the shoreline at this time, told the Inquiry that he saw a light on the water "out in the mist" at about 100 to 200 metres from where he stood on the shore. He spoke of hearing two voices on the water and could make out the name "Tom" being shouted. He heard other firefighters shouting to the men, asking them if they were in the water, and he heard at least one of the men replying "Yes".[1] Mr Gemmill estimated that the shouts from the water ceased about twenty minutes before the rescue boat from Strathclyde Fire and Rescue arrived, which, according to the coastguard's log was 05.31 hours (Crown Production 7).

The lights on the Loch and the cries for help were also seen and heard by George Dow, a fellow volunteer firefighter from Dalmally. The cries for help from the Loch which were heard by Mr Colquhoun, understandably, caused him considerable distress. Elizabeth Cattenach, one of the firefighters who was present on the shore, described having to prevent Mr Colquhoun from walking into the water in an attempt to rescue his friends.

[1] Transcript – 9/6/2010, page 35 to 39

The recovery of the bodies of Craig Currie and William Carty

The bodies of Craig Currie and William Carty were recovered from the Loch by firemen Gordon Spence and Temporary Watch Commander Graham Taylor, both firefighters based at Renfrew. Gordon Spence, a level 2 trained powerboat operator[1], confirmed that at about 03.50 hours on 21 March 2009 his shift had received information about the ongoing water incident on Loch Awe. He was assigned to tow the fire crew "Zodiac" boat to the Loch. When his crew arrived at the campsite on the Loch at 05.27 hours they were unable to find a suitable launching site. They were forced to travel back up the Loch for approximately one mile before they were able to launch their boat. Once launched, the men followed the shoreline for approximately five minutes until they reached the shore party. At the shoreline they were directed in a north-westerly direction and shortly thereafter recovered the bodies of Craig Currie and William Carty from the water. Craig Currie was first to be recovered. He was wearing a floatation device and had on a "LED" head torch which was still showing a dim light. William Carty was next to be recovered. He was wearing an "ill-fitting vest" or buoyancy aid (label 2). Both bodies were upright and vertical in the water. When Craig Currie was found his head was above the water, which reached as far as his lower lip. William Carty was totally submerged up to his forehead. In the Fiscal's written submissions to the Inquiry (at page 78) Mr Harris attributed William Carty's lower position in the water to his ill-fitting buoyancy aid.

Both bodies were taken to the shore where paramedics attempted resuscitation without success. Both men were given CPR (cardio-pulmonary resuscitation) and were

[1] Transcript – 14/06/2010, pages 180 to 181

shocked with a defibrillator. Dr Rayeel Ahmed, the police casualty surgeon who later attended at the scene, pronounced life extinct at 08.00 hours. Thereafter the bodies of both men were taken to the mortuary in Oban, before being transferred to the City Mortuary in Glasgow for post-mortem examination. The post-mortem examinations were carried out by Dr Julia Bell on 25 March 2009. She certified the causes of death in respect of both men as being "cold water immersion" (Post-mortem reports – Crown Productions 9 and 10). The toxicology report for Craig Currie disclosed the presence of alcohol (68 mg/dl) and a low concentration of cannabis. William Carty's toxicology report likewise disclosed the presence of alcohol (53 mg/dl) and a low concentration of cannabis.

The search for the bodies of Stephen Carty and Thomas Douglas

Fireman Gordon Spence and Temporary Watch Commander Graham Taylor resumed their search of the Loch immediately after they had taken Craig Currie and William Carty to the shore. They had not physically marked the part of the Loch where they had recovered the bodies of Craig Currie and William Carty because, as was explained by Gordon Spence, their "Zodiac" boat did not carry markers[1]. However the firemen had left a pair of Wellington boots in the water at the place where the bodies had been found which assisted them in identifying the spot. Graham Taylor told the Inquiry that as they continued their search for Stephen Carty and Thomas Douglas they saw a trail of debris which comprised oars, a fuel tank and articles of clothing which comprised

[1] Transcript – 15/06/2010, page 16

hats, boots and gloves.[1] Mr Taylor told the Inquiry that the debris "formed a trail down the Loch where the current from the river seemed to be taking them." They followed the trail in the hope that it would help them to find Stephen Carty and Thomas Douglas.

The boat which had been used by the deceased was never recovered.

Gordon Spence and Graham Taylor continued searching the Loch without success for a "good hour" before they returned to their launch site. Both men were of the opinion that had the bodies of Stephen Carty and Thomas Douglas been floating in the water they would have spotted them. The other rescue services and recruited civilians continued with a search of the shoreline without success until they were stood down at different times of the day.

The standing down of the rescue services

As mentioned (*supra*) Rescue Helicopter 177 was unable to carry out a search of the Loch because of dense fog. It returned to Prestwick at 12.21 hours. Fireman Gordon Spence and Temporary Watch Commander Graham Taylor changed personnel at 12.03 hours that day, when a fresh crew took up the search for Stephen Carty and Thomas Douglas. They continued searching until later on in the day.

The crews of the Inveraray, Oban and Dalmally Fire and Rescue Services continued searching until they were stood down at 09.52.24 hours. The Marine Coastguard who were involved were stood down at 08.56 hours and the Strathclyde Mountain Rescue Team at 12.18 hours (production 2 – Police Storm Log).

[1] Transcript – 15/06/2010, page 106

Members of the Oban Mountain Rescue Team who had assisted in searching the loch side were stood down by the police at 11.24 am. Donald Wilson and Michael McManus, local boat owners who had assisted in the search, were stood down at 12.18 hours. During Donald Wilson and Michael McManus's search of the Loch they recovered and brought to the shore a glove, a torch, a Wellington boot and a fuel tank which was described by Mr Wilson as being a fuel tank for an outboard motor. He told the Inquiry that the fitting for the fuel tank's attachment to the engine had sheered off. He assumed that it had happened when the boat sank or had turned over[1].

The continuing search for the bodies of Stephen Carty and Thomas Douglas

The search for the bodies of Stephen Carty and Thomas Douglas continued until 6 April 2009. Different methods of search were carried out. These included a search by the Strathclyde Police Underwater Unit, Strathclyde Dog Unit, the Strathclyde Police Helicopter Unit, the Strathclyde Police Support Unit, the Strathclyde Marine Unit, the Maritime Coastguard Agency Search Team, the Oban Mountain Rescue Team and International Rescue. Additional assistance in searching for the bodies was given by Mr Neil Powell who attended with a dog (a Sardar) trained to locate the smell of decomposing bodies on the surface of water. This search with the dog was carried out on 9 and 10 May. During the search the dog identified two areas of interest on the water which were both dived with negative results.

[1] Transcript – 30/6/2010, page 68

On 22 May 2009 an independent diving team, Moray Diving, which operates sonar with a remotely operated vehicle (R.O.V.), was employed by the families of the missing divers. Moray Diving likewise was unsuccessful in finding the bodies.

Overall responsibility for overseeing the search/recovery operation was that of acting Chief Inspector Judy Wilson, who at the time was based at Oban Police Office. As mentioned (*supra*), Inspector Wilson took on that responsibility when she took up her duties on the morning of Monday 23 March 2009. At 1 pm that day she met Chief Inspector Mosely who had, until that time, been co-ordinating the search at the loch side. At the time the two police officers met Strathclyde Underwater Unit were systematically searching the area of the loch which had been identified as being the point where Craig Currie and William Carty had been recovered and where the debris, including the fuel tank, had also been recovered.[1] Extensive searches were carried out during the course of the following nine days (21 March 2009 to 30 March 2009) with different methods of underwater searching of the Loch being carried out by the police without success. These included the use of sonar combined with a remotely operated vehicle (R.O.V.). Strathclyde Police Helicopter Unit attended on three separate occasions,(i.e. 21, 23 and 28 March 2009). Strathclyde Marine Policing Unit, who also assisted, carried on searching the surface of the Loch until 4 April 2009. In addition, on 25 March 2009 a Specialised Police Search Advisor Team (POLSA) attended at the Loch in order to carry out a systematic and detailed search and to co-ordinate the search teams.

The underwater search for the bodies of Stephen Carty and Thomas Douglas was stood down on 28 May 2009. Inspector Judy Wilson told the Inquiry that it was the considered view of the senior police officers who were responsible for the search that

[1] Transcript 25/06/2010, page 25

there was "nothing else that could be brought to the table"[1]. Inspector Wilson told the Inquiry that after nine days of being underwater the bodies of the two men would have decomposed to such an extent that decomposition gases would be forcing them to the surface. It was her evidence to the Inquiry that by the time the underwater search was stood down 24,000 square metres of water had been searched[2]. Notwithstanding that the underwater search had been stood down, a further four days of underwater search was carried out between 27 and 30 April 2009 when additional areas of search were identified by Sergeant Ian Bell[3]. The search in its entirety was finally stood down on 29 May 2009.

The recovery of the bodies of Stephen Carty and Thomas Douglas

The badly decomposed bodies of Stephen Carty and Thomas Douglas were eventually found on 31 May 2009 at 11.30 am by a local man, James Lockhart, who had taken his boat out to go fishing on the Loch with a friend. The bodies were found lying about thirty to forty feet apart on the shoreline of a small island adjacent to Kilchurn Castle. Scenes of crime police officers attended and photographed the bodies where they lay. James Lockhart identified the bodies from the photographs taken at the time Photograph 11 (Crown Production 44), was the photograph of Thomas Douglas who was first to be found, and photographs 31 and 32 were photographs of Stephen Carty's body. It was a matter of agreement between the parties that the police surgeon, Dr Qurashi attended at the shores of the Loch and pronounced Thomas Douglas's life to be extinct at 16.56 hours and Stephen Carty's at 16.58 hours. The bodies of both men were thereafter

[1] Transcript 22/09/2010, page 860.
[2] Transcript 9/6/2010, page 40
[3] Transcript - 22/9/2010, page 75

transferred to Glasgow City Mortuary where post-mortem examinations were carried out on 25 March 2009.

