

**FATAL ACCIDENT ENQUIRY INTO THE DEATH OF JAMES TAYLOR McLAREN
DRUMMOND AGED 21 YEARS HELD ON 10, 11 AND 12 JUNE 2002
SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW**

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

SECTION 1(1)(a)

SECTION 1(1)(b)

DETERMINATION by CHARLES W McFARLANE, Queen's Counsel, Sheriff of the Sheriffdom of Glasgow and Strathkelvin following an Inquiry held at Glasgow on the Tenth, Eleventh and Twelfth days of June and Thirteenth December all Two Thousand and Two Years into the death of JAMES TAYLOR McLAREN DRUMMOND, aged 21 years, who formerly resided at 765 Shettleston Road, Glasgow.

GLASGOW, September, 2003.

The Sheriff, having considered all the evidence adduced, DETERMINES:

In terms of section 6(1)(a) of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976 that James Taylor McLaren Drummond, aged 21 years who resided at 765 Shettleston Road, Glasgow, died in Cell No.21 on the second floor of "C" Hall in HMP Barlinnie, Glasgow between about 2300 hours on Tuesday, 29 February 2000 and 0900 hours on Wednesday, 1 March, 2000. Life was pronounced extinct at 0900 hours on Wednesday, 1 March, 2000.

In terms of section 6(1)(b) of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976 that the cause of death of JAMES TAYLOR McLAREN DRUMMOND was death by hanging.

The Sheriff, having considered all the evidence adduced, finds the following facts admitted or proved:-

Mr James Taylor McLaren Drummond ("Mr Drummond") died between 29 February and 1 March, 2000. At the time of his death he was 21 years of age and the sole prisoner occupying Cell No. 21 on the second floor of "C" Hall in HMP Barlinnie, Glasgow (hereinafter referred to as "Barlinnie"). He was single and unemployed.

Mr Drummond was born on 9 August, 1978. He was remanded to Barlinnie on Wednesday, 23 February, 2000 pending the preparation of a Social Enquiry Report and a Community

Service Order Assessment Report, before being due to re-appear at Glasgow Sheriff Court for sentencing on 15 March, 2000, bail having been refused.

Prior to Mr Drummond's admission to Barlinnie on Wednesday, 23 February, 2000 he had been an abuser of the illicit drug heroin. He started to abuse heroin when he was about 19 years of age.

Prior to 23 February, 2000 Mr Drummond had spent some time in custody either in Barlinnie or in HMYOI Longriggend or HMYOI Polmont. On said occasions he had kept in contact with his mother, Mrs Maureen Drummond (see Finding-in-Fact No. (6) (infra)) principally by way of writing letters to her. (See Finding-in-Fact No. (5) (infra)).

The letters written by Mr Drummond to his mother on the occasions when he had been in custody (see Finding-in-Fact No. (4) (supra)) had contained information with regard to his general circumstances and situation. Said letters, which had been received by Mrs Drummond on a regular basis, frequently contained detailed information with regard to her son's personal well-being.

Mrs Maureen Drummond ("Mrs Drummond") was 53 years of age. She lived at flat No. 2, 884 Shettleston Road, Glasgow. She was the mother of Mr Drummond and was employed as a care worker. She had a very close relationship with Mr Drummond. None of her family, apart from Mr Drummond had been previously involved with either the police or with the prison authorities.

Following upon Mr Drummond's remand in Barlinnie on 23 February, 2000 Mrs Drummond did not receive any letters from him. She had been surprised at this, because on all previous occasions when he had been detained in custody Mr Drummond had written to her. This was the first occasion on which he had not done so. This gave Mrs Drummond some cause for concern. However, on any previous occasions when Mr Drummond had been remanded in custody, Mrs Drummond had never been concerned that her son might have had suicidal tendencies.

On the other occasions when Mr Drummond had been detained in custody, in addition to writing letters to his mother (see Finding-in-Fact No. (5) (supra)) he had sometimes telephoned her and she had sometimes visited him in prison. In this connection, in her evidence which she gave to the Inquiry on Monday, 10 June 2002, Mrs Drummond stated that her son telephoned her at home from Barlinnie on Sunday, 27 February 2000. However, as Mrs Drummond was at work at the time her son spoke instead to one of his brothers, Mr Robert Drummond (see Finding-in-fact No. (248) (infra)). Accordingly Mrs Drummond did not speak to her son on that occasion. She stated however that she was next off work on Tuesday, 29 February and Wednesday, 1 March 2000 and that Mr Robert Drummond advised her son of this and told him that she would be going up to visit him in Barlinnie on one of these two days. Mrs Drummond in fact attempted to visit Mr Drummond in Barlinnie on Tuesday, 29 February 2000 but was denied admission because she was late (see Finding-in-fact No. (236) (infra)).

Mr Gerald Smith ("Mr Smith") was a Prison Officer in Barlinnie. He was 43 years of age. He had been a Prison Officer for 14 1/2 years. He had been working in Barlinnie throughout February and March 2000. During that period his duties involved working in "C" Hall in Barlinnie. He was the most senior officer on the second floor (Flat) in "C" Hall at that time.

Mr Smith was also a training officer for the Act Procedure (see Findings-in-Fact Nos. (28), (40) and (41) (infra)). In this connection he had been a Reception Officer in Barlinnie for 5 or 6 years prior to being transferred to "C" Hall.

On 15 July, 1998 Mr Smith had admitted Mr Drummond to Barlinnie. On said date he had completed the "Reception Risk Assessment (Reception Officer)" Form in respect of Mr Drummond and had interviewed him with a view to assessing any potential suicide risk. Having recorded his observations pursuant to Mr Drummond's responses to certain questions specified in the Form designed to gauge general behaviour and attitude, Mr Smith concluded that there were no problems and that Mr Drummond was not at risk. In particular, there had been no requirement for an "Act Form" to be raised (see Crown Production No. 3, Scottish Prison Service Healthcare Records, p 26).

During the last week of February, 2000 Mr Smith remembered Mr Drummond's being a prisoner in "C" Hall. Mr Drummond had been brought through from "A" Hall to "C" Hall on Saturday, 26 February, 2000 and sent back again to "A" on the same day. On the following day, viz Sunday, 27 February, he was re-transferred from "A" Hall to "C" Hall and placed in Cell No 2/21. (See Production No. 2 for the Scottish Prison Service). Mr Smith had no concerns with regard to Mr Drummond. He appeared to be quiet and did not cause any problems. He went to recreation and exercise, and mixed with other prisoners.

During Mr Drummond's time in "C" Hall, he shared Cell No. 2/21 with another prisoner, a Mr Mark Cairns ("Mr Cairns"). On Tuesday, 29 February, 2000, being the day prior to Mr Drummond's body being found, information had come to the notice of the Prison Authorities that certain prisoners were planning to take one of the Prison Officers, namely, a Ms Marilyn Dewar, hostage. Mr Cairns had been suspected of being involved in this plan. Accordingly, in an attempt to foil the plan, Mr Cairns was removed from the Cell which he had been sharing with Mr Drummond (Cell No. 2/21) and placed in the Segregation Unit. Mr Cairns was removed from Cell No. 2/21 in "C" Hall to the Segregation Unit at around 11.00 am/11.30 am on Tuesday, 29 February, 2000. Mr Drummond was thereafter left alone in the Cell. Both the Scottish Prison Office and Prison Officers as individuals take very seriously any rumour or threats or allegations that a Prison Officer is going to be taken hostage by prisoners.

Although Mr Smith had been working during his shift on 29 February, 2000 when Mr Cairns had been removed from Cell No. 2/21 to the Segregation Unit Mr Smith had had no personal involvement in the decision to remove Mr Cairns. That decision would have been taken by the Supervisor in charge of "C" Hall at the time. Mr Smith had not been aware of Mr Drummond's suffering any adverse effects as a result of Mr Cairns' being removed from the Cell.

Mr Smith had last seen Mr Drummond at the end of his shift on Tuesday, 29 February, 2000 at approximately 2.15 pm. Mr Smith did not recollect anything different or unusual about Mr Drummond at that time.

For about a week prior to Wednesday, 1 March 2000 Mr Smith had been working regularly in "C" Hall. During that week, he had sometimes been relieved at the end of his shifts by Prison Officers John Richmond ("Mr Richmond") and John G Burns ("Mr Burns"). Messrs Richmond and Burns (when themselves not off duty or having a "rest day") had generally been on the other shift from Mr Smith. When Mr Smith had gone off duty Messrs Richmond and Burns had usually come on duty and vice versa. At no time did either Mr Richmond or Mr Burns mention to Mr Smith that there had been any sort of incident or problem relating to Mr Cairns and/or Mr Drummond.

Mr Smith commenced work at Barlinnie on Wednesday, 1 March 2000 at 6.15 am. As soon as he started his shift, there was a short meeting, lasting about 5 minutes in "C" Hall, before proceeding to count the prisoners on the Second Floor. Mr Smith started to count from Cell

No. 16 and proceeded to Cell No. 21. When he viewed through the observation window of Cell No. 21 he saw Mr Drummond suspended by a ligature attached to the steel bars over the window at the other side of the Cell, immediately opposite the Cell door (see Crown Production No. 1, photographs A, B, G and F).

Mr Smith, on seeing Mr Drummond suspended by a ligature attached to the steel bars over the window at the other side of the Cell (see Finding-in-Fact No. (17) (supra)) immediately called a "Code 1", which is a call for immediate assistance, specifying the location. He then opened the Cell door and entered. He took the weight off Mr Drummond's body, at which time Prison Officers Stephen and Clark arrived to assist. Prison Officer Stephen cut the ligature from the steel bars (see Crown Production No. 3, photographs G and E) and Prison Officer Clark assisted Mr Smith in laying Mr Drummond on the bed (see Crown Production No. 3, photograph F). By that time the nurses had arrived.

Mr Smith saw a lace (either a shoelace or a trainer lace) around Mr Drummond's neck (see Crown Production No. 3, photographs J and I). The medical staff then administered cardio pulmonary resuscitation ("CPR") to Mr Drummond (see Finding-in-fact No. (90) (infra)). By that time Mr Smith's supervisor had known about the emergency on account of the "Code 1" call which Mr Smith had put out.

As at February/March 2000 a count of prisoners was generally not made by Prison Officers during the nightshift, with the exception of those prisoners who were on "special observations" ("special obs"). That policy has since changed. Mr Smith did not know who was on nightshift in "C" Hall on the night of 29 February/1 March 2000. He accordingly did not know whom he relieved at 6.15 am on Wednesday, 1 March, 2000 when he came on duty.

By reference to the concentrated patch of staining on the floor of Cell No. 2/21, immediately to the left of the bed and the spots of dark staining in the middle of the floor in front of the Cell door (all as shown in Crown Production No. 1, photograph B), Mr Smith did not remember seeing that staining. He did not recall seeing any blood staining either on the deceased or on the floor of the Cell.

As narrated in Finding-in-Fact No. (17) (supra) Mr Smith commenced duty on Wednesday, 1 March, 2000 at 6.15 am. He had finished duty on Tuesday, 29 February, 2000 at 2.15 pm and did not know who had relieved him at that time (see also Finding-in-Fact No. (20) (supra)).

Mr Drummond shared Cell No. 2/21 with Mr Cairns from Sunday, 27 February 2000 until Mr Cairns was removed from the Cell on Tuesday, 29 February, 2000 to the Segregation Unit (see Finding-in-Fact No. (13) (supra)). Accordingly, Mr Drummond and Mr Cairns shared Cell No. 2/21 for two nights, viz: Sunday 27 and Monday, 28 February, 2000 (see Finding-in-fact No. (12) (supra) and Production No. 2 for the Scottish Prison Service).

Between Saturday, 26 February, 2000 and Tuesday, 29 February, 2000 when Mr Smith last saw Mr Drummond at the end of his shift at about 2.15 pm (see Finding-in-Fact No. (15) (supra)), Mr Smith did not detect any signs of extreme drug withdrawal in relation to Mr Drummond. If he had detected such symptoms he would have highlighted his concerns to the Hall nurse. His first concern would have been to obtain medical assistance. At no time was there anything about Mr Drummond which caused Mr Smith to suspect that he would take his own life.

If Mr Smith had thought that Mr Drummond was in danger of taking his own life he would first have assessed the problem by proceeding in accordance with the "ACT procedure" (see

Findings-in-Fact Nos. (28), (40) and (41) (*infra*). If he had had any concerns after making the risk assessment in accordance with that policy, he would have referred the matter to the Prison Medical Authorities, after which Mr Drummond would have been removed to a safe environment or to a secure Cell. However, as narrated in Findings-in-Fact Nos. (15) and (24) (*supra*) Mr Smith had no concerns in relation to Mr Drummond throughout the whole time he was in contact with him, ie. from Saturday, 26 February, 2000 to about 2.15 pm on Tuesday, 29 February 2000.