James Lockhart gave a description to the Inquiry of the clothes that he recollected the deceased to have been wearing when they were found. He described Thomas Douglas as wearing a "Real Tree" camouflage suit but not wearing a lifejacket/personal floating device or buoyancy aid.[1] He "thought" that Stephen Carty was wearing a lifejacket.

The post-mortem reports of both men (productions 11 and 12) concluded that both died from "cold water immersion". No significant injuries were found on the bodies of either man. The toxicology report in respect of Stephen Carty (production 11) disclosed that there was 163 mg/dl of alcohol in his blood and 149 mg/dl in a bile sample. The report in respect of Thomas Douglas disclosed a reading of 103 mg/dl of alcohol in a bile sample which was taken from his body. Julie McAdam, the pathologist who performed both post-mortems, described the level of alcohol found in Stephen Carty's body as being "a moderate level" and in Thomas Douglas's body as "a relatively low level".

Issues

The primary issues which were focused upon at the Inquiry involved (1) the safety of the boat used by the deceased; (2) the weather conditions; and (3) whether or not the amount of alcohol consumed by the deceased impaired their collective judgement in making the decision to use the boat for the return trip to the campsite. In addition the Inquiry examined (4) the suitability and effectiveness of the clothing and

[1] Transcript – 18/6/2010, page 130

lifejackets/buoyancy aids worn by the deceased; and (5) the roles played by certain branches of the emergency services, including the mountain rescue services, their available equipment and the co-ordination and communication systems of the different rescue services. In that regard the availability of local assistance, including local knowledge and the availability of local boats/equipment, was looked at.

In conclusion the Inquiry heard evidence as to steps taken after the accident by the local community to improve safety on Loch Awe. I turn now to deal with those issues.

(1) The safety of the boat used by the deceased

Construction, alteration, stability, the suspected failure of the outboard motor and possible causes of the failure.

The boat and trailer had been given to Thomas Douglas approximately six weeks prior to the accident by Patrick Donnelly (*supra*). Mr Donnelly identified the boat's trailer from photograph 59 in Crown Production 41. He told the Inquiry that before giving the boat to Thomas Douglas he had regularly used it at intervals of approximately four months. He had used it three or four months prior to the accident. Mr Donnelly was referred to a sketch that he had made of the boat (Crown Production 1) and described the boat as being "belly-shaped" and made of fibreglass. He described it as being 12 feet in length and 5 to 5 ½ feet in breadth at the rear. He explained to the Inquiry that the boat had been adapted to have what he described as two plastic school seats with legs removed and "bolted down" at the back. Mr Donnelly went on to describe a wooden spar seat in the middle of the boat and two fibreglass stepped areas, one at the stern and the other at

the bow. He described metal oar locks, which had been given to Mr Douglas with the boat, and an aluminium plate to the rear of the boat where an outboard engine could be attached.[1] He had not provided Thomas Douglas with an engine for the boat as he understood that Stephen Carty was to provide the engine.

As Patrick Donnelly had not supplied the engine for the boat and as Edward Colquhoun could not assist the Inquiry about the boat in any way, evidence was heard as to what type of engine could have been attached to a boat of this description by James McIlwraith, a naval architect and expert witness. His evidence about the matter was predicated on Mr Donnelly's description of the dimensions of the boat, the type of fuel tank recovered from the Loch by Donald Wilson (*supra*) and the reasonable assumption that the fuel tank recovered came from the boat, standing that it was recovered along with other debris from the boat. Mr McIlwraith concluded from the fact that the tank contained a mixture of two-stroke fuel that the outboard engine used on the boat was greater than a six horse power engine and was capable of powering the boat at "more than 12 to 13 knots". It was his evidence to the Inquiry that the engine would be started by pulling a cord and that the action of pulling the cord to start the engine would cause the boat to rock.

Mr McIlwraith told the Inquiry that as of June/July 1996 a boat of the proportions described would be required to comply with an EU safety direction for recreational craft. Thus, if the boat had been post June/July 1996 it would have been required to undergo testing as to its carrying capacity. Mr McIlwraith told the Inquiry that given the combined weights of the four deceased, the boat would have been over the specified limit

[1] Transcript – 1/6/2010, pages 93 to 99

of 49 kilos provided for by the EU Directive.[1] Furthermore it was Mr McIlwraith's evidence that since 1996 boats such as the one used by the deceased required to have built-in buoyancy devices, which are normally fitted under the spars. He thought it unlikely that this boat had any form of buoyancy device.[2] It was his opinion that had buoyancy devices been fitted to the boat it would have been washed ashore.

It became apparent during the evidence that the air screw on the fuel cap of the tank which was recovered was closed and that there was no water in the fuel within the tank (Joint Minute of Admissions, paragraph 7). When asked to comment about these matters Mr McIlwraith stated that it was his opinion that without the fuel breather being opened "the engine would not run for more than one or two minutes before it failed and stopped"[3] He was of the opinion that the effect of someone standing up to attempt to restart the engine or any person within the boat moving to examine the engine would have caused the boat to rock. He considered that the boat would also have rocked if persons changed positions in order to row it. It was Mr McIlwraith's opinion evidence that if the boat had become sufficiently unbalanced it may have taken in enough water to cause it to sink.

Other "speculative scenarios" as to what might have cause the boat to become de-stabilised and sink were put to Mr McIlwraith for comment. These included movement within the boat being exacerbated by the heavy clothing worn by the deceased or one of the deceased urinating over the side of the boat or a scenario where one of the deceased had fallen into the water and his friends had attempted to pull him back into the boat. Mr McIlwraith agreed with the possibility that each of these speculative scenarios could

[1] Transcript – 2/9/2010, pages 11 to 18
[2] Transcript – 2/9/2010, page 23
[3] Transcript 2/9/2010, page 49

have de-stabilised the boat. He told the Inquiry that one of the most common causes of male drowning was from falling into the water whilst urinating over the side of a boat.[1] As regards the scenario of one of the deceased having de-stabilised the boat by urinating over the side, Miss Pitt, in the course of her submissions, drew attention to the fact that the fly zip of Thomas Carty's trousers (photograph 12, production 41) was undone. She maintained that in the absence of any of the rescuers recollecting having undone Mr Carty's flies when they attempted resuscitation it was likely that the boat tipped over when Mr Thomas Carty attempted to relieve himself. The Fiscal however pointed out that Mr Carty may well have just forgotten to fasten up his zip when he left the Tight Line Public House.

External factors which may have caused the boat to sink were also speculated upon. Different witnesses spoke to the presence of a sandbar extending out on to the Loch from the peninsula on which Kilchurn Castle is situated. George Dow and Jamie Watson, both local men who had worked on pleasure boats on the Loch between 1985 and 1998, spoke about this sandbar. Alan Gray, the local landowner on whose land the deceased had set up camp, likewise gave evidence about a sandbar. There was however something of a discrepancy between the evidence of these witnesses as to the extent the sandbar went out into the Loch. Jamie Watson[2] and Alan Gray[3] differed from George Dow in saying that the sandbar did not extend across the line between the Loch Awe Hotel and the campsite. George Dow disagreed. He told the Inquiry that in the past he had seen boats getting into difficulty on many occasions on the sandbar. He spoke of rocks being visible at a point where the level of the sandbar dropped under tree stumps

[1] Transcript - 2/9/2010, page 77
[2] Transcript - 14/6/2010, page 58
[3] Transcript – 18/6/2010, page 84

which protruded out from the north of the island. The consensus of opinion however was that if the boat had collided with the sandbar, it would have become grounded and the deceased would have stepped out on to the sandbar before wading into deeper water and drowning.

At the end of the day, in the absence of direct witness evidence as to what caused the boat to sink, and in the absence of the boat being recovered, one can only speculate. In those circumstances I feel unable to make any findings about the matter.

(2) Weather Conditions

The risks of using a boat in extreme foggy weather conditions were spoken to by the various members of the rescue services who attended at the scene, as well as locals. PC Gregor Bryce, the local police officer at Dalmally, described the Loch at the time as being "very, very dangerous". David Wilson, (*supra*), described the conditions as being "exceptionally bad with severely restricted visibility"[1] He described how it took him one and a half hours to make a journey which would normally take him fifteen/twenty minutes, in order to reach the accident area when he was called upon to assist with the search. He described setting off at 6.30 am on the morning of 21 March 2009, travelling along the shore of the Loch and becoming disorientated in the mist, so much so that he found himself to be 90º off course.[2] It was his evidence to the Inquiry that "one could easily lose direction in the fog" and that if that happened one was "liable to hit a rock or a hazard". Mr Wilson told the Inquiry that the weather conditions were exceptionally bad

[1] Donald Wilson – Transcript – 30/6/2010, page 3
[2] Transcript – 30/6/2010, pages 24 to 27

that day and he estimated visibility when he arrived at the campsite to be "maybe ten or fifteen yards". He would not have allowed any of his boats out in such weather, nor would he have allowed anyone to launch a boat from his slipway in such weather conditions.[1]

Standing that the deceased were familiar with the Loch and in light of the evidence about the extreme weather conditions and the possible option of the men being able to obtain a lift back to their campsite from the landlord of the Tight Line or a member of his staff (*supra*), it seems perfectly clear that the deceased failed to take responsibility for their own safety when they went on to the Loch that morning.

I have made a formal determination in that regard under **section 6(1)(c) of the Act**.