The Segregation Unit is a separate unit which is outwith "C" Hall. "A" Hall, from which Mr Drummond was transferred to "C" Hall on Saturday, 26 February, 2000 (see Findings-in-Fact Nos. (12) and (23) (*supra*)) is the Induction Hall in Barlinnie, to which all prisoners go on admission for a 3 day induction course. Mr Smith had some knowledge of the 3 day induction course at Barlinnie.

The 3 day induction course/programme at Barlinnie consisted of a video highlighting what prison life was like. It dealt with such matters as to what a prisoner should do if he was being bullied or if he felt at risk or suicidal. It explained the avenues open to a prisoner if he felt he was unable to cope. It explained the Prison Rules, the procedure for making telephone calls and the general régime within the prison.

Mr Smith was a trainer in the "Act" procedure. Generally training in that procedure involved a Prison Officer being trained on 18 different modules. The programme explains the risks from evidence which has been highlighted in response to questions and what to look for in a particular person, for example whether or not he displays signs of drug or alcohol addiction or of anxiety as a result of a bereavement. On occasions a prisoner may inform a Prison Officer that he is suicidal. The "Act" programme trains a Prison Officer what to do in these circumstances and involves role playing in various scenarios which sometimes include prisoners, nurses, doctors and Prison Officers. The programme also incorporates videos of Court cases and of how prisoners actually commit suicide and of how those who have attempted it have reacted (see also Finding-in-Fact No. (41) (*infra*)).

Mr Smith had never heard either from Mr Burns or from Mr Richmond or from anyone else about any allegations that Mr Burns had struck Mr Drummond on the back of the head sometime after Mr Smith had gone off duty on Tuesday, 29 February, 2000. The first time that Mr Smith had ever heard of such an allegation was in the course of this Inquiry, when he was questioned about the matter, ie. on 11 June, 2002, almost 2 years and 4 months later.

Mr Smith had never heard either from Mr Burns or from Mr Richmond or from anyone else about any allegation(s) that Mr Burns had assaulted Mr Cairns in Cell No. 2/21 sometime after Mr Smith had gone off duty. Any assault could not have taken place at that time in view of the fact that Mr Smith went off duty at around 2.15 pm on Tuesday, 29 February, 2000 whereas Mr Cairns was removed from Cell No. 2/21 to the Segregation Unit at around 11.00/11.30 am on Tuesday, 29 February, 2000 (see Findings-in-Fact Nos. (13), (15) and (24) (*supra*)).

Mr Smith had never heard any allegation(s) that a male Prison Officer on nightshift duty in "C" Hall on the night of Tuesday, 29 February, 2000 to Wednesday, 1 March, 2000 had responded to screams of help from Mr Drummond by telling him to "get his fucking head down" and threatening "to leather" him if he continued to scream. In relation to these allegations Mr Smith said "No, I've never heard this before."

Mr Smith had never heard any allegation(s) that Mr Drummond was getting bullied by other Prison Officers in relation to an alleged stash of drugs which was supposedly held by Mr Cairns, and that the Prison Officers had told Mr Drummond that if he did not inform them

where the stash of drugs was kept they would label him "a grass" and spread this around the prison. Mr Smith had never bullied or been involved in bullying Mr Drummond.

At no time did any prisoner and in particular a Mr William Wotherspoon ("Mr Wotherspoon") ever speak to Mr Smith or express any concerns to him about Mr Drummond. At no time did Mr Drummond himself voice any concerns to Mr Smith.

Physical threats by Prison Officers to prisoners were not a common/everyday occurrence in "C" Hall.

There was a complaints procedure whereby a prisoner, who felt threatened or intimidated by a Prison Officer could register a complaint about the officer's behaviour. The internal complaints procedure which was confidential involved the prisoner completing a complaints form which was then submitted to the Hall supervisor. The complaint is thereafter brought to the attention of the Prison Officer concerned. So far as any bullying was concerned, there was a "bullying strategy" in operation in each Hall in Barlinnie. In particular, "C" Hall had its own "Bullying Officer" to whom a prisoner could submit a completed form in connection with any allegation of bullying which he wanted to make against a Prison Officer.

Mr Neil Hainey ("Mr Hainey") was a Prison Officer in Barlinnie. He was 41 years of age. He had worked as a Prison Officer since 1988, and had always worked in Barlinnie. He had attended various courses throughout his employment there. Throughout the past 6 or 7 years he had been working in the reception area in Barlinnie. The reception area was the place where prisoners were brought in by the police and where they were first booked in.

The prisoners who were brought into the reception area included those who came from the Courts, either on remand or convicted prisoners or transfers from other prisons. It also included prisoners who had been in hospital and who at the end of their treatment were sent back to prison. All prisoners came through the reception area and were assessed by staff there, apart from "returns" viz., those prisoners who had left Barlinnie for Court in the morning and were simply returning there later in the day, when there had been no change in their circumstances.

On arrival at the reception area a reception officer checks the prisoner's details to ensure that the prisoner is in fact the person who has been legally committed to the prison. The prisoner is then put in a holding Cell and provided with some sustenance. He remains in the holding Cell until he can be received by a warrant officer.

On removal from the holding Cell, the prisoner is then interviewed by a warrant officer in a small interview room. At that stage, the prisoner's personal details, marital status, next of kin or particular characteristics are updated on the prisoner's information system.

In February, 2000 Barlinnie operated the "ACT" procedure. The "ACT" procedure was introduced in or about 1998. "ACT" stood for "Assessment, Contact and Teamwork". It was basically a procedure which was put in place to assess prisoners on admission with specific reference to the question of whether or not they were at risk of suicide or self-harm.

Mr Hainey attended a 3 day course on the "ACT" procedure although not all Prison Officers did so. The course consisted of various aspects of trying to identify prisoners at risk, either when they came into Prison from Court or on transfer from another Prison. The course consisted of role-plays and the acting out of various scenarios all with a view to identifying signs and symptoms of prisoners who may be a suicide risk or at risk of self-harm (see Finding-in-Fact No. (28) (supra)).

At the stage of the warrant officer's interview of the prisoner in the interview room, Form B of the Act documentation was also completed. This Form related to the assessment risk of the prisoner.

Crown Production No. 3 was the Scottish Prison Service Healthcare Records relating to Mr Drummond. Page 11 of Crown Production No. 3 was Form B of the ACT documentation [Reception Risk Assessment (Reception Officer)] relating to Mr Drummond. Mr Hainey completed Form B when he interviewed Mr Drummond on his admission to Barlinnie at 8.15 pm on 23 February, 2000. The said Form was signed and dated by Mr Hainey at the foot of the page.

Form B - section 1 of the ACT documentation relating to Mr Drummond was self-explanatory. It showed that Mr Drummond was admitted to Barlinnie as opposed to having been transferred there from another institution. The first parts of the Form dealt with Mr Drummond's behaviour and attitude. In this connection, Mr Hainey, as interviewing officer was required to record his observations to certain questions which he put to Mr Drummond, by ticking Mr Drummond's responses in the boxes marked "Yes" and "No". Each question required to be asked. It was also hoped that a prisoner might elaborate in some of his responses. The questions which Mr Hainey asked Mr Drummond were as follows:-

(1)Is this your first time in Prison?

In relation to this question an interviewing officer sometimes already knew if a prisoner had been in Prison before, by reference to the prisoner's number. Sometimes an interviewing officer recognised a prisoner as having served previous sentences. In these circumstances, it was not always necessary to use the actual words "Is this your first time in Prison?" when seeking this information.

(2)Was your imprisonment/transfer unexpected?

(3)Did you receive a bigger sentence than you expected?

(4)Do you feel the need to be protected?

(5)Will you or have you had problems contacting your family or friends?

(6)Are you expecting any problems with visits?

(7)Are you feeling suicidal?

All the questions listed in Finding-in-Fact No. (44) (supra) were put to Mr Drummond by Mr Hainey in the course of the interview although Mr Hainey had no recollection of the interview itself. All the questions were answered by Mr Drummond in the negative, Mr Hainey having

ticked all the "No" boxes. All the questions were and had to be asked in a manner where the prisoner was encouraged to tell the truth and elaborate in his responses, rather than give a straight Yes/No answer. When a prisoner was asked the questions, the interviewing officer, in addition to having a formal discussion with him, also tried to pick up any signs that the prisoner was, for example, not telling the truth or that he may have been upset or may have been communicating in a non-verbal way which gave cause for concern. If, for example, a prisoner had been perspiring excessively or crying or maybe laughing, that information would have been noted on the form in the box headed "Comments". The box headed "Comments" required the interviewing officer to "Outline the prisoner's general behaviour and note any other relevant information provided or practical concerns raised (eg. childcare)". So far as Mr Drummond was concerned there were no problems or concerns about him at that stage. He did not show any signs of stress or of being upset. If he had shown any such signs it would have been noted in the "Comments" box. In the circumstances the words "No Problems" were noted in the "Comments" box by Mr Hainey.

In addition, Form B - section 1 of the ACT documentation relating to Mr Drummond provided information by reference to ticks in boxes marked "Yes" and "No" as to whether or not, on admission he appeared to be displaying any of the following signs:-

(1)Anxious.

(2)Angry.

(3)Low Mood (eg withdrawn, poor eye-contact).

(4)Confused (eg. unclear as to time, date or place).

(5)Drugged/Drunk.

(6)Disturbed behaviour.

All the "No" boxes were ticked by Mr Hainey in relation to Mr Drummond. The boxes were not generally ticked in response to questions (apart from whether or not a prisoner was taking drugs) but more in relation to the interviewing officer's observations of the prisoner, when he would be looking to see, as he was speaking to him and asking him questions, whether or not he was displaying any of the above symptoms.

From Mr Hainey's questioning and observations of Mr Drummond on his admission to Barlinnie at 8.15 pm on Wednesday, 23 February, 2000 Mr Hainey considered that Mr Drummond was at no apparent risk and no "ACT" form was raised (see Findings-in-Fact Nos. (49) and (50) (infra)). This concluded Mr Hainey's involvement with Mr Drummond.

If, at the stage of a prisoner's interview on admission, the interviewing officer was sufficiently concerned that the prisoner might cause himself harm or attempt to commit suicide an "ACT"

form would be raised. If, for example, the prisoner had not expected to be imprisoned, or was not going to get visits from his family, or told the interviewing officer that he felt suicidal then an "ACT" form would be raised.

In Form B - section 1 of the "ACT" documentation, the following is narrated after the words "Risk Assessment" towards the foot of the page:-

"If after your assessment, you feel the prisoner is at risk you should raise an ACT form immediately and inform a member of Healthcare staff of your decision."

The box marked "ACT FORM CONTINUES" at the foot of Form B relates to circumstances where a prisoner has been transferred from another institution to Barlinnie while still on the "ACT" programme, ie. still at risk. In that situation, he would again be interviewed and the general admission procedure gone through, after which, if appropriate, the "ACT FORM CONTINUES" box would be ticked. The prisoner would accordingly remain on the "ACT" procedure.

Form B [ie the Reception Risk Assessment (Reception Officer)] form is only one part of the "ACT" procedure, which contains various items of documentation. If an "ACT" form was raised at the conclusion of the prisoner's interview, he would be highlighted as being at risk of self-harm or suicide. He would then be placed on the computer system as being at risk and a log-book would be opened into which the prisoner's details would be entered.

As soon as the procedures outlined in Finding-in-Fact No. (50) (supra) had been completed, the Health Service nurses would then be informed that there was a prisoner at risk. From that stage the prisoner would then be taken through by the interviewing officer to the strip desk, where his clothing would be changed. He would then be escorted through to the Health Centre where all the relevant documentation would be handed over along with the prisoner.

The documentation handed over to the Health Centre (see Finding-in-Fact No. (51) (supra)) sets out a preferred care option. It also states why the interviewing officer had initially placed the prisoner "at risk" and why he had concerns about the prisoner's state of mind. The preferred care option is normally a safe environment, being in the first instance the Residential Health Care Unit which is the hospital wing in Barlinnie. If there was no room there, it would be the responsibility of the Health Centre staff to find a suitable location for the prisoner. He would also be put on a minimum observation period which would normally be once every 15 minutes. If, for example, the prisoner indicated that his family were not going/able to visit him, the interviewing officer might arrange for the prisoner to be supplied with pen and paper so that he could write a letter home or allow him the use of a telephone. Such arrangements can help to alleviate the prisoner's problem or symptoms. At that stage the prisoner, together with all the paperwork is taken through to the Health Centre. Whilst that would normally be the interviewing officer's last contact with the prisoner, there is an ongoing programme with nursing/medical staff in relation to the prisoner.

The preferred option in relation to a prisoner who is at risk of committing suicide is that he be put in a Cell on his own. Prior to doing so, however, there would be an assessment of the prisoner and his circumstances, after which a decision would be made as to whether or not it would be beneficial to have the prisoner put in a Cell on his own or with another prisoner. In this connection, consideration would also be given to any preference expressed by the

prisoner. Sometimes, if circumstances dictate, the prisoner is placed in the hospital wing of the Prison.

A prisoner can commit suicide, not only when he is in a Cell on his own but also when he is sharing it with another prisoner/other prisoners. If a prisoner is at high risk of committing suicide, any items which could cause him harm are removed. In particular his shoelaces would normally be removed along with his shoes. Special clothing, which is basically Velcro-fastening, are also issued to the prisoner. If a prisoner is at high risk of committing suicide he may well be put in an anti-ligature Cell which is a Cell which does not have any bars on the window or light fittings around which items could be tied.

In addition to the "ACT" documentation which the interviewing officer completes in the course of interviewing a prisoner on his admission to Barlinnie, the interviewing officer sometimes has "Special Risk" forms which come either from Court or from the police. These "Special Risk" forms provide information as to whether a prisoner may have suicidal tendencies or be at risk of self-harm. They may also provide information as to whether a prisoner has a violent nature, or an infectious disease or the likelihood of his attempting to bring drugs into prison. There can also be an "ACT" Form A which starts at Court and which accompanies the prisoner from Court to Barlinnie. This form also narrates any concerns which the Court or the Crown or the police or the prisoner's solicitor may have in relation to the prisoner.

During the admission interview of a prisoner who previously had been in prison the interviewing officer has access to computerised information in relation to the prisoner. This information, which is on a computer screen, may provide details as to whether a prisoner has previously been on high-risk observations on account of for example, eg. drug withdrawal or as a suicide risk. The computerised information may also disclose whether a prisoner is, eg. asthmatic or diabetic. Whenever a prisoner is admitted to Prison, as much information as possible is gleaned from the prisoner and placed on the computer information system. This information is updated each time a prisoner is admitted to prison. As a matter of course, the interviewing officer has the computer information relating to a prisoner before him during the course of the interview. Any changes or updates in relation to the prisoner are entered in the computer information system.

So far as Mr Drummond was concerned Mr Hainey could not remember whether or not he obtained any information from the computer in relation to Mr Drummond's having been the subject of observations for whatever reason - either drug withdrawal or suicide risk. He did however, as a matter of course, look at the computer for such information. Had such information appeared on the computer screen, he would probably have seen it. In that event, depending on how long the prisoner had been at risk, he would have asked the prisoner for details as to why he had previously been on observations. Whether or not Mr Hainey recorded this information, depended upon how important he considered the prisoner's explanation to have been. The only way an interviewing officer could know if a prisoner had previously been at high risk was:-

(a) if the prisoner told him so or

(b) if information to that effect appeared before him on the computer screen.

Following upon Mr Hainey's admission interview of Mr Drummond on 23 February 2000 and his assessment that Mr Drummond was at no apparent risk (see Finding-in-Fact No. (47) (supra)), he was then placed in the holding Cell and thereafter sent through to the Health Centre, along with inter alia the completed Form B - section 1 (see Findings-in-Fact Nos. (44) to (46) (supra)). Thereafter the nurses in the Health Centre retrieved Mr Drummond's Healthcare Records (see Crown Production No. 3 - Scottish Prison Service) [SPS] Healthcare Records) and the first part of the Nurse Risk Assessment form, (Form B - section 2) being the reverse side of the Reception Risk Assessment (Reception Officer) form (Form B - section 1), was completed (see Crown Production No. 3, p 10).

After having been interviewed on admission by the Reception Officer (Mr Hainey) (see Findings-in-Fact Nos. (42) to (47) (supra)), Mr Drummond was again assessed by Nurses - Mr Alan Spencer and Mr David Greenhill on the same day (see Findings-in-Fact Nos. (64) to (92) (infra) and further assessed by a doctor, (Dr Dominic Gonzalez) on the following day ie. 24 February 2000 (see Findings-in-Fact Nos. (93) to (100) (infra)).

At any time after the Reception Officer's risk assessment, the nurses' risk assessment and the doctor's risk assessment (see Finding-in-Fact No. (59) (supra)) an "ACT" Form can be raised by any member of staff at Barlinnie if such a member has any concerns about a prisoner. If a prisoner is assessed to be of no apparent risk he is then generally sent to one of the Halls. In these circumstances no further work is done on the "ACT" documentation unless the prisoner has to go back to Court and subsequently back to Prison again. Accordingly, at any time after a prisoner is admitted to one of the Halls, if any Prison Officer, either in the Hall or on a landing, or any nurse or social worker or other member of staff has concerns about a prisoner's mental health or well-being, an "ACT" form can be raised and the prisoner placed on Form B as being at risk.

When a prisoner is placed on Form B as being at risk, that means that he is considered as being at "high risk". Within 24 hours of his being assessed as being at risk, a case conference is held at which the prisoner is again assessed by a nurse and a supervising officer. The prisoner is himself involved at that stage and is encouraged to try to plan out the best way to manage his own particular situation. If an "ACT" form has been raised in respect of a prisoner, and if, after several days he is considered to be progressing well and no longer considered to be at as high a risk of self-harm to himself as he was initially, the risk assessment is then reduced and he is placed on a low risk category. This may mean a change in the prisoner's environment, such as his removal from the Healthcare Unit to one of the Halls. The prisoner is again involved in this process and always encouraged to help himself through what can be a difficult time for him. (See also Finding-in-fact No. (174) (infra)).

A prisoner's medical records (physical/healthcare records) are confidential. That being so, the reception/interviewing officer does not normally have access to them unless it is deemed necessary for the purpose of assisting him with the care of the prisoner. The nurses doing the Nurse Risk Assessment (see Findings-in-Fact Nos. (58) and (59) (supra) and (64) to (92) (infra)) have access to all the prisoner's medical records. When the ACT documentation is taken through to the nurses at first the prisoner's medical records are then retrieved by them from the prison records.

The nurses who assessed Mr Drummond on his admission to Barlinnie on 23 February 2000 almost certainly had his medical records in front of them when he was being assessed (see Findings-in-Fact Nos. (70), (72) and (85) (infra)). Drug withdrawal observations are separate from "ACT" observations.

Mr Alan Spencer ("Mr Spencer") was aged 38. He was a Nurse Practitioner at Barlinnie, who started working there in 1997. He was a Registered Psychiatric Nurse who qualified in 1993. His duties at Barlinnie involved the dispensing of medications and the assessment of prisoners on admission, particularly in relation to their medical status and mental health. Even if, having been seen by a reception officer, a prisoner is not assessed as being a suicidal risk using the ACT procedure, the prisoner is still seen by a qualified nurse, such as Mr Spencer. Even if the qualified nurse does not assess a prisoner as being suicidal, he is seen further by a doctor.

Mr Spencer completed and signed the first half of the Nurse Risk Assessment Form - Form B - section 2 in relation to Mr Drummond on 23 February, 2000 after Mr Drummond had initially been assessed by Mr Hainey (see Findings-in-Fact Nos. (43) to (47) (supra) and Crown Production No. 3, p 10)). Form B - section 2 narrates inter alia at the top of the page:-

"This form should be used to record general information in respect of risk only. Clinical details should be entered on the health care record, which remains 'medical-in-confidence'".

Mr Spencer could not specifically remember the particular interview with Mr Drummond.

Form B - section 2 contains the following questions which Mr Spencer and his colleague Mr David Greenhill "(Mr Greenhill)" put to Mr Drummond under the heading "Mental Health Assessment":-

(1)Have you ever received psychological treatment?

(2)Have you ever received psychiatric treatment?

(3)Have you ever attempted self-harm or suicide?

(4)Do you feel suicidal/like hurting yourself at the moment?

(5)Have you ever been treated for "nerves" by a doctor?

(6)Do you have or had a drug problem?

(7)Do you have or had an alcohol problem?

By reference to boxes marked "Yes" or "No" opposite each of the said questions, Mr Spencer ticked all the boxes marked "No" with the exception of the box opposite the question - "Do you have or had a drug problem?" where he ticked the box marked "Yes". In particular, the "No" boxes were ticked after each of the following questions:-

"(3)Have you ever attempted self-harm or suicide? and

(4)Do you feel suicidal/like hurting yourself at the moment?"

It is normal practice for two qualified nurses to take the prisoner through the questions specified in Form B - section 2 (Nurse Risk Assessment) (see Crown Production No. 3, p 10). When Mr Spencer was interviewing Mr Drummond on 23 February, 2000 he was assisted by his colleague Mr Greenhill who was present throughout the interview. In asking the questions specified in Form B - section 2 (see Finding-in-Fact No. (66) (supra)), the interviewing nurse tries to get as much background information as possible from the prisoner and may spend more time on issues which are particularly concerning to him. The interviewing nurse tries to build up some sort of rapport with the prisoner and using his professional skills tries to assess if there appears to be any risk. He does not necessarily accept the prisoner's answers at face value, in which case he would explore further by reference to such things as records of previous instances of self-harm or special risk reports from the Social Work Department or the Court. In the course of the interview, the nurse would also observe the prisoner's body language and non-verbal communication.

In the box in Form B - section 2 headed - "General Observations/Comments Relevant to the Risk Assessment" in relation to Mr Drummond, Mr Spencer has noted "IVDA - 4/7?". Mr Spencer was told by Mr Drummond that he was an intravenous drug user and that he had last used Heroin 2 days earlier. If Mr Spencer had had any concerns about Mr Drummond as he was observing him during the interview he would have recorded such concerns in the said box. No such entries or recordings were made by Mr Spencer in the said box. Mr Spencer recorded his decision in relation to Mr Drummond at the conclusion of the interview as being at "No Apparent Risk" by ticking the box to that effect.

After the assessment by Mr Spencer that Mr Drummond was at no apparent risk Mr Drummond was again assessed by a doctor (Dr Dominic Gonzalez) on the following day, ie. Thursday, 24 February, 2000.

In addition to Form B - sections 1 and 2 the interviewing nurse would ideally have all the prisoner's medical records either with him in the interview room or before him on the computer screen. In these circumstances, Mr Spencer was "pretty sure" that he had all the medical records relating to Mr Drummond (Crown Production No. 3) before him when Mr Drummond was interviewed. As narrated in Finding-in-Fact No. (65) (supra), Mr Spencer could not specifically remember interviewing Mr Drummond. He could also not specifically remember looking at Mr Drummond's medical records. In this connection he stated:-

"I couldn't with certainty remember much of the aspects of it [the interview] but I am pretty sure that the notes [ie. Crown Production No. 3] were available". (See Volume II of the Notes of Evidence, p 2132/3).

In the course of a day Mr Spencer interviewed many "admission prisoners" which on a busy day could amount to as many as 40. In these circumstances, no interviewing nurse, and in particular neither Mr Spencer nor Mr Greenhill could reasonably be expected to remember

the details of and all the relevant information relating to the assessment of each individual prisoner at the time of his admission to Barlinnie.

Scottish Prison Service Production No. 1 and Crown Production No. 3, pp 7 and 8 (SPS Physical Care Records relating to Mr Drummond) contain inter alia the following entries:-

(1)28 October, 1997 (no time specified) - confident can cope...

(2)15 July, 1998 (no time specified) - adm(ission), no suicidal thoughts.

(3)16 July, 1998 (no time specified) - states no withdrawal problems - feels confident can cope.

(4)18 July, 1998 (no time specified) - stated to Hall Officials that he is strung out. Placed 15 min(utes) DW (drug withdrawal) (obs) Observations.

(5)20 July, 1998 (no time specified) - Prefers to do without medication!

(6)25 July, 1998 at 11.30 am - admitted from HMP Barlinnie. Appears settled - offered no complaints nor shows cause for concern.

(7)25 July, 1998 at 3.15pm - on checking the computer it appears that this young man was placed on HIGH RISK OBS on 22/7/98. No ACT book or notes available/sent - only the Reception Risk Assessment.