(3) Did the alcohol consumed by the deceased affect their collective judgment?

The maximum level of alcohol beyond which it is illegal to drive a car is 80 mg/dl and the average rate for the body to process alcohol is 18 mg/dl per hour.[2] The blood alcohol readings taken from the deceased represent the levels of alcohol in their blood at the time they died or when their hearts stopped beating.[3] The toxicology report attached to the post-mortem report for Craig Currie (production 9), showed a blood alcohol reading of 60 mg/dl and shows that, in addition, he had 7 ng/ml of cannabis metabolite present in his blood. The report describes this as being a low concentration of cannabis "indicating previous use of cannabis".

[1] Transcript - 30/6/2010, pages 25, 26 and 29.
[2] Dr Hazel Torrance – Transcript – 29/6/2010, page 204
[3] Dr Hazel Torrance – Transcript – 29/6/2010, pages 200 and 216

The toxicology report attached to the post-mortem report for William Carty (production 10) shows an alcohol reading of 53 mg/dl and 7 ng/ml of cannabis metabolite present in his blood which is likewise described as being a "low concentration …indicating previous use of cannabis". Dr Julia Bell, the pathologist who carried out the post-mortem on Craig Currie and William Carty was of the opinion that the low levels of alcohol and cannabis found in both men "would not have contributed to death".

Because of the time which had elapsed between Stephen Carty and Thomas Douglas drowning and their bodies being recovered (71 days) the Inquiry heard that the blood in their bodies would have decomposed. In Stephen Carty's case it was however possible to recover two femoral samples of blood and a bile sample for analysis. In Thomas Douglas's case, because no blood sample could be obtained, samples of pleural fluid and bile were taken for analysis. The toxicology report in respect of Stephen Carty showed that he had 163 mg/dl of alcohol in his blood and 149 mg/dl in his bile. The bile sample taken from Thomas Douglas revealed that he had reading of 103 mg/dl of alcohol in his body.

Dr Hazel Torrance, the toxicologist who analysed the samples taken from Stephen Carty and Thomas Douglas, told the Inquiry that the levels of alcohol found in the samples <u>may</u> have increased due to decomposition. She was unable to say by how much. As regards the effect that those levels of alcohol would have had on the behaviour of the deceased, it was her evidence to the Inquiry that the best way of ascertaining this would have been by personal observation. To that end the CCTV evidence from within the Tight Line and the eyewitness evidence of the landlord, Brian Somerville, and Roderick O'Neil, a customer in the Tight Line at the time, does not point to evidence of unusual

behaviour. However, although the levels of alcohol and cannabis found in the bodies of the deceased did not appear to have a physiological effect on the men, Professor Michael Tipton, Professor of Human and Applied Physiology at Portsmouth University, gave evidence to the Inquiry that the consumption of alcohol may affect behaviour and could account for the decision of the deceased to take their boat onto the Loch in such appalling weather conditions. Professor Tipton said this: "I think your assessment capabilities are significantly impaired in terms of whether or not you should be doing some things once you have a certain amount of alcohol…I mean that's a behavioural factor"[1]

It was the Fiscal's position to the Inquiry, that in taking the decision to use their boat, "risks were either not taken account of by the deceased group, or were assessed as worth taking".

Having regard to the opinion evidence of Professor Tipton and to the evidence of Brian Sommerville, the landlord of the Tight Line, that the deceased may have had the option of asking for a lift to their campsite, as they had in the past done, I have made a recommendation under **section 6(1)(c)** that no person should take a decision to use a boat whilst under the influence of alcohol. I have refrained from including the consumption of cannabis under this head as there was no specific evidence to suggest that William Carty or Craig Currie had consumed cannabis within a period when it might have affected their behaviour.

[1] Transcript – 23/6/2010, page 76

(4) The clothing worn by the deceased

weather clothing, lifejackets/buoyancy aids and the suitability or otherwise of those items.

When Craig Currie was recovered from the Loch he was wearing a floatation device and was floating vertically with the water reaching his bottom lip (*supra*). He, like his companions, was wearing heavy weather clothing and, in addition, was wearing a hat with an illuminated LED torchlight, a jacket, a fleece, a pullover, a t-shirt, combat trousers, long-johns and boxer shorts (photograph 12 of production 41). When William Carty was recovered he was submerged up to his forehead with his mouth and nose beneath the water. The buoyancy aid that he was wearing is seen in photograph 12 of production 41.

The buoyancy aids worn by Craig Currie and William Carty (labels 19 and 20) were described as being 50 Newton buoyancy aids. Professor Tipton described buoyancy aids as being there "to help you to help yourself". He explained that a buoyancy aid does not prevent its wearer from drowning if that person has become unconscious. He told the Inquiry that when unconsciousness occurs the wearer's head will slump into the water and he/she will drown. It was Professor Tipton's evidence to the Inquiry that the aid worn by William Carty would have given him some buoyancy but would not have left his airways clear of the surface. He described the aid being worn by Craig Currie as being of a slightly better design with less chance of riding up. It was the Professor's opinion that there was nothing to prevent the buoyancy aid worn by William Carty from riding up to his armpits. The descriptions of the buoyancy aids worn by Craig Currie and William Carty was consistent with the evidence of Craig Currie being found floating with the

water reaching up to his lower lip and William Carty with the water reaching up to the level of his forehead. Professor Tipton concluded that the chances of Craig Currie and William Carty surviving the accident "would have been significantly increased had they been wearing lifejackets that had been deployed as opposed to a buoyancy aid such that the airways would have been kept clear of the water."[1]

The clothing that Stephen Carty and Thomas Douglas were wearing can be seen in the photographs taken of them when they were recovered. Stephen Carty is shown in photographs 31 to 35 of Crown Production 44 and Thomas Douglas in photograph 11 of Crown Production 44 and photographs 1 to 3 of Crown Production 46.

The lifejacket which Stephen Carty is wearing is a 150 Newton lifejacket which is not inflated. It was agreed in evidence that the manufacturers of the lifejacket considered that this model was one supplied only on a commercial basis to shipping and off-shore customers (Joint Minute – statement 9). Police Constable Arbuckle, who examined Stephen Carty's lifejacket, told the Inquiry that it was "in poor condition" and that the pull cord for inflating the jacket was missing. The carbon dioxide canister was later tested and apart from the missing cord was found to be in working order. Constable Arbuckle told the Inquiry that in addition there was a hole in Stephen Carty's life jacket which was consistent with a cigarette burn. The hole, when measured, was found to be 6 millimetres by 5 millimetres and penetrated the jacket. It was Constable Arbuckle's opinion that even if the lifejacket had been inflated, it would have quickly deflated because of this hole and would have been of no assistance whatsoever to Stephen Carty. Although the jacket was capable of being inflated orally by means of a mouth hose located within a zip area, the zip was in a closed position.

[1] Transcript – 23/6/2010, pages 151 to 152

In relation to the lifejacket worn by Stephen Carty, the Fiscal, in his submissions to the Inquiry, referred to that part of Edward Colquhoun's evidence in which he had spoken of having been shown the pull cord and the carbon dioxide canister used for inflating the jacket by Stephen Carty. The Fiscal maintained that if Edward Colquhoun's recollection on this matter was correct it would suggest that the cord had either fallen out of the jacket because it was not properly knotted or it had been pulled through the activating mechanism because it had not been properly knotted.

It was his position that had there been a proper examination of Stephen Carty's life jacket, it would have revealed that it was not capable of functioning properly. I agree and have made an appropriate recommendation under **section 6(1)(c)** of the Act.

Thomas Douglas is not seen to be wearing a lifejacket or buoyancy aid in the photographs. However, in a statement given to the police by Edward Colquhoun, Mr Colquhoun states that he had seen Thomas Douglas wearing a lifejacket before he set out for the Tight Line (Joint Minute – paragraph 4). Be that as it may, when recovered Thomas Douglas was not wearing any form of buoyancy aid. If he had then it is reasonable to assume that it was not properly fitted or secured, otherwise he would still have been wearing it when recovered. Interestingly, the Fiscal advised the Inquiry that a buoyancy aid had been recovered during the shoreline search but for some reason which he could not explain, it had not been put in evidence. Accordingly it was not possible for the Inquiry to ask of Mr Edward Colquhoun if this buoyancy aid belonged to Thomas Douglas. The effectiveness of the buoyancy aids worn by Craig Currie and William Carty and the lifejacket worn by Stephen Carty was discussed by Professor Michael Tipton at the Inquiry together with his evidence about the effects on the body of cold

water immersion. It was the Professor's evidence that if a body is immersed in water at a temperature below 5º centigrade, drowning may occur from (1) uncontrolled hyperventilation; (2) fatal cardiac response; or (3) physical incapacitation occurring when the extremities of the body i.e. the arms and legs, shut down in order to protect the body core. The Professor told the Inquiry that (4) hypothermia leading to loss of life may also occur from cold water immersion. He explained that when hypothermia occurs the brain may become affected by the cold to such an extent as to cause unconsciousness.

It was the Professor's opinion that both Craig Currie and William Carty, who were the first to be recovered from the Loch by the crew of the Strathclyde Fire and Rescue boat, became physically incapacitated or hypothermic before losing consciousness and drowning.[1] His opinion was based on the evidence of shouting being heard from the men up to 04.55 hours and 05.25 hours and the temperature in the Loch, which would not have varied much from the time when it was measured at 5º centigrade by the emergency services at 4 pm that day. The Professor considered that because neither of the two men were wearing a fully functioning buoyancy device, both would have died very shortly after their boat capsized.