(8)25 September, 1998 at 1600 hours - Apparently the High Risk Obs were not taken off prior to his lib on 23/7/98 and when he was re-admitted on 24/7/98 he was no apparent risk. This level of obs will be continued until he is libbed [liberated] on 27/7/98.

(9)6 January, 1999 (no time specified) - history of drug abuse IV user, has recently completed Detox Programme prescribed by GP. States fit and well with no thoughts of self-harm L [left] hand slash mark, old/not (?) infected.

(10)1 July, 1999 (no time specified) - admission. No medical problems. Confident poly drug abuse. Denies habit or problem. Denies suicidal ideation. Abrasion above R [right] eye fighting outside, also old bruises L [left] elbow.

(11)9 July, 1999 (no time specified) - off med(ical) marker.

With reference to the entries referred to in Finding-in-Fact No. (71) (supra) extracted from the SPS Physical Care Records relating to Mr Drummond, Mr Spencer considered that he would have taken them into account when interviewing Mr Drummond and that the information contained therein would have been balanced against Mr Drummond's mental state at the time, with particular reference to any attempt at self-harm. He would have looked at a number of factors. Notwithstanding anything contained in the said medical records, Mr Spencer was, as a result of his observations of Mr Drummond and the latter's responses to his questions in the course of the interview properly entitled to conclude that Mr Drummond was at no apparent risk.

Entry No. 7 dated 25 July, 1998 (see Finding-in-Fact No. (71) (supra)) in terms of which Mr Drummond appears to have been placed on High Risk Observations on 22 July, 1998 is likely to have been mistaken in that no entry for the date 22 July, 1998 appears anywhere in the records. It is likely that entry No. 7 either referred to a mistaken entry on the computer or should properly have referred to the date 18 July, 1998 (see entry No. 4) where reference is made to Mr Drummond's being placed on 15 minute drug withdrawal observations. The reference to "15 min D/W Obs" in entry No. 4 may have been mistakenly referred to as "High Risk Obs" in entries Nos. 7 and 8. (See also Findings-in-fact Nos (76), (86) and (99) (infra)).

Whilst the reference is to "High Risk Observations" in entries Nos. 7 and 8 (see Finding-in-Fact No. (71) (supra) appeared ex facie to indicate that Mr Drummond was considered to be at a high risk of committing suicide or self-harm as at July and September, 1998 and whilst that fact would have been discussed with Mr Drummond in the course of his interview there was no particular requirement that a note to that effect should have been recorded by Mr Spencer when completing Form B - section 2.

The fact that Mr Drummond's medical records appear ex facie to indicate that he was considered to be at a high risk of committing suicide or self-harm as at July and September, 1998 would have been one of the factors taken into account by Mr Spencer when making his risk assessment of Mr Drummond on 23 February, 2000. However, other factors would also have been taken into account by him such as Mr Drummond's then current mental state and circumstances and how he viewed his future. An interviewing nurse always had to balance a prisoner's previous circumstances with his current circumstances when making a risk assessment. In particular, the fact that the "ACT" procedure had been invoked in respect of a prisoner on a previous occasion did not necessarily mean that it should be invoked again. The question of whether or not to do so would depend on the whole circumstances of the interview, including the prisoner's past and present circumstances, the responses obtained to the interviewing nurse's questions and the whole general demeanor of the prisoner.

The frequency of "high risk observations" is a minimum of 15 minutes. As at 1998, if a nurse saw an entry (see Finding-in-Fact No. (71) (supra), entry No. 4) which referred to "15 min D/W obs" he might wrongly have assumed that it was referring to a "High Risk Obs" when in fact it was referring to 15 minute drug withdrawal observations which is quite a different thing. As at 1998, if, for example a prisoner was suspected of having swallowed drugs he would have been placed on 15 minute drug withdrawal observations, also known as "Strict Observations" to make sure that he suffered no adverse effects. "Strict Obs" were therefore of the same duration as "High Risk Obs" (ie. 15 minutes). Accordingly the reference in entry No. 4 to "15 min D/W obs" was a reference to "Strict Obs". It is for example, quite possible that the computer referred to Mr Drummond as having been on "15 Minute Obs" while not distinguishing between "Strict Obs" (ie. in respect of drug withdrawal) and "High Risk Obs" (ie. in respect of suicide risk or risk of self-harm). It is therefore possible that the reference to

"High Risk Obs" in entry No. 7 (dated 25 July, 1998) is in fact a mistaken reference to the "15 min D/W obs" referred to in entry No. 4 (dated 18 July, 1998). Further, had Mr Drummond in fact been placed on "High Risk Obs" on 18th (and 22nd?) July, 1998, it could reasonably have been anticipated that the relevant "ACT" documentation including a daily log of the prisoner's progress or otherwise would have been available for the nurse's information on 25 July, 1998, whereas from the entry of that date (ie. entry No. 7) no such documentation appears to have been available (see Notes of Evidence Vol II pp 2262/5 and 2311/4). (See also Findings-in-fact Nos. (73) (supra) and (86) and (99) (infra)).

By reference to Crown Production No. 3, pp 7 and 8 (SPS Physical Care Records relating to Mr Drummond) and entries Nos. 9, 10 and 11 (see Finding-in-Fact No. (71) (supra)), it is apparent that:-

(1) On 6 January, 1999 although Mr Drummond had a history of drug abuse and was an intravenous drug user, he had recently completed a detoxification programme prescribed by his GP and stated that he was fit and well with no thoughts of self-harm;

(2) On admission on 1 July, 1999 he had no medical problems and denied having any drug habit or problems. He also denied having any suicidal ideation and

(3) On 9 July, 1999 he was taken off medical markers (ie. in relation to drug withdrawal symptoms).

Accordingly, whatever may have been Mr Drummond's risk assessment prior to 6 January, 1999 as discussed in his SPS Physical Care Records (see Crown Production No. 3) on 6 January, 1999 and again on 1 July, 1999 he denied any thoughts of self-harm or suicidal ideation.

The first part of the Nurse Risk Assessment - Form B - section 2 relating to Mr Drummond (see Crown Production No. 3, p 10) was completed by Mr Spencer on 23 February, 2000 at the same time as the Re-Admission Interview in relation to Mr Drummond (see Crown Production No. 3, p 5) was completed by his colleague Mr Greenhill (see Findings-in-Fact Nos. (81) to (85) (infra)). Both Mr Spencer and Mr Greenhill were present when each of the said forms was completed.

Mr David Greenhill ("Mr Greenhill") was aged 40. He was an Institutional Nurse. He qualified in 1989 and worked at the Dungavel House Immigration Detention Centre. In February, 2000 he was employed by the Scottish Prison Service as the Clinical Manager in Barlinnie. In that position, he was responsible for setting standards, staffing and generally manning the day-to-day running of the Health Centre on a shift basis. He also took part in carrying out admission procedures in relation to prisoners, which involved an assessment of both their physical and mental health.

Whilst Mr Greenhill did not recall the particular interview with Mr Drummond on 23 February, 2000 he was present when Mr Spencer carried out and completed the Nurse Risk Assessment - Form B, section 2 in relation to Mr Drummond (see Crown Production No. 3, p 10). See also Findings-in-Fact Nos. (65) to (70) (supra).

Mr Greenhill along with Mr Spencer also conducted a "Re-Admission Interview" of Mr Drummond on 23 February, 2000. It was the invariable practice for two nurses to be present at all times during the admission interviews, so that both can make an assessment of the prisoner. Such a practice also facilitates the administration of the admission procedure, whereby one nurse can ask questions whilst the other does the clerking, having medical records and notes relating to the prisoner before him. Accordingly, the presence of two nurses at the admission interview of a prisoner was both for professional and practical purposes.

With reference to the "Re-Admission Interview" of Mr Drummond on 23 February, 2000 (see Finding-in-Fact No. (81) (supra)) as at that date if a prisoner was being admitted to Barlinnie within a year of his last admission, he would receive (in addition to the Reception Risk and Nurse Risk Assessments - Forms B - sections 1 and 2) (see Crown Production No. 3, pp 11 and 10) a Re-Admission Interview. Such an interview was less comprehensive than the full admission interview, the details of which would normally be with the papers.

The Re-Admission Interview Form in relation to Mr Drummond (see Crown Production No. 3, p 5) was divided into quarters each headed as follows:-

(1)Medical History.

(2)Current Medication (Prescribed and Non-Prescribed).

(3)Illicit and

(4)Other Relevant Information (eg. appearance at interview).

In the quarter headed "Medical History" the following ailments were specified:-

(a)Infestations.

(b)Asthmatic.

(c)Diabetes.

(d)Epileptic.

(e)Fits/Black-outs.

(f)Alcohol Problems.

(g)Drug Problem.

(h)Psychiatric History.

(i)Skin Infections.

(j)Allergies:

Type if known.

Opposite each of the above ailments were "Yes" boxes and "No" boxes which required to be ticked as appropriate by the interviewing nurse. So far as infestations were concerned the prisoner would be asked questions or asked for information about whether he had anything which he could possibly pass on to another person such as body lice, scabies or skin infections. He would be asked questions about whether he was asthmatic or diabetic or suffered from epilepsy or fits/black-outs. He would be asked questions about whether he had an alcohol or drug problem and asked to give details of any previous psychiatric history and any concerns which he had about his present psychiatric health. He would also be asked questions about any skin infections, rashes, dermatitis, eczema etc from which he may be suffering and whether or not he had any allergies to particular drugs or medications.

So far as the quarter headed "Medical History" in the Re-Admission Interview form relating to Mr Drummond was concerned, (see Finding-in-Fact No. (83) (supra)) the only "Yes" box which was ticked by Mr Greenhill was opposite the words "Drug Problem". All the other "No" boxes were ticked by him. So far as the quarter headed "Current Medication (Prescribed and Non-Prescribed)" was concerned, Mr Greenhill entered the word "nil", which indicated that Mr Drummond had told him he was not on any prescribed medication. So far as the quarter headed "Illicit" was concerned, that related to non-prescribed drugs such as illicit/illegal and street drugs. In that quarter Mr Greenhill had entered the following:-

"IVDA Heroin £30 - £40/day 2/7 days."

which indicated that Mr Drummond had told him that he abused the drug heroin intravenously; that he spent about £30 - £40 per day on the habit and that he had last taken heroin 2 days prior to his admission to Barlinnie (ie. on Monday, 21 February 2000). In the quarter headed "Other Relevant Information" Mr Greenhill had also entered the word "nil". On completion of the Re-Admission Interview, Mr Greenhill signed the Re-Admission Interview form at the foot of the page (see Crown Production No. 3, p 5).

Mr Greenhill confirmed that he was present when Mr Drummond was interviewed by Mr Spencer on 23 February, 2000 (see Findings-in-Fact Nos. (65) to (70) (supra)). He also agreed with Mr Spencer's assessment that Mr Drummond was at "no apparent risk" (see Nurse Risk Assessment - Form B, section 2) (Crown Production No. 3, p 10). In these circumstances there had been no requirement for the "ACT" procedure to be raised.

By reference to the entries in the SPS Physical Care Records relating to Mr Drummond (see Scottish Prison Service Production No. 1 and Crown Production No. 3, pp 7 and 8), Mr Greenhill confirmed that entry No. 7 dated 25 July, 1998 (see Finding-in-Fact No. (71) (supra)) which refers to Mr Drummond's having been placed on "High Risk Obs" on 22 July, 1998 was in fact referring to entry No. 4, dated 18 July, 1998 where it is narrated that Mr Drummond was placed on "15 minute D/W Obs" (Drug Withdrawal Observations) on that date (see Findings-in-Fact Nos. (73) and (76) (supra)). It is possible that the reference to "High Risk Obs" in entry No. 7 appeared as a result of an incorrect entry in the computer to that effect, when the correct reference should in fact have been to "D/W Obs" in accordance with the terms of entry No. 4 (see also Finding-in-Fact No. (99) (infra)).

The SPS Physical Care Records relating to Mr Drummond (see Scottish Prison Service Production No. 1 and Crown Production No. 3, pp 7 and 8) make no mention whatsoever of Mr Drummond's ever having voiced any suicidal threats or threats of self-harm. There was nothing in these records or from anything which Mr Drummond told either of the interviewing nurses (Mr Spencer and Mr Greenhill) on 23 February, 2000 which should have led them to conclude that Mr Drummond was either an apparent suicide risk or at apparent risk of self-harm. If, after interviewing Mr Drummond and perusing his medical records, Mr Greenhill had considered that he was an apparent suicide risk or at apparent risk of self-harm he would have ticked the "Yes" box in response to the question:- "Have you ever attempted self-harm or suicide?" under the heading "Medical Health Assessment" where it appears in the Nurse Risk Assessment - Form B, section 2 (see Crown Production No. 3, p 10).

Prisoners often tell nurses if they are para-suicidal. Signs of such a condition include self-cuts or scars on arms. Frequently, however, scars are as a result of injuries received during fights. From the terms of the SPS Physical Care Records (see Scottish Prison Service Production No. 1 and Crown Production No. 3, pp 7 and 8) and the records of Mr Drummond's initial interviews on admission (see Crown Production No. 3 pp 5, 10 and 11) there is no indication that Mr Drummond was para-suicidal. Had there been such an indication Mr Greenhill would have noted it. In the course of the next 24 hours, Mr Drummond was again independently assessed by Dr Dominic Gonzalez (see Findings-in-Fact Nos. (93) to (103) and (109) (infra)).

Mr Greenhill again had contact with Mr Drummond in Barlinnie on 1 March, 2000. He had started his morning duty in the Health Centre at 6.15 am on that date. At 6.30 am he heard the emergency telephone ring in the Health Centre. It had a distinctive tone to it. It was a lady practice nurse, a Ms Alex Bowie who had alerted the staff to the fact that there had been a "Code 1", ie. a medical emergency, regarding a hanging in "C" Hall. On receiving this information Mr Greenhill immediately grabbed what was known as an "ambu" or ambulance bag, which was an oxygen reservoir bag with a face-mask used for administering ventilation to a patient. As at March, 2000, there was a "crash team" approach to emergencies at Barlinnie. Within each Hall at the Nurses' Station, there was suction and oxygen equipment to limit the amount of equipment which required to be carried over from the Health Centre to a Hall in the event of a "Code 1" emergency. "C" Hall was just across from the Health Centre. There were two defibrillators available at the time, one kept in the Health Centre and

the other in the upstairs ward. Mr Greenhill took both the defibrillator and his "ambu" bag with him over from the Health Centre to "C" Hall.

Mr Greenhill arrived at "C" Hall about one minute after he had received the "Code 1 " emergency telephone call at the Health Centre (ie. at about 6.31 am) (see Finding-in-Fact No. (89) (supra)). He was immediately directed to Cell No. 2/21. On entering the Cell, he saw Mr Drummond lying on the bed under the barred windows with his head facing towards the left of the Cell (see Crown Production No. 1, photograph F). When Mr Greenhill arrived in the Cell, he was told that somebody (ie. Mr Drummond) had hanged himself. By that time Mr Drummond's body had been cut down and a nurse, a Ms Lesley Penders, was carrying out mouth-to-mouth resuscitation and CPR. (See Finding-in-Fact No. (19) (supra)). Two Prison Officers were also present in the Cell. The ambulance bag was connected to the oxygen and Nurse Penders attempted to ventilate Mr Drummond. Mr Greenhill connected Mr Drummond to the defibrillator at which point Nurse Penders started the cardiac compressions. Mr Greenhill then carried out an examination of Mr Drummond. He was unable to detect any pulse. Mr Drummond did not appear to be breathing; his pupils were fixed and dilated and were unresponsive to light; his body was cold to touch. The defibrillator did not register any cardiac output or electrical activity in the heart. Mr Drummond showed no signs of life. Despite that fact, CPR continued from about 6.30 am until the arrival of the paramedics just after 7.00 am. The paramedics then connected Mr Drummond to their machinery and attempted to intubate him. One of the paramedics advised Mr Greenhill that he thought Mr Drummond had been dead for about 4 or 5 hours. From Mr Greenhill's examination of Mr Drummond, he also thought that Mr Drummond had been dead "for quite some time" (see Notes of Evidence, Vol II, p 2692/3). The general conclusion reached by all of those present in the Cell was that the situation "was beyond hope basically" (see Notes of Evidence, Vol II, p 2692/5).

Depending on how many staff were available or whether or not he was "covering for" anyone Mr Greenhill would carry out as many as 60 Admission Interviews at Barlinnie in one day. Of the 60 interviews, as many as 80 per cent could in fact be in respect of Re-Admissions. Of that 80 per cent, a proportion would previously in the course of their time spent in Barlinnie have been placed on an observational régime of some kind. Such an observational régime could have been on account of a variety of circumstances, such as drug withdrawal, suicide risk, alcohol problems, the nature of the charges faced or the family situation outside. Depending on the circumstances, prisoners sometimes got depressed and then made a full recovery. Prisoners often changed quite dramatically from one admission to the next. In particular, a prisoner on re-admission would not necessarily be assessed as a suicide risk because he had been assessed as such in the past. Whilst it would be a factor which would be taken into consideration, it would not automatically follow that he be put on observations or assessed as an apparent risk.

(92)Mr Greenhill did not remember at the point when he visited Mr Drummond's Cell on 1 March, 2000 and was trying to resuscitate him that he had in fact interviewed him the week before on 23 February, 2000 at the "Re-Admission Interview" (see Findings-in-Fact Nos. (81) to (84) (supra)). It was Mr Spencer who reminded Mr Greenhill that he had interviewed Mr Drummond the week before. Mr Greenhill was surprised that Mr Drummond had taken his own life because at the interview on 23 February, 2000 he had given no indication that he was a suicide risk.

Dr Dominic Gonzalez ("Dr Gonzalez") was 37 years of age. As at June, 2000 he was more or less a full-time Occupational Physician who very occasionally worked as a locum General

Practitioner. His qualifications were MB, ChB., D Occ Med. As at February, 2000 he had worked with the Scottish Prison Service since about October, 1998. He ceased working with them in January, 2002. When he worked with the Scottish Prison Service he did six sessions per week and one evening a week on-call as well as a share of the weekend rota.

On 24 February, 2000 Dr Gonzalez examined Mr Drummond in Barlinnie (ie. within 24 hours of his admission there). He completed his risk assessment of Mr Drummond at 11.05 on that date, and signed the Doctor's Risk Assessment part of the Nurse Risk Assessment - Form B, section 2 at that time (see Crown Production No. 3, p 10). In this connection he also concluded that Mr Drummond was at no apparent risk and ticked the appropriate box to that effect.

Dr Gonzalez's examination of Mr Drummond on 24 February, 2000 (see Finding-in-Fact No. (94) (supra)) was a routine admission assessment. At that time, he discovered from Mr Drummond that he was an intravenous drug user who used an average of about £40 worth of heroin per day and that he had last used heroin 2 days prior to his admission. Mr Drummond denied a history of alcohol problems and denied a history of suicidal intent or past history of suicide. His past medical history indicated that he had had skin abscesses and possible haematuria (ie. blood in the urine). In addition, he denied any psychiatric history or any involvement with psychiatrists and was not on any medication on his admission. Dr Gonzalez also knew that Mr Drummond expected to be in prison for approximately 3 weeks and that he was in a fit condition to be transferred if that was necessary.

Also on 24 February, 2000 Dr Gonzalez completed the SPS Physical Care Records relating to Mr Drummond (see Crown Production No. 3, p 8) and adhibited a stamp which specified various matters which required to be highlighted by reference to ticking the appropriate "Yes" or "No" boxes if the relevant information was to hand. So far as the contents of the stamp were concerned, going down the left-hand side in sequence it referred to the prisoner's drug history, alcohol history and history of suicidal or suicidal intent. At the bottom left-hand corner of the stamp, there were boxes referring inter alia to whether the prisoner was considered fit or unfit for transfer. The "Yes" box was circled in relation to drugs and the "No" boxes were circled in relation to alcohol and suicidal. So far as the suicidal position was concerned that usually prompted two questions from Dr Gonzalez, viz:-

(1)whether there was a past history of suicide attempts; and

(2)whether the prisoner was feeling suicidal at the time.

Any affirmative response in that connection usually prompted some sort of written annotation on the records by Dr Gonzalez. In relation to the fitness or otherwise for transfer criteria the "Fit" box had been ticked. The right-hand side of the stamp, going down in sequence, referred to the prisoner's previous medical history, previous psychiatric history and whether or not he was on any medication on his admission. The "Yes" box was circled in relation to previous medical history and the "No" box was circled in relation to previous psychiatric history and medication. So far as Mr Drummond's previous medical history was concerned, he told Dr Gonzalez that he had had skin abscesses. This was not unusual for an intravenous drug user. He also told Dr Gonzalez about the possibility of blood in his urine. Dr Gonzalez passed this information on to another member of staff to enable a urine assessment of Mr Drummond to be carried out.

Subsequent to Dr Gonzalez' examination and assessment of Mr Drummond on 24 February, 2000 (see Findings-in-Fact Nos. (94) and (96) (supra)), he then prescribed for Mr Drummond what was the routine detoxification régime used in Barlinnie at that time. This consisted of the sedative librium, used on a gradually reducing dosage. On that occasion, Mr Drummond was prescribed a 2 week course of reducing medication to treat his withdrawal symptoms. The first week was chlordiazepoxide (ie librium) at 50 mg twice per day. This is referred to in the Drug Prescription Sheet completed by Dr Gonzalez in relation to Mr Drummond (see Crown Production No. 3, SPS Physical Care Records, p 37) and also below the stamp (dated 24 February, 2000) adhibited at the end of Mr Drummond's SPS Physical Care Records. In this connection Dr Gonzalez also noted (in shorthand) the cocktail of three medications which were prescribed to Mr Drummond to treat any of the following drug withdrawal symptoms, viz:-

(1)Colofac or Mebeverine - to treat stomach cramps.

(2)Loperamide - to treat diahorreah.

(3)Ibuprofen - to treat muscular spasms or pain.

(See Crown Production No. 3, p 8 and Finding-in-Fact No. (96) (supra)). All of the above were prescribed to Mr Drummond from the first week, ie. from 24 February, 2000. In addition, although Mr Drummond did not suffer from Hepatitis B, Dr Gonzalez ensured that he had a repeat course of Hepatitis B vaccination. At the time it was the policy to encourage prisoners to take up Hepatitis B vaccinations. This was designed to be a preventative measure, the intention being that after a course of two or three vaccinations the prisoner would develop some (hopefully long lasting) immunity if repeat boosters were given.

If a prisoner is admitted to Barlinnie and found to be a suicide risk an "ACT" form is raised and the Healthcare staff informed (see CPS Health Safety Records in relation to Mr Drummond, Crown Production No. 3 - p 10 (Nurse Risk Assessment - Form B, section2)). This involves the supervision and monitoring of the prisoner's mental state. If the prisoner is deemed to be a particular risk, he can be put on High Observations. Observations can range from Continuous Observations down to an Observation every 60 minutes. If there is any concern about the prisoner, he can be transferred to the Health Centre or he can be kept in the prison wing on the lower floors where he can be monitored more closely by the Prison Officers. This system has been in operation for some years. Dr Gonzalez did not consider that there was any risk of Mr Drummond's being suicidal as at 24 February, 2000. Dr Gonzalez essentially confirmed the operation of the "ACT" procedure as spoken to in detail by Mr Hainey, Mr Spencer and Mr Greenhill (see Findings-in-Fact Nos. (40) to (50), (55) to (57), (64) to (75), and (78) to (87), (supra)). In particular, he confirmed that the "ACT" procedure in relation to the care of a prisoner involves the keeping of separate documentation which is filled out by the appropriate members of staff and used to ensure that a multi-disciplinary approach is given to the monitoring of a prisoner considered to be a suicide risk.

From Dr Gonzalez' reading of the SPS Physical Care Records in relation to Mr Drummond (see Crown Production No. 3, pp 6 and 7) Mr Drummond was admitted from HM YOI Polmont ("Polmont") from Barlinnie on 25 July, 1998. He considered that Mr Drummond had been admitted to Barlinnie 3 days earlier ie. on 22 July, 1998 when he was placed on "High Risk" observations. Thereafter, he appears to have been released from Barlinnie on 23 July, 1998 and re-admitted on 24 July, 1998 where it is noted that he was at no apparent risk. He then appears to have been transferred from Barlinnie to Polmont on 25 July, 1998 with a release date of 27 July, 1998. It accordingly appears from the terms of Crown Production No. 3, pp 6 and 7 that Mr Drummond was on High Risk observations for one day only, ie. 22 July, 1998 and that he was released from Barlinnie either on that date or on the following date. However, whilst there is contained in the SPS Physical Care Records in relation to Mr Drummond (see Crown Production No. 3) "Admission Documentation" in relation to his admission to:-

(1) Barlinnie on 15 July, 1998 (see Crown Production No. 3, p 26).