As regards Stephen Carty and Thomas Douglas, whose bodies were later found on the shores of Loch Awe, the Professor thought that they both had "a fairly acute problem" when the boat capsized or sank. He considered that they had suffered from hyperventilation as a consequence of cold shock.[2] It was the Professor's opinion that Thomas Douglas had <u>not</u> been wearing a lifejacket when he entered the water and that

[1] Transcript – 23/6/2010, page 110
[2] Transcript – 23/6/2010, page 61

had he been doing so, standing the calm conditions on the water of the Loch that morning he would still have had it on when his body was recovered on 31 May 2009.

He considered that Stephen Carty's lifejacket which had the missing pull cord and hole in it, had either not inflated or if it had, had quickly deflated.

It was the Professor's considered opinion that had the four men been wearing lifejackets which were fully deployed and working their chances of survival would have been significantly increased.[1] In expressing his opinion the Professor was careful to distinguish between the capabilities of a lifejacket which has an inflatable collar and a buoyancy aid which does not. In light of Professor Tipton's opinion evidence I made what I consider to be appropriate recommendations under **section 6(1)(c)** of the Act in relation to the use of lifejackets.

(5) The roles played by Strathclyde Fire and Rescue Services, the Mountain Rescue Services and the RNLI

Their equipment, the possibility of the Mountain Rescue Services becoming a "declared asset", the co-ordination and communication system of the different rescue services and the need for a Register of Local Assistance (ROLA).

THE STRATHCLYDE FIRE AND RESCUE SERVICE

In relation to the provision of a water rescue service the Inquiry heard that although there is no statutory duty on Strathclyde Fire and Rescue Service to provide an inland water rescue service, such a service is provided by them in addition to normal firefighting duties. This service is provided from certain level 2 boat stations. At the

[1] Transcript 23/6/2010, page 152

time of this incident the nearest level 2 boat station to Loch Awe was based at Renfrew and Knightswood.[1] From the timelines produced to the Inquiry it can be seen that a crew of five firefighters left Renfrew Fire Station with a "Mach 3 Zodiac Boat" at 03.54 hours on the morning of 21 March 2009. The distress call from Edward Colquhoun is shown as having been received by Strathclyde Fire and Rescue at 03.40 hours. By the time the boat crew arrived at the Loch side at 05.31 hours the calls for help from Craig Currie and William Carty had ceased to be heard. As mentioned (*supra*), it was Professor Tipton's opinion that by this time, both men had probably succumbed to hypothermia.

There was no evidence to suggest that there had been any delay in scrambling the fire tenders, which included the one equipped with the boat. Nor was there any evidence to suggest that the fire tenders were delayed by anything other than the poor weather conditions. There was however a delay of approximately five minutes before a launching site was identified for the boat after it had arrived at the campsite (*supra*). Fireman Gordon Spence commented that this short delay may have been avoided if those on site had sourced a suitable launching place before the boat arrived.

As regards available equipment onboard the rescue boat, fireman Gordon Spence suggested that the Zodiac should be equipped with some form of location system, i.e. a compass or GPS. In addition he drew attention to a lack of markers on the boat and told the Inquiry that he and Graham Taylor had been required to locate the position on the Loch from where they had recovered Craig Currie and William Carty by locating a pair of Wellington boots that they had left floating on the water.[2]

[1] Temporary Watch Commander Graham Taylor – Transcript – 15/6/2010, at page82
[2] Transcript – 15/6/2010, page 29

I consider it appropriate that I should make an observation in respect of the lack of markers and have made an appropriate recommendation under **section 6(1)(e)** of the Act. I do not consider, however, that a recommendation that there should be a compass/GPS system on board the rescue boat falls within my remit.

In his submissions to the Inquiry the Procurator Fiscal referred to evidence in relation to the absence of an individual lifejacket for each crew member of an SFRS fire appliance. He drew attention to the SFRS operating procedures which prohibit firemen from going within three metres of a waters edge without a lifejacket and submitted that if this requirement were to be strictly complied with shoreline searches would be severely restricted. He invited me to make an observation and appropriate recommendation under section 6(1)(e). Miss Pitt, on behalf of the SFRS, maintained that there was no need for such an observation or recommendation as all fire appliances were now equipped with a lifejacket for each crew member. As there was no direct evidence at the Inquiry to that effect I have considered it appropriate to make an observation and recommendation in relation to this matter, under **Section 6 1 (e)**.

Other "equipment related" matters considered at the Inquiry concerned the feasibility of a Zodiac type boat being kept and maintained in Oban by the SFRS for rescue services on Loch Awe and the surrounding inland waters and the communication equipment provided to the different services, including the police and mountain rescue services.

As regards the keeping of a boat at Oban there was evidence that up until September/November 2007 a Zodiac boat had been kept by the SFRS in Oban. It had been removed after discussions within the Operations Directorate Headquarters at

Hamilton because of the low level of activity within the Argyll and Oban area (two incidents within a period of 18 months) and because of the need in the event of a boat being kept at Oban to train 100% of the firefighters stationed there to the appropriate level of competence (level 2)[1]. Area Commander John Ironside told the Inquiry that there were "no plans to provide another boat at Oban" or to train personnel based at Oban in the use of a boat[2]

It was submitted by Miss Pitt that if there were to be a boat based in Oban there would be a duplication of resources on Loch Awe standing the now availability of a patrol boat through the Loch Watch Loch Awe Scheme (*infra*). She drew attention to the evidence of Assistant Chief Officer John Walker who emphasised to the Inquiry that strategically the SFRS wished to enhance the capabilities of their partners and not duplicate them.[3]

I consider Miss Pitt's submissions to be well founded and have refrained from making any observations in my determination about this matter.

The inability to be able to source a properly equipped boat was a matter of concern to the various witnesses who were first to arrive at Loch Awe. These concerns were expressed by the Watch Commander of Strathclyde Fire and Rescue, John Brisco, who spoke of a lack of knowledge on his part of anyone local who may have been able to provide a boat, and there was evidence of unsuccessful attempts by Police Sergeant McGeachy and Police Sergeant Davidson to find a suitable boat. It was suggested that had the local police officer at Dalmally been recalled to duty at the time of the incident he may well have had local knowledge of where a suitable boat might have been sourced.

[1] Area Commander John Ironside – Transcript 14/7/2010, pages 6 to 27
[2] Transcript – 14/7/2010, at page 6.
[3] Transcript – 14/7/2010, at page 94

Miss Ali maintained that at the time Sergeants Davidson and McGeachy were searching for a boat, Donald Wilson, the local boat owner had already been placed on standby by the MCA. Local knowledge she said was thus already available. In his submissions to the Inquiry the Fiscal invited me to make an observation and recommendation about the local police officer not having been contacted. Standing Miss Pitt's submission, I have not considered it appropriate to make any formal observation or recommendation about this matter. I do however consider that as a matter of courtesy the local police officer based at Dalmally ought immediately to be informed of any major incidents on the Loch which are within his jurisdiction.

What might have been the outcome in this incident had a local boat been available to the rescue services, as soon as they arrived in my opinion; has to be speculative. Gordon Spence[1] and John Brisco[2] were both of the opinion that they would have launched a boat had one been available. Police Sergeant Daniel McGeachy was of like mind. Others took a different view. Ian McKinnon MCA (*infra*) when asked said "I have thought about this many times. If there was a boat sitting there waiting would we have launched it? I don't think so. I would have had real difficulty recommending a launch in these conditions."[3] If a boat had been immediately available would Craig Currie and William Carty, whose cries for help were heard on shore, have been located or would a civilian crew have become disorientated in the mist like Donald Wilson was when he set out in his boat? These are matters that can only be speculated upon.

[1] Transcript – 15/6/2010, at page 59
[2] Transcript – 10/6/2010, at pages 2004 to 2005
[3] Transcript – 13/7/2010, at page 71

THE MOUNTAIN RESCUE TEAMS

Neither the Oban Mountain Rescue, nor the Glencoe Mountain Rescue Team took part in the immediate rescue attempts. The Oban Mountain Rescue Team however, under the leadership of Damon Powell, did take part in a two hour shoreline search following Mr Powell being contacted by phone by a member of the Oban Police Mountain Rescue Team. Mr Powell told the Inquiry that because his team did not have the capacity for open water rescue, they would not normally expect to be deployed to a water rescue incident. They had no boat and their only water based rescue equipment comprised of throw lines. Mr Powell advised the Inquiry that Oban Mountain Rescue had no immediate intentions of purchasing a boat. He told the Inquiry that he would have liked his team to have been called out earlier. He felt that the role of the Mountain Rescue Team should be extended to include inland water based rescues. It was his opinion that the "police have to find some ways of integrating experience outwith their organisation"[1] He did not see funding for the purchase of a boat or training of the Mountain Rescue Team members to be a difficulty. He perceived the problem of integration would be in satisfying the police authorities that his team was trained to a sufficient standard to enable them to be used as a "declared asset". Mr Powell said that he was happy to enter into discussions with the police.

It was not made clear at the Inquiry if a rescue boat held by Oban Mountain Rescue and registered as a "declared asset" with North Strathclyde Police would require to comply with the MCA Code of Practice involving, as it would, costs of over

[1] Transcript – 16/6/2010, page 128

£100,000.[1] Although integration of the Oban Mountain Rescue as a "declared asset" is not something that is within the remit of this Inquiry I do make the observation that this should not preclude discussion between Strathclyde Police and Oban Mountain Rescue about the possibility.