(2) Longriggend Remand Unit on 16 July, 1998 (see Crown Production No. 3, p 28).

(3) Barlinnie on 24 July, 1998 (see Crown Production No. 3, pp 24 and 25) and

(4) Polmont Young Offenders' Institution on 25 July, 1998 (see Crown Production No. 3, pp 22 and 23), there is a gap or confusion in the SPS Physical Care Records for the period from 16 to 24 July, 1998. At that time it sometimes happened particularly in relation to Young Offenders that a prisoner such as Mr Drummond was admitted to one institution and before seeing a doctor there transferred to another institution. In these circumstances it is possible either that any "Admission Documentation" covering that period did not find its way back to the SPS Physical Care Records in relation to Mr Drummond (see Crown Production No. 3) or that the references to Mr Drummond's being admitted to some sort of institution on 22 July, 1998 when he was allegedly placed on the "High Risk Obs", was an error. In any event, in view of the fact that Mr Drummond appeared to prefer to do without medication on 20 July, 1998 it would have been very unlikely for him suddenly to develop drug withdrawal symptoms within 2 days (ie. by 22 July, 1998) sufficient to cause him to be placed on "High Risk Obs" (see Scottish Prison Service Production No. 1; Crown Production No. 3 p 7 and Finding-in-Fact No. (71), items 5 and 7) (supra)). (See also Findings-in-Fact Nos. (73), (76), (86) and (99) (supra)).

From Dr Gonzalez' observations of Mr Drummond and from his reading of the SPS Physical Care Records in relation to him (see Crown Production No. 3) he was at no apparent risk of suicide. There were no continuing admissions or record to suggest that Mr Drummond had a long-standing history of suicidal problems. Indeed, throughout Mr Drummond's Physical Care Records there were frequent references to no suicidal risk or suicide attempts; no psychiatric history and no problems with drink. Prisoners are often quite forthcoming and very rarely secretive about such matters because most of them understand the nature of the questioning and why it is done.

On account of the number of prisoners seen by Dr Gonzalez during his time at Barlinnie it became fairly easy for him to spot a prisoner who was perhaps not being 100 per cent

forthcoming with how he was feeling. In addition, he would have the Reception Officer's Assessment as well as the Nursing staffs' subsequent assessments to help him to ascertain if there had been any change in the prisoner's condition from any previous time when he had been admitted to prison.

The withdrawal symptoms for a person coming off Diamorphine (heroin) can be quite profound or they can be minimal. It depends on the individual. There is always the question of whether or not a person is telling the truth about how much he uses. For intravenous drug users, £40 worth of heroin per day is a fairly stable level. The majority of symptoms which one would expect to see are physical, such as shivers, changes in skin colour and goosepimples. As the symptoms become more serious one might expect to see shaking, abdominal pains, muscle pain and diarrhoea. For precisely these reasons the medications specified in Finding-in-Fact No. (97) (supra) were prescribed by Dr Gonzalez to Mr Drummond on 24 February, 2000.

A fairly acute state of heroin withdrawal can be indicated when a person's skin starts to change colour or when he begins to sweat heavily. If medication such as librium is prescribed to such a person then symptoms of heavy sweating are normally alleviated within one or two days. As narrated in Finding-in-Fact No. (97) (supra) Mr Drummond was prescribed librium by Dr Gonzalez on 24 February, 2000 following upon his admission to Barlinnie the previous day "Rattling" refers to the worst stages of drug withdrawal symptoms. It is a very commonly used word and does not really refer to any specific symptom. It is relatively simple to examine someone to see if he is going through significant withdrawals, and there are various ways of doing so. Many prisoners who go through bad withdrawal symptoms tend to be "rattling". The visibility of withdrawal symptoms or any distress suffered by a prisoner is generally more apparent in the first few days following upon his admission in prison. If a prisoner is placed on "High Risk" immediately upon his admission, he is frequently taken off quite quickly once he has settled in and feels safer. Dr Gonzalez had no contact with Mr Drummond after 24th February, 2000.

On admission to prison, a prisoner is asked if he has ever felt suicidal or tried to commit suicide as well as how he is feeling at the particular time. In these circumstances, he is given every opportunity to express any anxieties or concerns which he may have. If, as was the case with Mr Drummond he was placed on a Detoxification Programme and given his "detox" medication on a twice daily basis, he was accordingly in contact with the nurse(s) who administer that medication on a twice daily basis. In these circumstances not only was he in a position to raise any concerns which he may have had with the nurses on a twice daily basis but they in turn would also have had an opportunity to observe him on a twice daily basis. In addition, it would always have been open to Mr Drummond to voice any concerns which he may have had with any of the Prison Officers, who would also of course have had an opportunity to observe him on a daily basis. If any member of staff (apart from a doctor or a nurse) such as a Prison Officer or a Supervisor had had any concerns at any time with regard to Mr Drummond's being a suicidal risk or at risk of self-harm then the "ACT" procedure could have been immediately instituted.

A large number of prisoners who are admitted to prison are either on or are coming off drugs. In these circumstances, they are often in a distressed condition and have difficulty in coping with that situation. However, admission to prison can also, for a variety of reasons be a distressing experience for someone who does not take drugs. Accordingly, while some prisoners who are coming off drugs commit suicide on account of the distress they are suffering, others commit suicide for a multitude of other reasons, totally unconnected with drug abuse, such as the prison situation itself or personal matters. A person who can appear

"fine" to his family and friends can yet go on to commit suicide following upon his admission to prison.

It would be a matter of concern if a prisoner, such as Mr Drummond, had shouted from his Cell that he could not cope and was becoming distressed. In these circumstances, the nursing staff and occasionally the medical staff would normally become involved. It would also be a matter of concern if a Prison Officer, in such circumstances had simply told the prisoner "Get your fucking head down." etc and gave him no assistance.

It would be a matter of concern if a prisoner such as Mr Drummond had been suffering from acute withdrawal symptoms (ie. "rattling") (see Finding-in-Fact No. (103) (supra)) and being distressed and heavily sweating had been refused assistance having first requested it. It would further be a matter of concern if a prisoner in these circumstances, having been left alone in his cell for several hours at the beginning of the night had been intimidated by a Prison Officer. Whether or not such a scenario would lead to a suicide situation would very much depend on the prisoner's particular situation and circumstances at the time and other peripheral factors. Whilst, in the case of a suicide it is a matter which would require to be looked at very seriously, it is another matter to conclude that there had been a direct link between the above scenario and any subsequent suicide.

Most prisoners who are admitted to Barlinnie know the system and have been there a number of times before, as was the case with Mr Drummond. In these circumstances they are aware of how things operate and what medication is available for drug withdrawal symptoms. They are probably also well aware of the "ACT" procedure because of what they see in relation to some of their fellow prisoners being in a distressed state.

The medication prescribed by Dr Gonzalez to Mr Drummond on 24 February, 2000 (see Finding-in-Fact No. (97) (supra)) could reasonably have been expected to alleviate the worst effects of the "rattling" process (see Finding-in-Fact No. (103) (supra)). In this connection, prisoners such as Mr Drummond very often present themselves to the nursing staff almost immediately if they find that the medication which has been prescribed to them fails to alleviate their symptoms. There is no note to that effect in relation to Mr Drummond who appears to have presented himself to the nurses on a twice daily basis to receive his prescribed medication.

Nurses in Barlinnie are trained and know that they are dealing with prisoners, some of whom are withdrawing from drugs. They are alert to any ill effects from which a prisoner may be suffering and are usually extremely good at identifying prisoners who are having problems. In these circumstances, if a prisoner such as Mr Drummond had been visibly suffering from severe drug withdrawal symptoms such as distress or shaking one could reasonably have expected that such symptoms would have been "picked up" by the nurses on Mr Drummond's twice daily visits to them. In view of the fact that the SPS Physical Care Records in relation to Mr Drummond (see Crown Production No. 3) contain no entries disclosing any such symptoms following upon his admission to Barlinnie on 23rd February, 2000 it can reasonably be assumed that the medication which he was receiving was sufficient.

Notwithstanding the fact that a prisoner may be being prescribed medication at Barlinnie in relation to drug withdrawal symptoms such a prisoner can sometimes obtain drugs, such as heroin from other prisoners. In these circumstances, if such a prisoner is seen to be under the influence of drugs and knowing the effects which the prescribed medication can have, the prescribed medication is withdrawn from the prisoner until such times as he is assessed by a doctor as being fit to resume his prescribed (detox) medication. In these circumstances

if a prisoner appears, for example to be over-sedated or under the influence of drugs, then the prescribed medication would be discontinued at that stage and the prisoner would be put on strict observations ("Strict Obs").

"Strict Obs" entails that a prisoner is kept in a separate Cell and observed by Prison Officers on a more regular basis and assessed by a nurse and subsequently by a doctor. Once it has been established that there is no over-sedation or adverse drug effects the prisoner can be allowed to resume his prescribed medication. Illegal drugs are sometimes passed on to prisoners in Barlinnie by relatives. In these circumstances a careful watch has to be maintained.

If a prisoner, such as Mr Drummond was admitted to Barlinnie and assessed as having a drug problem and prescribed the appropriate "detox" medication one would not expect such a prisoner to be "rattling" or showing acute heroin withdrawal symptoms 6 or 7 days following upon his admission (see Finding-in-Fact No. (103) (supra)). A prisoner who has been placed on a "detox" régime in Barlinnie, sees the nurse twice daily in order to receive his prescribed medication twice daily. The times at which the nurse come around vary from Hall to Hall. It is usually around 7.00 am and again at 3.00 pm or 4.00 pm.

In view of the fact that such a large proportion of prisoners who are admitted to Barlinnie have been using illegal drugs, drug withdrawal observations are as such no longer normally maintained. The main concern now is one of suicide risk on the basis that if a prisoner is, on admission significantly under the influence of drugs or is suffering distress then he may be a potential suicide risk, even although he does not specifically admit to being such.

Page 37 of the SPS Physical Care Records in relation to Mr Drummond (see Crown Production No. 3) sets out the medication which it was anticipated would be prescribed to Mr Drummond in Barlinnie over a 2 week period, viz from 24th February, 2000 to 9th March, 2000. Page 37 in effect narrates the advance prescription in relation to Mr Drummond over a 2 week period. The letter "A" represented chlordiazepoxide or librium (used as a sedative). This was to be administered from 24th February, 2000 (under the column headed "Commence") to 2nd March, 2000 (under the column headed "Stop Date") at a dosage of 50 mg to be taken twice per day, viz: once in the morning and once in the afternoon (under the column headed "Times of Administration - am and pm"). The letter "S" (under the column headed "Issued") indicates that Mr Drummond was to be supervised or observed whilst taking that medication. The letter "B" again represented chlordiazepoxide or librium. This was to be administered from 2nd March, 2000 to 9th March, 2000 at a reduced dosage rate of 25 mg also to be taken twice per day, viz: once in the morning and once in the afternoon, again to be supervised or observed. The letter "C" represented loperamide (used to treat diarrhoea). This was also to be administered from 24th February, 2000 to 2nd March, 2000 at a dosage of 2 mg to be taken three times per day, viz: once in the morning, once at noon and once in the afternoon. The letter "D" represented mebeverine (or colofac) (used to treat stomach cramps). This was also to be administered from 24th February, 2000 to 2nd March, 2000 at a dosage of 135 mg to be taken three times per day viz: once in the morning, once at noon and once in the afternoon. The letter "E" represented ibuprofen (used to treat muscular spasms or pains). This was also to be administered from 24th February, 2000 to 2nd March, 2000 at a dosage of 400 mg to be taken three times per day, viz: once in the morning, once at noon and once in the afternoon. The letter "D" (under the column headed "Issued") indicates that Mr Drummond received all of loperamide ("C"), mebeverine, ("D") and ibuprofen ("E") on a daily basis. In these circumstances it was anticipated that medications "C", "D" and "E" would have been issued to Mr Drummond between 24 and 29 February, 2000 on a daily basis, whenever he presented himself to the nurse for his

supervised daily dosage of chlordiazepoxide (librium). After the first week of said prescribed medications a prisoner would not be expected to display any significant symptoms of drug withdrawal. In these circumstances, it was anticipated that the 50 mg dosage of chlordiazepoxide ("A"), the 2 mg dosage of loperamide ("C"), the 135 mg dosage of mebeverine ("D") and the 400 mg dosage of ibuprofen ("E") would have been discontinued on 2nd March, 2000.