John Grieve, who is the leader of the Glencoe Mountain Rescue Team, told the Inquiry that his team were occasionally called out to assist Strathclyde Police in Mountain Rescue. When that happened he was normally contacted via Northern Constabulary Police call centre[2] and would automatically come under North Strathclyde Police Policy of Insurance. Mr Grieve told the Inquiry that Glencoe Mountain Rescue Team is equipped with an inflatable boat which is equivalent to a "Zodiac" boat. The boat has a 25 horsepower engine and is equipped with lifejackets, search lights, a radio, flares, paddles, spare fuel and has a hand held "Sat Nav". Included in the Glencoe Mountain Rescue Team are four/five full time fishermen who have navigational experience and experience of working in poor weather conditions. Mr Grieve did not consider that members of his team would have been putting themselves at risk had they been called to the incident. His team had been called to four water based incidents in the year prior to the Inquiry. He "realistically" thought that in good weather conditions it would have taken his team 80 minutes from the time of receiving a call to being able to launch a boat onto Loch Awe. He was happy to concede however that it would have taken longer in poor weather conditions such as prevailed that morning. At the time of this incident Strathclyde Police were unaware that the Glencoe Mountain Rescue Team

[1] Transcript – 9/7/2010, pages 107 to 108
[2] Transcript – 16/6/2010, page 128

had a boat. Mr Grieve, like Mr Powell, indicated that he was happy that his team should train in water based rescue with the police.

THE RNLI

The RNLI took no part in this incident nor were they requested to. Waveney Crooks, the Divisional Inspector of Lifeboats in Scotland, explained that the RNLI is a registered charity which is funded entirely from voluntary donations. They do not normally operate in inland waters in Scotland[1] although there is an exception made in the case of Loch Ness which carries seagoing traffic. Mr Crookes explained that the RNLI operate a "can do" policy if contacted by other rescue services. They do not have a suitable vessel for deployment on Loch Awe.

Mr Crookes told the Inquiry that there were no plans for the RNLI to provide a rescue boat on Loch Awe. To do so he said would be outwith the remit of the RNLI which is "first and foremost to save lives at sea".[2] In referring to the charitable status of the RNLI Mr Crookes pointed out that the scarcity of population round Loch Awe and the number of recorded incidents on the Loch would not justify the cost of maintaining a volunteer crew in the area. The possibility of the RNLI maintaining a 16 foot Zodiac inflatable lifeboat for inland water rescue based at Oban and for use on Loch Awe was discussed with Mr Crookes and while he did not entirely rule out the possibility on grounds of cost, he did refer to a number of practical difficulties. Specifically to an "incoming rescue vessel code of practice", which would make specific requirements as to

[1] Transcript – 1/6/2010, at page 11
[2] Transcript – 1/6/2010, page 12

what equipment should be carried on such a boat, the construction standards of the boat and the availability of the crew. In addition Mr Crookes referred to problems that would be associated with distance times, crewing and currency of training in the area and the lack of available communication. He referred also to the lack of "electronic chart plot information" on Loch Awe.[1]

The absence of a presence by the RNLI on Loch Awe was addressed at the Inquiry by Mr Stevenson during his submissions relative to section 6(1)(c) of the Act. He highlighted the financial implications and difficulties that would be involved were a voluntary organisation, such as the RNLI, required to provide and maintain rescue facilities on inland waters including Loch Awe. Having regard to the terms of section 6(1)(c) which refer specifically to "reasonable precautions" I am of the opinion that it would not have been reasonable to have expected the RNLI to have provided a presence on Loch Awe at the time of this accident. Nor do I consider that in this economic climate it would be reasonable in the future to expect the organisation to provide a presence on Loch Awe or any other inland waters for that matter.

Communications within and between the Emergency Services

(i) The Scottish Fire and Rescue Services:-

Prior to this incident communication between the SFRS rescue boat and the SFRS control room had been by an onboard VHS system which allowed for communication with MCA personnel. However at the time of this incident that system had been removed

[1] Transcript – 1/6/2010, pages 77 to 80

and those onboard the rescue boat communicated by handheld radio. This allowed them to communicate with other SFRS personnel, the police and the Scottish Ambulance Service. There was no evidence to suggest there were any problems with communications between the SFRS boat crew and those members of the SFRS who were in attendance at the shore or the other rescue services.

(ii) The Royal Navy Search and Rescue Service:-

The Royal Navy Search and Rescue Helicopter (R177) (*supra*) was in radio communication with ARCC Kinloss.[1] Flight Lieutenant Crawford told the Inquiry that the control room at ARCC would take calls from other emergency services and in an emergency would liaise directly with the agency that had requested assistance (in this case Clyde Coastguard) or directly with the person on the ground who had requested assistance. He told the Inquiry that search and rescue helicopters are equipped with VHS radios. However on occasions at night transmission via these radios was "not particularly good". It was his evidence to the Inquiry that the Coastguards VHF shortwave radios made it easier to communicate directly with ARCC helicopters.[2] None of the other emergency services at the time of this incident had the facility to communicate directly with the helicopter. There was however evidence that the Navy were hoping to improve matters in order to allow direct communication from the helicopter to the police services.[3] Lieutenant Commander Nicholas, who piloted the rescue helicopter, did not consider a lack of direct communication with the police had in any way hindered or prevented their

[1] Transcript – 10/6/2010 Flight Lieutenant Daniel Crawford, page 36
[2] Transcript – 10/6/2010, pages 36 to 37
[3] Lieutenant Commander Nicholas – Transcript – 10/6/2010, page 129

operations as they were receiving "a general synopsis of what the weather was likely to be from the weather forecasters at ARCC and HMS Gannet.

(iii) The MCA:-

When the MCA arrived at the Loch side at 04.44 hours they found that they had no communications with their control room. Their team leader used his mobile phone to communicate the fact that they had arrived at the scene. The MCA control room Watch Manager Graham Waters told the Inquiry that this was not an ideal situation and that the preferred method of communication would have been by VHS radio. Ian McKinnon, a volunteer with the coastguard rescue, explained "It certainly is an issue not being able to communicate with the control room". It became apparent during the Inquiry that because the Marine Coastguard Agency are primarily involved in sea rescues, their communication masts are positioned to point outwards towards the sea rather than inland. In his submissions to the Inquiry the Fiscal suggested a potential solution would be for the MCA to place a communications mast at the head of Loch Awe. Miss Maitland, on behalf of the MCA, did not agree. It was her position that a communications mast situated there would not have altered the outcome of this incident. She pointed out that there had been communication between the coastguard rescue team and the Maritime Rescue Co-ordinator Centre by mobile phone. It was her position that placing the responsibility of erecting and maintaining a communication mast on the MCA ran the risk of blurring the lines of which of the services was responsible for co-ordinating a rescue. She reminded the Inquiry that responsibility for co-ordination ultimately lay with

the police. In addition Miss Maitland referred to the "huge cost implications" which would be involved in maintaining and providing masts for other inland waters were it to be decided that the MCA should be responsible for erecting a mast at the head of Loch Awe. Miss Maitland drew attention to the statutory role of the MCA as provided for in the "Search and Rescue Framework for the United Kingdom of Great Britain and Northern Ireland" (Crown Production 21) which she said is primarily to co-ordinate sea and coastal searches and rescue and that inland water searches and rescues, were provided for in only a limited number of specified lochs.

Standing Miss Maitland's submissions I have not considered it necessary or appropriate that I should make an observation and recommendation under section 6(1)(e) to the effect that the MCA should be responsible for the erection of a communications mast at the head of Loch Awe.

The co-ordination of communications between the different rescue services

The Fiscal submitted that there was a difficulty in "joined up communication" for all of the agencies who were in attendance at this incident. He referred to the evidence of Area Commander Paul Connelly (SFRS)[1] who said in evidence "I think communication was a difficulty for all agencies concerned". The Commander told the Inquiry that since this incident a digital based system of communications (Firelink system) had been introduced into the SFRS which enabled communications within the fire services, the police, ambulance and resilience teams. This facility however did not extend to the MCA personnel or the Mountain Rescue Services. The Fiscal suggested that the police in an

[1] Transcript – 22/6/2010, at pages 121 to 123

emergency situation such as this should give a police handset to the MCA and to the leaders of the Mountain Rescue Teams as had been the practice in the past when Oban Mountain Rescue had attended at an incident.

Miss Maitland on behalf of the MCA was not opposed in principal to the suggestion provided that privacy, data protection and security issues were satisfied. Miss Ali, on behalf of Strathclyde Police, submitted that such a recommendation was unnecessary standing Ian McKinnon's evidence that radios were routinely exchanged in any event. As the matter was focused upon at the Inquiry I have considered it appropriate to deal with the matter under the provisions of **section 6(1)(e)**. To that end I have recommended that the police and the MCA give consideration to the feasibility of a police radio being given to the MCA in the event of a similar future incident.

The role played by the Loch Lomond rescue boat service on Loch Lomond

Evidence about the operation of the Loch Lomond rescue boat was led by the Crown to demonstrate how "safety issues" were dealt with on Loch Lomond. Mr Frank Rogers, the coxswain of the Loch Lomond rescue boat, described Loch Lomond as being a much used Loch on which up to 300 boats would be launched in a day, not including boats which were already moored. He told the Inquiry that the Loch Lomond rescue boat is a "declared asset" to both Strathclyde and Central Police. Crew members are trained to RYA level 2 powerboat handling and to level 3 safety boat handling.[1] Mr Rogers explained that there are twenty crew members of Loch Lomond rescue and that seventeen are fully qualified. The boat is crewed entirely by volunteers who carry pagers which

[1] Transcript – 24/6/2010, page 114

may be activated from Pitt Street in Glasgow. It is funded largely by donations from the public, although it does, in addition, receive a donation from Strathclyde and Central Police and the local West Dunbartonshire Council.