Page 36 of the SPS Physical Care Records in relation to Mr Drummond (see Crown Production No. 3) records by reference to the prescribed drugs "A", "B", "C", "D", and "E" (see Finding-in-Fact No. (115) (supra)), the actual medication received by Mr Drummond between 24 February, 2000 and 29 February, 2000 and the approximate times of day (by reference to "am" and "pm") when the said medication was administered to him. "Am" is likely to have meant round about 7.00 am and "pm" is likely to have meant round about 4.00 pm. In the afternoon of 24 February, 2000 Mr Drummond received medication "A" (chlordiazepoxide/librium) and medication "D" (mebeverine). In the morning of 25 February, 2000 he again received medication "A" (chlordiazepoxide/librium) and medication "D" (mebeverine). Under the column marked "pm" for 25 February, 2000 have been written the letters "NRFC" which indicates that Mr Drummond had not been returned from Court ie. that he was not in Barlinnie at that time. Prisoners who require to attend Court can also be administered prescribed drugs as and when necessary by qualified members of the Court staff. In the "Comment" column for 25 February, 2000 are written the letters: "'D' - 'DI'" which indicates that Mr Drummond was supplied with a "Day's Issue" of medication "D" (mebeverine) on that date. In the morning of 26 February, 2000 he again received medication "A" (chlordiazepoxide/librium) but does not appear to have received any medication either in the afternoon of 26 February, 2000 or in the morning of 27 February, 2000. However, in the afternoon of 27 February, 2000 he again received medication "A" (chlordiazepoxide/librium) together with medication "E" (ibuprofen). In this connection, prisoners sometimes complain of suffering from diarrhoea or stomach cramps or physical pain in response to which they are given the appropriate medication by the nurses for the particular symptom. So far as medications "C" (loperamide), "D" (mebeverine) and "E" (ibuprofen) were concerned, under the column headed "Times of Administration" at p 37 of the SPS Physical Care Records in relation to Mr Drummond (see Crown Production No. 3) were written the letters "PRN" which indicated that the three medications were only to be given to Mr Drummond as and when necessary. The three ticks opposite the said three medications under the columns headed "am", "noon" and "pm" indicated that Mr Drummond was to be given each of the said three medications three times a day, but only as and when necessary.

Mr Drummond did not require to receive any of medications "C" (loperamide), "D" (mebeverine) or "E" (ibuprofen) on either of the 2 days (viz: 28 and 29 February, 2000) immediately prior to his death. As narrated in Finding-in-Fact No. (97) (supra) said three medications were designed to combat the physical effects of withdrawal from drugs (eg heroin). However, as narrated in Finding-in-Fact No. (116) (supra) said three medications were only to be given to Mr Drummond "as and when necessary". Prisoners were aware that they could ask for any of said medications if they displayed any (further) appropriate symptoms. Accordingly, from the fact that Mr Drummond did not receive any of the said three medications on the two days immediately prior to his death and on the basis that he would have been aware that he could have requested any of them had he displayed any of the relevant symptoms, it can reasonably be assumed not only that he made no such request but also that he was not suffering from or displaying any of the relevant symptoms. In this connection, Mr Drummond had been given medication "D" (mebeverine) in the morning of 25 February, 2000 and medication "E" (ibuprofen) in the afternoon of 27

February, 2000. (See p 36 of SPS Physical Care Records in relation to Mr Drummond) (Crown Production No. 3).

Medication "A" (chlordiazepoxide/librium) is a sedative. The "as and when necessary" medications, viz: medications "C" (loperamide) (used to treat diarrhoea), "D" (mebeverine) (used to treat stomach cramps) and "E" (ibuprofen) (used to treat muscular spasms or pains) are prescribed purely as an additional aid to alleviate any other symptoms which prisoners may suffer from when they are withdrawing from drug abuse. The said "as and when necessary" medications are issued purely as a precaution. In this connection, some persons, albeit they are suffering from general drug withdrawal symptoms do not suffer from diarrhoea or experience either stomach cramps or muscular spasms or pains. Such prisoners may simply feel unwell, requiring only a sedative such as librium as medication. Other prisoners, in addition to being prescribed such a sedative may also require any or all of the said "as and when necessary" medications depending upon from which of the said other drug withdrawal symptoms they may be suffering.

Some prisoners require to take the prescribed medication for drug withdrawal symptoms for the whole of the first week whereas others only require to take it for the first few days when the withdrawal symptoms are usually at their worst. Whilst it is possible that a prisoner who had been prescribed medication "A" (chlordiazepoxide/librium) only, could still suffer drug withdrawal symptoms the "as and when necessary medications" (see Finding-in-Fact No. (118) (supra)) are also prescribed or made available to prisoners for a week after they commence their detoxification treatment to alleviate any other symptoms from which they may be suffering in relation to their drug withdrawal. So far as Mr Drummond was concerned, he saw a nurse every day he was in Barlinnie from his admission on 23 February, 2000 until 29 February, 2000. Further, he received prescribed medication on a daily basis between 24 February, 2000 until 29 February, 2000 in accordance with the detoxification programme devised for him by Dr Gonzalez (see Findings-in-Fact Nos. (97), (115) and (116) (supra)).

Crown Production No. 6 is the Toxicology Report in relation to Mr Drummond dated 5 April, 2000 produced by Dr John S Oliver, BSc Phd, C Chem, FRSC, Senior Lecturer in Forensic Medicine (Toxicology) at the University of Glasgow. The report is in the following terms:-

"Acting on the instructions of John J Miller, Interim Procurator Fiscal, Deaths and Complaints Unit, 10 Ballater Street, Glasgow G5 9PS I the undersigned received on 8 March, 2000 a sample of blood labelled 'James Drummond' from Dr Ravindra Fernando, Senior Lecturer and Consultant Forensic Pathologist, MBBS, MD, FCCP, FRCP, FRC Path, DM J, The Department of Forensic Medicine and Science, The University of Glasgow.

The blood sample was analysed for acidic drugs, alcohol, amphetamines, basic drugs, benzodiazepine drugs, buprenorphine, cannabinoids, cocaine, lsd, methadone, opiate drugs, paracetamol and solvents.

The results obtained are as follows:-

1.15 mg of alcohol per 100 millilitres of blood.

2.0.4 mg of Chlordiazepoxide per litre of blood.

3.0.1 mg of Desmethylenediazepam per litre of blood.

4.All other analyses gave NEGATIVE results.

Sgd John S Oliver."

With reference to Dr Oliver's Toxicology Report dated 5 April, 2000 (see Crown Production No. 6 and Finding-in-Fact No. (120) (supra)), Dr Gonzalez was surprised at the reading of 15 mg of alcohol per 100 millilitres of blood. In this connection, however, as prisoners in Barlinnie can produce their own illegal alcohol (colloquially known as "hooch") by placing fruit, sugar and yeast in a plastic bag and leaving it somewhere warm, this could have been the source of the alcohol/blood level reading found in Mr Drummond. So far as the reading of 0.4 mg of chlordiazepoxide (librium) per litre of blood was concerned, this confirmed that Mr Drummond had been receiving this drug as part of his prescribed medication at the time of his death (see Finding-in-Fact No. (116) (supra)). So far as the 0.1 mg of Desmethylenediazepam per litre of blood was concerned, Desmethyldiazepam is a breakdown product of Diazepam otherwise known as Valium. It had not been prescribed to Mr Drummond and was not available on prescription in Barlinnie at that time (ie. February/March 2000). It could however have been obtained by him through connections within the prison. It is a drug which is also a sedative similar to the chlordiazepoxide (librium) which had been prescribed. It can also be used to combat the effects of withdrawing from heroin.

PC David Billingham ("PC Billingham") was 28 years of age. He was a Police Officer with Strathclyde Police, stationed at Easterhouse Police Office. He had just over 4 years' police service. On 1 March, 2000 he was on uniform mobile patrol along with his colleague PC James Young. At 6.40 am on said date he received a radio call to go to Barlinnie in relation to a prisoner (ie. Mr Drummond) who had apparently hanged himself in his Cell. He immediately went to Barlinnie when he was directed to "C" Hall. On arrival at "C" Hall he was met by Prison Officer Smith (see Finding-in-Fact No. (9) (supra)) who advised him that Mr Drummond had been found hanging within Cell No. 2/21 in "C" Hall. PC Billingham went to Cell No. 2/21 where he found medical staff from the Health Centre in Barlinnie administering First Aid to Mr Drummond. At that time Mr Drummond's eyes were open and in a fixed state. He was bluish in colour and had a deep ligature mark on his neck (see Crown Production No. 1, photographs F, H and J). The paramedics attended shortly thereafter. There were no signs of life. PC Billingham radioed his controller and asked for the supervisor CID to attend along with a police casualty surgeon. PC Billingham, together with PC Young took statements from the witnesses who had discovered Mr Drummond and PC Young took details of Mr Drummond. PC Billingham was present when Dr Ashis Banerjee, Police Casualty Surgeon, care of Baird Street Police Office, Glasgow attended and pronounced life extinct at approximately 9.00 am (see Findings-in-Fact Nos. (128) and (129) (infra)).

PC Billingham, along with other officers made a search of Cell No. 2/21 after Mr Paul Anderson, Scenes of Crime Officer, Strathclyde Police, took 10 photographs showing various views of the Cell and of Mr Drummond (see Crown Production No. 1 and Finding-in-

Fact No. (128) (infra)). On the desk shown in photograph C, PC Billingham found a lined piece of A4 paper with writing on both sides. On one side were written the words:-

"I'M SORRY

I LET YOU

DOWN MA"

On the other side were written the words:-

I'M SORRY

I LET YOU

MA".

The words "I'm sorry I let you Ma" appear to have been scored out (see also Crown Production No. 1, photograph C and Crown Production No. 7).

PC Billingham also found within Cell No. 2/21 another lined piece of A4 paper on which the following words were written:-

"MA I'M

SORRY

FOR EVERY

THING"

He was however, unable to recall where exactly in the Cell this second piece of paper was found (see Crown Production No. 8).

A third lined piece of paper (not A4) was also found within Cell No. 2/21. Said piece of paper appeared to have originally been part of a single sheet of paper and appeared to have been

torn from top to bottom, leaving only the left-hand side of the sheet. The following words and letters were written on said left-hand side of the sheet:-

"MA I'M SO

YOU'RE THE BE

COULD HOPE

DID WAS TAK

OF THAT AND

BACK AND

OFF WITHOUT" (see Crown Production No. 9).

PC Billingham did not know where exactly within Cell No. 2/21 said left-hand side of the sheet was found. The corresponding right-hand side of the sheet was missing.

The following items were also found within Cell No. 2/21:-

1. Shoelaces (lying on mattress (see Crown Production No. 1, photographs B and E).

2. Shoelaces tied around the bars of the Cell window (see Crown Production No. 1, photographs G and F).

The shoelaces found on the mattress and tied around the bars of the Cell window were of the same type.

When PC Billingham entered Cell No. 2/21, Mr Drummond's body was lying in the position shown in photograph F of Crown Production No. 1 (see also photographs H and I). Mr Drummond was not bleeding and PC Billingham did not notice any blood or blood stains anywhere in the Cell. In particular, so far as the more concentrated stain mark on the Cell floor, immediately to the left of the bed shown in photograph B was concerned, PC Billingham did not recall seeing that at the time. In his opinion however it looked like some sort of wet or liquid stain which had subsequently dried in. So far as the little blobs of dark stain marks shown on the Cell floor to the left of the said concentrated stain mark were

concerned, PC Billingham also did not recall seeing them. However, in his opinion they looked like dried paint type staining.

The following Joint Minute of Agreement was entered into by: (1) Mr Henderson, Procurator Fiscal Depute for the Crown; (2) Ms S Lyle, Solicitor for the Scottish Prison Service and (3) Mr E Mowatt, Solicitor for the Scottish Prison Officers' Association;

"1.PRO No. 1 is a book of photographs and comprises of 10 photographs which were taken by Paul Anderson, Scene of Crime Officer, Strathclyde Police on 1 March, 2000 at "C" Hall, Barlinnie Prison, Glasgow. The photographs are true and accurate views of Cell No. 21 within "C" Hall and show various views of the Cell and of the now deceased James Taylor McLaren Drummond.

2.At approximately 8.30 am on 1 March 2000 Dr Ashis Banerjee, Police Casualty Surgeon, care of Baird Street Police Officer, Glasgow attended at Cell No. 21, "C" Hall, Barlinnie Prison, Glasgow where he examined the body of the now deceased James Taylor McLaren Drummond. On examination Dr Banerjee found rigor mortis to be well established and saw no signs of any other injury. He pronounced life to be extinct at approximately 9.00 am. PRO No. 4 is Dr Banerjee's examination report.