The inception of the Loch Watch Loch Awe Scheme

Concerns about safety issues on Loch Awe were previously raised in 2002 when a grandfather and his grandson drowned on the Loch. At that time Argyll and Bute Community Safety Forum set about educating Loch users, some items of rescue equipment were provided and placed around the Loch. Ian McKinnon, an environmental protection officer with Argyll and Bute Council and chairman of the Environment Safety Group (a separate strand of the Community Safety Forum) gave evidence that Argyll and Bute Council's Community Safety Forum benefited from a "small portion" of funding from the Scottish Government and in addition had received contributions in 2002 from the family of the deceased grandfather and grandson which had been raised from local fundraising events. Four sets of throw lines and two lifejackets had been purchased and positioned around the Loch. In addition some local businesses with loch side frontages had installed rescue equipment in the form of lifebelts, warning posters and signs which were displayed at popular sites. Literature had been distributed to local businesses and to the Oban Tour Office.

Subsequent to the deaths of Craig Currie, William Carty, Stephen Carty and Thomas Douglas concerns about safety issues on the Loch were re-raised. Discussions and meetings at local level took place. Specifically on 26 May 2009 a multi-agency

meeting was held at Oban Fire Station. The remit of this meeting was to discuss "ideas and suggestions on water safety issues, concerning recent events in the area, in particular those in Loch Awe". Mr McKinnon was tasked with meeting the various organisations. The meeting was attended by the local MP Jamie McGrigor MSP and a number of local councillors. Also in attendance at the meeting were representatives of the police, the ambulance service, Strathclyde Fire and Rescue Service and the RNLI. In addition there were representatives of the community councils, the mountain rescue services (Glencoe and Oban), the Loch Lomond rescue boat and Loch Awe boats.

The main issue at the meeting was the lack of a rescue boat on the Loch. Mr McKinnon told the Inquiry that after this meeting he was tasked with meeting the various organisations and the local fish farm representatives in order that he might discuss in detail the various proposals and report back. He chaired a further meeting on 12 June 2009, at which six recommendations were passed on for consideration by a multi-agency meeting which took place on 21 July 2009. The recommendations from the meeting of 12 June were concerned with education of those using the Loch, a safety patrol boat, by-laws, communications, emergency planning exercises and the provision of loch side spotters. Some of the recommendations proposed found their way into the "Loch Watch Loch Awe Scheme" which was formed as a direct consequence of the various discussions that took place. The Loch Watch Loch Awe Scheme was officially launched on 1 March 2010. It has a website from which weather conditions and advice may be given to persons using the Loch. The Scheme is referred to by Paddy Tomkins QPM (*infra*) in his report[1] when he refers to the "commendable work led by (the late)

[1] Independent Review of Open Water and Flood Rescue in Scotland – Crown Production 22, page 32

Councillor McDonald and supported by Jamie McGrigor MSP which produced the Loch Awe Loch Watch Scheme and the Loch Awe Safety Boat Scheme".

Detailed evidence was given to the Inquiry about the workings of the Loch Watch Loch Awe Scheme by Ian McKinnon. The Inquiry was told that the Scheme was financed from funds donated by the families of the deceased, by various local businesses and by different organisations. Equipment had been gifted. The use of a boat as a safety patrol boat had also been made by a member of the public A list of forty-eight named volunteers to the Scheme had been compiled. Mr McKinnon mentioned that between eighty and ninety people were either directly or indirectly involved with the Scheme. He described that there was a system now in place whereby any witness who saw an incident on the Loch would immediately contact the police who in turn would contact Mr Wilson, or his depute. Mr Wilson or his depute would then contact the different volunteers who would establish the location of the incident and alert the emergency services. Detailed information as to what LWLA members should do in the event of spotting an incident is contained within a "LWLA pack". The packs contain an impressive folder of information and instructions as to what should be done in the event of someone on the Loch being spotted in difficulty. They also include a map of the Loch and surrounding areas which are divided into seven sections. The packs contain instructions as to how to fix a compass bearing on anyone seen in difficulties.

In addition to these safety measures Mr McKinnon described how warning signs have been placed at different parts and locations around the Loch. He described that it is his "personal wish and vision for the future" that there should be a "designated rescue craft" for the Loch which may be transportable by road and which will be kept either at

Inverary or Oban and which can be used in the event of any inland water incident in Argyll.

In his submissions to the Inquiry the Fiscal drew attention to a commitment that Oban police had made in their Community Policing Policy to support and work with the Loch Watch Loch Awe Scheme in 2010. He submitted that it was important that this commitment be maintained and suggested that I make a recommendation to that effect.

Having regard to the evidence of Ian McKinnon that the police are supportive of the Loch Watch Loch Awe Scheme and have been helpful in promoting the Scheme and are continuing to do so, I see no need for a formal recommendation. I feel confident that Strathclyde Police will continue with their support. Likewise I feel it unnecessary for me to make a formal recommendation, as was suggested by the Fiscal, that LWLA packs be provided to all emergency services. Although there was no direct evidence about the matter I am confident that this will already have been attended to by Mr McKinnon.

The Tomkins Review

Evidence was given to the Inquiry by Paddy Tomkins QPM, former HM Chief Inspector of Constabulary for Scotland. Mr Tomkins told the Inquiry that in December 2009, following a series of incidents, including the Loch Awe tragedy; he was commissioned to prepare a report for the Minister of Community Safety. His terms of reference included *inter alia* "the resources and capabilities of all agencies currently involved in water rescue emergencies including flooding. The level of public awareness and education of the risks associated with open water". His report, known as the

"Tomkins Report" and officially called an "Independent Review of Open Water and Flood Rescue" (Crown Production 22) was given the backing of the Scottish Parliament after debate on 21 January 2010 (Crown Production 23). Mr Tomkins at that time was assured that his recommendations were to be taken forward. In his evidence to this Inquiry Mr Tomkins said that his review was "in no way" an investigation into the Loch Awe tragedy but was based on "an inspection of the general and the strategic rather than the particular".[1] His evidence to this Inquiry was however helpful in underlining a number of analogous matters considered. In particular the role of the police as "the co-ordinating agency in times of emergency" (page 28 of the report) and the need for a Register of Declared Assets, which Mr Tompkins considered should "enhance rather than diminish the important contribution that the voluntary section has and wishes to make" (page 29 of the report). I consider, in addition to the above, that the most important aspect of Mr Tomkins' evidence to this Inquiry was his emphasis on the importance of education as being "the pre-eminent means of avoiding accidents". In that regard he states in his report "I take very seriously the view stated by many experienced rescuers that the best rescue is the one that does not have to be mounted and that concentration on advice and education is proving beneficial" (at page 9 of the report).

[1] Transcript – 28/10/2010, page 6

Submissions

Mr Harris invited me to make formal findings in relation to the place and time of the deaths. He submitted that the cause of death in respect of each of the four deceased was "cold water immersion" and that the most probable cause of the accident was the capsizing of the boat in consequence of movement by one or more of the deceased. He submitted that in terms of **section 6(1)(c)** that reasonable precautions whereby the deaths or accident resulting in the deaths might have been avoided would include:

(i) The deceased wearing suitable clothing which would have protected them when immersed in water i.e. dry suits.

(ii) The deceased not operating the boat when under the influence of alcohol.

(iii) The deceased not operating the boat in fog.

(iv) The deceased walking back to the Tight Line and obtaining a lift back to the campsite.

(v) The deceased wearing fully-functional, secured and appropriately fitted lifejackets.

(vi) The deceased not having moved within the boat in such a manner as to have affected its stability.

(vii) The deceased telephoning 999 from the boat.

I have included in my determination findings in relation to (ii) to (v) and (vii) above. I have not included findings in relation to (i) and (vi). In relation to (i) it is impractical to expect everyone using the Loch to wear a dry suit in addition to wearing a lifejacket. As regards (vi), because there is a lack of any direct evidence as to what caused the boat to sink, one can only speculate about what in fact did cause it to sink.

In relation to **section 6(1)(d)** (defects if any in any system of working which contributes to the deaths or any accident resulting in the deaths) Mr Harris and the other parties to the Inquiry submitted that there were no defects in any system of working which would have contributed to these deaths.

As regards **section 6(1)(e)** of the Act (other facts relevant to the circumstances of the deaths), Mr Harris invited me to make a recommendation that there should be compiled a Register of Local Assistance (ROLA). He drew attention to the lack of knowledge by the various personnel in attendance of precisely what assistance/resources were available and to some of the misconceptions about available equipment, in particular the misunderstanding that the MCA would be equipped with a boat. Mr Harris referred also to the misunderstanding that the search helicopters could fly through fog. He submitted "It is far more beneficial to locate assets and assess their capabilities from a meeting table than from the scene of an unfolding emergency". He suggested that the police, as co-ordinating authority, assisted by the Community Safety Forum, the SFRS, the MCA and the RNLI should be responsible for the compilation of a ROLA.

Having considered the evidence I am satisfied that there is a need for a ROLA and have made an appropriate recommendation under **section 6(1)(e)** of the Act.

Other suggested recommendations by Mr Harris under **section 6(1)(e)** included:

(i) a recommendation that all Strathclyde Fire appliances carry a lifejacket for each crew member.

(ii) That all emergency services control rooms have as part of their initial checklist for a water based incident on Loch Awe immediate consideration of contacting the ARCC.

(iii) That all emergency services be made aware of the need to report as much information to the ARCC as is possible, including weather conditions.

(iv) That the Maritime Coastguard give consideration to the possibility of placing a communications mast near Loch Awe.

(v) That the Maritime Coastguard and Strathclyde Police give consideration as to whether it would be feasible for at least one police radio to be provided to the MCA at Oban for their personal use at incidents in order to communicate with the police.

(vi) That there should be a police protocol to the effect that in any water based rescue on Loch Awe active consideration should be given as to whether or not the local police officer at Dalmally should be contacted in order that he might assist with his local knowledge.

In addition Mr Harris suggested that I recommend:

(vii) That there be an inter-agency live training exercise on Loch Awe at night or in anticipated difficult weather conditions.

(viii) That Strathclyde Fire and Rescue have a protocol in place whereby there is communication between the crew of a lifeboat and fire personnel at the scene of an incident.

(ix) That there are protocols in the police control rooms whereby contact with an underwater search unit supervisor in considered in the early stages of a water incident.

(x) That all Strathclyde Fire and Rescue boats carry physical markers to help identify areas where casualties or items are recovered from the water.

(xi) That in any incident involving an extensive shoreline search of Loch Awe consideration should be given to the appointment of a POLSA as soon as possible.

(xii) That water safety on Loch Awe remains a standing item on the Environmental Safety Group of Oban and Islands Community Safety Forum.

(xiii) That Oban Mountain Rescue Team and Strathclyde Police begin formal discussions to assess the feasibility of the Oban Mountain Rescue becoming trained and equipped to provide assistance in inland water rescues.

(xiv) That a commitment to support and work with Loch Watch Loch Awe be featured in the community policing plan for the Oban area in 2011.

(xv) That there is liaison between Strathclyde Fire and Rescue Services, the Loch Watch Loch Awe and the Scottish Ambulance Service in order to

facilitate distribution of LWLA packs and to raise awareness of protocols for contacting LWLA.

I consider that the Fiscal's suggested recommendations (i), (v), (viii) and (x) fall within my remit and have carried those recommendations forward into my determination. I have not however carried forward his suggested recommendations (iii), (iv), (vi) - (vii), (ix) and (xi) - (xv) for the following reasons.

I do not consider that Commander Nicholas's evidence is supportive of the Fiscal's suggested recommendations (ii) and (iii). His evidence was not suggestive of communication difficulties between his helicopter and his control room or between his control room and the other emergency services. He told the Inquiry that he was in constant touch with his control room who, in turn, were in communication with the emergency services. Furthermore it was his evidence to the Inquiry that he was kept updated about weather conditions by the weather forecasters at ARCC and HMS Gannet. In addition to Commander Nicholas's evidence, there was evidence from Marie Coyle, the Watch Commander in SFRS Operation Support Centre, that communications with other agencies is usually actively carried out by the operators on duty.[1]

In relation to the Fiscal's suggested recommendation (iv) that the MCA should be responsible for the erection and maintenance of a communications mast, I consider that Miss Maitland's submissions (*infra*) that this could detract from the MCA's role as a sea and coastal rescue agency and could potentially lead to confusion as to the delineation of the relevant responsibilities of the rescue agencies, specifically that of the police as co-ordinators, are well founded.

[1] Transcript 14/6/2010, page 143

My reasons for not making a recommendation in relation to (vi) above are given at page 44 above.

As regards the Fiscal's suggested recommendation (vii) there was no evidence which would entitle me to make a finding that there was a lack of inter-agency training prior to this incident. In any event both Miss Ali and Mr Stevenson submitted that the emergency services regularly carried out exercises with one another.

The Fiscal's proposed recommendations (ix) and (xi) relate to "recovery" not "rescue" operations. In that regard Miss Ali, in her submissions, drew attention to Sergeant Ian Bell's evidence[1] in which he stated that there is no benefit to be gained from contacting the Underwater Search Unit at the "rescue stage" of an operation and that in any event the Underwater Search Unit has no remit to give advice about rescue.[2] As regards the Fiscal's recommendation (xi) that the police should appoint a POLSA as soon as possible, there was no evidence led which would justify the finding that the outcome of this incident would have been different if a POLSA had been appointed at an earlier stage. The appointment of a POLSA is relative to 'recovery operations' and not "rescue operations". In any event I do not consider this to be a matter which is within my remit. I consider that the appointment of a POLSA is a matter best left to the judgment of those officers at the scene.

In relation to his suggested recommendations (xii) and (xiv) above I would strongly wish to encourage water safety as being a standing item on the Environmental Safety Group's agenda and would strongly wish to encourage a commitment to the LWLA in the Community Policing Plan. I do not consider however that these are matters

[1] Transcript – 28/6/2010, pages 51 to 54
[2] Transcript – 28/6/2010, pages 51 to 54 and 96

which strictly fall within my remit. In any event, so far as policing is concerned, Ian McKinnon gave evidence of the support given to the LWLA by the police.

Finally, and in relation to (xiii) above, I am again of the opinion that this suggested recommendation falls out-with my remit. In any event, as was pointed out by Miss Ali, the mountain rescue services are both voluntary and autonomous. In addition Miss Ali pointed out that it would not be within the remit of the police to determine whether the mountain rescue services were suitably qualified to carry out water rescue as the statutory role of the police does not extend to water based rescue.

Submissions on behalf of the Scottish Ambulance Service Board

The ambulance services were only involved in attending to Craig Currie and William Carty when they were recovered from the Loch. Mr McLeod's submissions were therefore restricted. He invited me to make a formal determination in relation to the time, date and place of the deaths and to find that both Craig Currie and William Carty died as a consequence of being immersed in cold water. Mr McLeod adopted Miss Pitt's submissions that when Craig Currie and William Carty were brought ashore, although there were no clinical signs of life from either, extensive efforts were made to revive both men without success. He made no submissions in respect of sections 6(1)(c) to (d) of the Act.

Mr McLeod did however question the Fiscal's suggested recommendation that in terms of section 6(1)(e) there should be a ROLA to include the Scottish Ambulance Board. It was his position that there was neither, an evidential basis or statutory basis for

the Board to be included. He reminded the Inquiry of the terms of the Scottish Ambulance Service Board Order 1999, which does not place any statutory duty on the Ambulance Service in relation to the provision or maintenance of rescue facilities, but rather makes provision for the Board to provide "ambulances for the conveyance of persons suffering from illness". Mr McLeod further submitted that there was no evidential basis for the Crown to make a suggested recommendation in terms of section 6(1)(e) that individual emergency organisations should report to the ARCC or that the Ambulance Service should liaise with LWLA in respect of the distribution of LWLA packs or in the raising of awareness of safety issues on the Loch.

I am satisfied that Mr McLeod's submissions as regards inclusion of the Ambulance Service in a ROLA are well founded and have accordingly excluded the organisation from my recommendations on that matter. I have not included a recommendation that the Scottish Ambulance Service Board should report to the ARCC or that they should liaise with LWLA for the reasons stated above (page 62).

Submissions on behalf of the Chief Constable of Strathclyde Police

Miss Ali invited me to make a formal determination in relation to the time, place, date and causes of death. She invited me to make no findings under sections 6(1)(d) and (e) of the Act. In relation to section 6(1)(c) of the Act Miss Ali invited me to make certain findings in 'relation' to reasonable precautions whereby the deaths or any accident resulting in the deaths might have been avoided. She accepted that any questions about the condition or inherent defects in the boat had to be speculative. She also accepted that

what caused the boat to capsize was speculative. She categorised her suggested findings under section 6(1)(c) as "Reasonable precautions – mechanical" and "Reasonable precautions – practical". Under the head "Reasonable precautions – mechanical" Miss Ali dealt with the lifejackets/buoyancy aids worn by the deceased and the use and stability of the boat. Under the head "Reasonable precautions – practical" she dealt with the scenario of using the Loch whilst being unfamiliar with it in poor weather conditions and after having consumed alcohol. She also considered the deceaseds' familiarity with the boat its qualities and layout and its equipment. Miss Ali suggested findings and recommendations as to reasonable precautions should include (1) the use of suitable, fully working lifejackets; (2) being aware of the suitability of the boat for use by four adults; and (3) having sufficient familiarity with the Loch to be able to take the boat out in conditions of severely restricted visibility. In relation to (1) above, Miss Ali drew attention to the evidence of Professor Tipton and to his opinion evidence that "Had the four men been wearing lifejackets which were in good working condition and were properly inflated the survival time would have increased." In inviting me to make a finding in relation to (3) above, Miss Ali referred to the poor weather conditions and to the evidence of Mr Gray, the local landowner, and the local firefighters who told the Inquiry that even with their familiarity of the Loch they would not have dared to venture out in such hazardous conditions.

As regards the consumption of alcohol by the deceased Miss Ali recognised as 'plausible' that the judgment of the deceased may have been diminished by their consumption of alcohol prior to going on to their boat and when in their boat.

Submissions on behalf of Strathclyde Fire Board and Rescue Services

Miss Pitt invited me to make formal findings in relation to section 6(1)(a) and (b) and to make no findings under section 6(1)(d). She submitted that the deaths could not be attributed to any failure in the system of work employed by the fire services during the attempted rescue attempts.

In relation to section 6(1)(c) Miss Pitt submitted that reasonable precautions whereby the deaths and any accident resulting in the deaths might have been avoided would have been to have had the boat and the outboard engine of the boat submitted to a safety check and not to have had so many people on board. She submitted that had the deceased worn lifejackets of appropriate size and in good condition and had they not consumed alcohol or cannabis before going on the boat their deaths might have been avoided. She maintained that had the deceased dialled 999 directly from the boat rather than having phoned Mr Colquhoun and had they used a compass to find their way back to the campsite their deaths might have been avoided.

In the absence of the boat being recovered and any direct evidence as to what caused it to sink; I am unable to carry forward Miss Pitt's suggested findings in relation to the boat or the use of a compass by the deceased. I have carried forward her other suggested findings into my determination.

Submissions on behalf of the Royal National Lifeboat Institution

Mr Stevenson invited me to make formal findings in relation to the date, time and place of the deaths. He submitted that the times of the deaths must have been at some point after 01.20 hours and that to pinpoint any other time would be speculative. He submitted that all four men died from "cold water immersion". He made no submissions in respect of section 6(1)(b) (system of work) as the RNLI were not involved in the immediate events.

As regards section 6(1)(c) Mr Stevenson suggested only one formal finding, namely that the deaths might have been avoided if the deceased had used suitable and fully working lifejackets. He suggested that rather than make formal findings I should make observations as regards a number of other matters namely (1) the training/seamanship skills of the deceased; (2) the state and condition of the lifejackets used by the deceased; (3) the appropriateness of having four persons onboard the boat; and (4) public awareness of personal responsibility for being on the water.

Standing the evidence of Professor Tipton (*supra*) I have considered it appropriate to include (2) above under S 6 (1) (c) of my Determination. I have dealt with (1) (3) and (4) in my general observations about education of the public and the vital role which the Loch Watch Loch Awe Scheme now play in that regard (*infra*).

Mr Stevenson submitted that it would be difficult for the RNLI or any organisation in the present economic circumstances to provide appropriate rescue facilities over Scotland's vast number of inland waterways. He reminded the Inquiry of

the RNLI's charitable status and submitted that I should be slow to make recommendations which might alter that role.

He recognised the important role that the LWLA Scheme now plays in raising safety awareness on the Loch. In drawing attention to the Tomkins Report he suggested that the next review of the Search and Rescue Framework for the UK might be extended to consider the provision of rescue services on the inland waters of Scotland.

Submissions on behalf of the Maritime and Coastguard Agency

I allowed Miss Maitland to become a party to the Inquiry on 10 January 2011 after she had explained that intimation of the Inquiry had not been received by her head office. Miss Maitland confirmed that the MCA were "mainly supportive of the Crown's proposed findings and recommendations under sections 6(1)(c) and (d) - (e). She confirmed that the MCA were in agreement with the Crown's suggested recommendations that there should be a ROLA held by the different rescue agencies and confined her submissions to those recommendations made by the Fiscal which impacted on the MCA and HM Coastguard. It was however her position that certain of the suggested recommendations by the Fiscal went beyond the scope of the Inquiry in so far as they did not relate directly to the circumstances of the accident and resulting deaths. She referred to Lord Cullen's recommendation in his "Review of Fatal Accident Legislation" (November 2009) in which his Lordship states *inter alia* "It would be inappropriate in my view for an FAI to be treated as if it were a public inquiry taking a nationwide approach and calling for far greater resources."

Miss Maitland developed her argument by submitting that any suggested recommendations made by the Crown involving the responsibilities of the various search and rescue agencies and voluntary organisations should not conflict with the Search and Rescue Framework for the United Kingdom of Great Britain and Northern Ireland (Crown Production 21) which she said "represents an agreed and established national policy". Miss Maitland dealt specifically with the Fiscal's suggested recommendations (i), (iii), (iv) and (v) above in relation to section 6(1)(e) of the Act. As regards his recommendation (ii) (that all emergency control rooms should have as part of the initial checklist for a water based incident on Loch Awe immediate consideration of contact with ARCC. Miss Maitland did not disagree in principal with the recommendation but pointed out that contacting ARCC already formed part of HM Coastguards standard procedures. She referred to the evidence of Graham Waters[1] and Ian McKinnon[2]. The suggested recommendation by the Fiscal was, she said, "too wide and ran the risk of blurring the lines as to who was responsible for co-ordinating search and rescue on Loch Awe". If the recommendation was to be taken forward she suggested it be confined to the relevant police control room as it is the police who are responsible for co-ordinating search and rescue operations.

As regards the Fiscal's suggested recommendation (iii) (that all of the emergency rescue services should report as much information as possible, particularly weather conditions, when requesting airborne rescue assistance) Miss Maitland again indicated agreement in principle but suggested the recommendation was of a general application and would have made no difference to the outcome of the incident. It was her position

[1] Transcript – 11/6/2010, page 45
[2] Transcript 5/7/2010, page 117

that there was no need to include the MCA or HM Coastguard in a recommendation of this nature as such suggested procedures already formed part of their standard operational procedures.

Miss Maitland voiced strong opposition to the Fiscal's suggested recommendation that the MCA should be responsible for placing a communications mast near to Loch Awe to allow for communications between their control room and the MCA personnel attending an incident on Loch Awe (recommendation (iv)). Her objections were based principally on grounds that the purpose of the Maritime and Coastguard Co-ordination Centre is to Co-ordinate Sea and coastal rescue, and except in the case of a very limited number of specified lochs in Scotland, to co-ordinate searches on inland waters. Miss Maitland submitted that if such a recommendation were to be taken forward it could potentially lead to confusion as regards the delineation of responsibilities between the relevant agencies. She suggested that if it were thought appropriate that a mast should be erected, the police as the body responsible for co-ordinating search and rescue should be responsible for doing so. It was Miss Maitland's position that in any event the suggested recommendation was superfluous as there had been perfectly adequate communication by mobile phone between the coastguard rescue team and the MCA co-ordination centre.

As regards the Fiscal's suggested recommendation that police radios should be given to the MCA at Oban for their personal use during an incident (recommendation (v)) Miss Maitland suggested that this recommendation was of "general application". She submitted that if a recommendation was to be made along those lines regard would require to be given to national policy issues regarding privacy, data protection and security.

I have not carried forward the Fiscal's recommendations (ii), (iii) and (iv) above for the reasons stated above (*supra* pages 63-64). I have carried forward his suggested recommendation (v) because of the communication difficulties referred to above and because the "Firelink" digital system referred to does not extent to MCA personnel or the mountain rescue services (*supra*).

Discussion

In the absence of the boat used by the deceased being recovered or any direct evidence as to what caused it to sink I am unable to make any specific findings about that matter. Different "speculative" scenarios as to what caused the boat to sink were advanced at the Inquiry. These ranged from the boat having been destabilised when the deceased attempted to restart the engine when it had failed because of fuel starvation, one of the deceased destabilising the boat when he urinated over the side of the boat, the boat being unstable because of its design/altered structure or simply because there were too many people onboard. Other speculative scenarios included the boat coming into collision with a sandbar or some other obstacle in the Loch. At the end of the day however, these scenarios have to be speculative and cannot give rise to any findings.

The specific times that the individual deceased died and the precise location on the Loch where they died cannot be exactly determined from the evidence. I have therefore made a finding that the four men died at some time after 01.20 hours on 21 March 2009. This takes into account the last time the men were seen alive when leaving the Tight Line and the time that it would have taken them to reach their boat at the pier below the Loch Awe Hotel. The location of where the men died has to be in an area of the Loch between the village of Loch Awe and the opposite shore where their campsite was located.

It is not speculative, in my opinion, to suggest on the basis of the evidence heard at the Inquiry that had the deceased been wearing fully functional and properly secured lifejackets their lives might have been saved nor is it speculative to suggest that their

deaths might have been avoided if they themselves had taken responsibility for their own safety by not venturing onto the Loch in such appalling weather conditions. Furthermore I do not consider it speculative, to suggest, given the time frames spoken to at the Inquiry, that their deaths might have been avoided if the emergency services had been contacted by the deceased from the boat at the same time Edward Colquhoun was first contacted.

In finding that the deceased deaths might have been avoided had they not consumed alcohol before going onto the Loch I have taken into account the evidence of drink consumed by the men before they left for the Tight Line public house and also the evidence of how much drink was consumed there. I have also considered with much care the evidence of the pathologists who described the levels of alcohol in the bodies of the deceased at the times of their deaths (i.e. when their hearts stopped beating) to be low/moderate. In that regard I have taken account of the rate at which the body dissipates alcohol as described by Dr Torrance and the time when the deceased left the Tight Line (01.05 hours)[1] relative to the time when the shouts from William Carty and Craig Currie ceased to be heard (05.11 hours).[2] In coming to the conclusion that a reasonable precaution whereby the deaths might have been avoided if the deceased had not consumed alcohol prior to taking the decision to use their boat I have very much had in mind the opinion evidence of Professor Michael Tipton which was that the deceaseds' assessment of risk may have been impaired by their consumption of alcohol. It must also be borne in mind that in relation to a finding under Section 6 1 (c) it is not necessary that

[1] supra page 13
[2] supra page 21

the Inquiry should be satisfied that the proposed precaution would in fact have avoided the accident or death only that it might have done.

Finally, in rejecting or carrying forward "suggested recommendations" by the Fiscal or the other parties to the Inquiry I have had in mind Lord Cullen's opinion in his review of fatal accident legislation (*supra*) that "There is considerable force in the arguments against the Sheriff making recommendations of general application."

My Determination would be incomplete without my placing on record the fact that I found no evidence to suggest any criticism of the emergency services or the systems of work employed by them at this very tragic accident. Their individual responses and the manner in which they carried out their duties in extremely difficult conditions were commendable.

Neither would my determination be complete without my recognising the considerable contributions made and still being made by those involved in the setting up of the LWLA Scheme (now in the hands of the Loch Awe Safety Committee) and by interested individuals and organisations subsequent to this tragic accident. These contributions have been highlighted in the local press and have involved financial contributions and contributions of both equipment and time. Equipment has included the use of a boat and affordable top quality lifejackets being sourced by the Loch Awe Safety Company for sale to the public. Financial contributions have enabled the purchase of marker buoys for placement around the Loch. Most importantly time has been devoted by those involved to the "pre-eminently" important task of educating the public about safety awareness on the Loch.

I would like to conclude by thanking those who appeared at the Inquiry for the helpful and sensitive way in which they dealt with the evidence and in the presentation of their submissions. I would also like to express my condolences to the families and friend's of Craig Currie, William Carty, Stephen Carty and Thomas Douglas.

Sheriff of North Strathclyde at Oban