3.PRO No. 5 is the Post Mortem report of Dr Ravindra Fernando, Senior Lecturer and Consultant Forensic Pathologist, formerly of the Department of Forensic Medicine and Science, the University of Glasgow, Glasgow and is a true and accurate account of his post mortem examination of the now deceased James Taylor McLaren Drummond, which he performed on 8 March, 2000. Dr Fernando's conclusion was that the cause of death was hanging.

(See Findings-in-Fact Nos. (129) and (130) (infra)).

Dr Ashis Banerjee 's Police Surgeon's Examination Report, dated 1 March, 2000 (see Crown Production No. 4 and Finding-in-Fact No. (128) (supra)) is in the following terms:-

"Body of a man is on a bed in supine position. Ligature round the neck using shoelaces. Body bulky clothed. Rigor mortis well established.

No sign of any other injury.

Body to mortuary.

Sgd. Dr Banerjee."

Dr Ravindra Fernandez's Post Mortem Report dated 14 March, 2000 (see Crown Production No. 5 and Finding-in-Fact No. (128) (supra)) is in the following terms:-

"Acting on the instructions of John J Miller, Interim Procurator Fiscal at Glasgow, I the undersigned at 11.10 hours on 8 March, 2000 within the City Mortuary, Glasgow, made a post mortem examination of the body of James Taylor McLaren Drummond, aged 21 years, of 765 Shettleston Road, Glasgow, who was pronounced dead at 06.28 hours on 1 March, 2000 within Cell No. 2/21, "C" Hall, Barlinnie Prison, Glasgow.

The body was identified to me by:-

1.Mortuary Technician,

City Mortuary,

Glasgow.

EXTERNAL EXAMINATION:

The body was that of a young male of average physique, measuring 5 ft 8 inches in height and 66 kg in weight. There was a 21 cm long ligature mark around the neck commencing just below the laryngeal prominence and extending slightly upwards and backwards, terminating 7 cm below the ear and, on the left side, terminating 4 cm below the ear at the level of the earlobe. The width of the ligature mark varied from 0.5 cm - 1 cm. There were no conjunctival patchial haemorrhages. Old healed scars were present on the back of the left hand, both loins and on the lower abdomen.

There were no marks of deliberate violence.

Rigor mortis was established. Hypostasis was present on the back of the body.

INTERNAL EXAMINATION:

Head and Neck

The scalp, skull and meninges were healthy. The brain weighed 1680 grams and was markedly congested. The cerebral vessels were healthy.

The mouth and tongue were healthy.

All laryngeal cartilages were intact. The thyroid gland was healthy.

Chest

The trachea and bronchi contained a small amount of mucus. The lungs showed severe congestion and oedema. The right lung weighed 700 grams and the left lung weighed 660 grams. The pulmonary vessels were healthy. The pericardium was healthy. The heart weighed 400 grams due to mild left ventricular hypertrophy. All the valves, the endocardium and the myocardium appeared healthy.

The coronary vessels were healthy. The aorta and its major branches were healthy.

The oesophagus was healthy.

Abdomen

The peritoneum was intact. The stomach contained a small amount of liquid. The mucosa was healthy. The intestines were healthy.

The liver was congested. It weighed 1680 grams.

The gall-bladder contained a small amount of bile.

The biliary tree was patent.

The spleen weighed 180 grams and was healthy.

The pancreas and adrenal glands were healthy.

The left-kidney was hypertrophied and was congested. It weighed 180 grams. Only a small amount of the right-kidney was present. The bladder and ureters were healthy.

Other

Other organs were healthy.

CONCLUSIONS

The deceased was a young adult who had no significant natural disease or injuries to cause or contribute to the death. He was a known intravenous drug abuser. He was found in a prison Cell with a ligature around his neck. The appearance of the ligature mark around the neck was consistent with hanging.

CAUSE of DEATH

1a: HANGING

Attested on sole and conscience

Sgd. R Fernando."

Prison Officer John G Burn ("Mr Burns") was 40 years of age. He had been a Prison Officer for 14 years and had always worked at Barlinnie. On Monday, 28 February, 2000 and Tuesday, 29 February, 2000 he was working backshift in "C" Hall in Barlinnie along with Prison Officer John Richmond ("Mr Richmond"). Production No. 1 for the Scottish Prison Officers' Association showed inter alia the shift patterns worked by Mr Burns and Mr Richmond at Barlinnie from 21 February, 2000 to 1 March, 2000. In respect of the week commencing Monday, 21 February, 2000 up until and including Thursday, 24 February, 2000 Mr Burns had been working early shift, which commenced at 16.15 am and finished at approximately 2.00 pm. On Friday, 25 February, 2000 he had a rest day. He had the weekend off on Saturday, 26 February, 2000 and on Sunday, 27 February, 2000. On Monday, 28 February, 2000 he had a further rest day. He commenced his backshift in "C" Hall on Tuesday, 29 February, 2000 and was again working backshift in "C" Hall on Wednesday, 1 March 2000. Said backshifts commenced at approximately 1.15 pm and finished at approximately 9.30 pm. Mr Burns did not remember seeing Mr Drummond in "C" Hall at any time. In view of the fact that Mr Drummond was only admitted to "C" Hall on Saturday, 26 February, 2000 (see Findings-in-Fact Nos. (12) and (23) (supra)) the only time when Mr Burns could have seen Mr Drummond in "C" Hall would have been Tuesday, 29 February, 2000.

Mr Burns remembered seeing Mr Cairns (see Finding-in-Fact No. (13) (supra)) in "C" Hall. He knew his face because he had been in "C" Hall for "a wee while". When Mr Burns commenced his backshift at approximately 1.15 pm on Tuesday, 29 February, 2000 he was told that there had been a Hall meeting with all the members of staff and that several prisoners, including Mr Cairns had been removed to the Segregation Unit in Barlinnie earlier

that day on account of a possible hostage situation which it was anticipated was going to take place some time during the backshift. The Prison Officer whom it was suspected was going to be taken hostage was Prison Officer Marilyn Dewar (see Finding-in-Fact No. (13) (supra)). It would have been very easy for prisoners to plan and probably execute a hostage situation, regardless of the size or build of the Prison Officer concerned. Accordingly, when Mr Burns came on duty in "C" Hall at approximately 1.15 pm on Tuesday, 29 February, 2000 Mr Cairns had already been removed to the Segregation Unit. The hostage situation whereby Mr Cairns was removed to the Segregation Unit was not simply a ruse to enable Prison Officers, such as Mr Burns and Mr Richmond to question Mr Drummond alone in his Cell in relation to where Mr Cairns might have been secreting illegal drugs. There would have been no requirement to go to such lengths if that had been the Prison Officers' intention.

Mr Burns was aware that many prisoners in Barlinnie abused controlled drugs and that they have addiction problems. From his experience he was able to tell, from his observations of a prisoner, when he was displaying symptoms of drug withdrawal such as sweating and the pupils of the eyes becoming dilated. Other symptoms of drug withdrawal are when a prisoner becomes fidgety; when he appears to be going in and out different doors looking for drugs and also when he fails to keep himself as tidy as he normally would. As Mr Burns had no recollection of seeing Mr Drummond in "C" Hall at any time (see Finding-in-Fact No. (131) (supra)), he was unable to comment on the question of whether or not Mr Drummond was displaying any symptoms of acute drug withdrawal during the afternoon of Tuesday, 29 February, 2000.

By the time Mr Burns came on duty in "C" Hall at approximately 1.15pm on Tuesday, 29 February, 2000 (see Findings-in-Fact Nos. (131) and (132) (supra)) Mr Cairns had already been removed from Cell No. 2/21 to the Segregation Unit (see Findings-in-Fact Nos. (13), (30) and (132) (supra) (see also Finding-in-Fact No. (16) (supra)). Mr Burns was accordingly unable to comment on the allegation that Mr Cairns had been assaulted in his Cell by Prison Officers sometime earlier on Tuesday, 29 February, 2000. However, in view of the fact that Mr Cairns had already been removed from his Cell to the Segregation Unit by the time Mr Burns started his shift in the early afternoon of Tuesday, 29 February, 2000 Mr Burns could not and was not involved in any assault on Mr Cairns.

Neither Mr Burns nor Mr Richmond shouted abuse at Mr Drummond from the bridge of the landing in "C" Hall or from any other place at around tea time (ie. 4.00 pm) on Tuesday, 29 February, 2000 when Mr Drummond was out of his Cell having his tea. In particular, at no time on that day did Mr Burns hit Mr Drummond on the back of the head or clip him about the ear as Mr Drummond was returning to his Cell with his tea.

Mr Burns did not, either on his own or along with Mr Richmond, later on in the afternoon of Tuesday, 29 February, 2000 or at any other time stand at the Cell door of Mr Drummond's Cell (Cell No. 2/21), when Mr Drummond was alone in the Cell and shout at him and order him to clean/mop up Mr Cairns' blood which was allegedly on the floor of the Cell. Accordingly, Mr Drummond at no time shouted back that he was not going to do that; that it was not his blood and that he was not responsible for its being there (see Finding-in-Fact No. (138) (infra)).

At no time did Mr Burns bully Mr Drummond in an attempt to get him to disclose information about where Mr Cairns may have hidden his supply of illicit drugs. Further, at no time did Mr Burns threaten Mr Drummond that if he did not disclose this information, he (Mr Burns) would spread a rumour among the prisoners that Mr Drummond was a "grass". Mr Burns knew nothing about these allegations. He was unable to offer any explanation as to why Mr

Cairns might have told Mr Drummond's mother (Mrs Maureen Drummond) (see Finding-in-Fact No. (6) (supra)) that he, Mr Cairns had simply been removed to the Segregation Unit so that Prison Officers could put pressure on Mr Drummond, whilst alone in his Cell, to disclose where Mr Cairns may have been hiding his supply of illicit drugs. As narrated in Finding-in-Fact No. (132) (supra), there would have been no requirement to go to such lengths if that had been the Prison Officers' intention. In this connection, it would have been quite simple to ask the Hall Supervisor for a special search in respect of a prisoner who was suspected of secreting illicit drugs. This was "a sort of routine affair". If a matter was likely to end up in Court, it would not make professional sense for drugs to be found in a Cell by Prison Officers in the absence of the prisoner. In any event, a Prison Officer can have a word with a prisoner at any time with regard to where his Cell mate may be secreting illicit drugs, without going to the length of concocting a hostage situation simply to have the Cell mate removed from the Cell so that pressure could be put upon the prisoner to disclose the information. In any event, it was by no means automatic that a prisoner, no matter what his particular circumstances, would disclose such information to a Prison Officer. The hostage situation was real, and was not simply a ruse which had been concocted by the Prison Officers with a view to removing Mr Cairns from Cell No. 2/21 so that pressure could be put on Mr Drummond, whilst alone in his Cell, to provide information as to where Mr Cairns may have hidden his supply of illicit drugs.

By reference to Crown Production No. 1, photograph B, Mr Burns stated that the floor in Cell No. 2/21 was a sort of garage type floor, covered in heavy thick paint which is commonly used on such floors. The floor becomes progressively layered as it is painted and repainted. So far as the various spots/blotches of staining in the middle of the floor in front of the Cell door were concerned, Mr Burns did not know what these were but surmised that they were the effects of paint coming away from the floor as a result of wear and tear. He did not accept that these various spots/blotches of staining could be blood. So far as the concentrated patch of staining on the floor immediately to the left of the bed was concerned, Mr Burns again did not know what this was, but surmised that it was a liquid stain of some sort. In this connection prisoners were allowed to drink tea and coffee in their cells and there was a flask available for that purpose. It is also apparent from Crown Production No. 1, photograph C, that there were several varieties of soft drinks in the Cell, such as Pepsi Cola, Robinson's Original Barley Water and Irn-Bru. So far as the said concentrated patch of staining was concerned, Mr Burns accepted that it could be either, eg. spilled tea or coffee or that it could be blood. He denied that he knew it was blood. In particular, he denied that he knew it was Mr Cairns' blood and that he had seen it before (see Finding-in-Fact No. (136) (supra)).

If Mr Burns had seen that Mr Drummond was suffering from acute symptoms of drug withdrawal (see Finding-in-Fact No. (133) (supra)) and that he was struggling really badly he would have ensured that Mr Drummond saw a nurse. If, on the other hand, he considered that Mr Drummond's condition was such that he could have dealt with it himself, he would, at the very outset have "doubled Mr Drummond up" with another prisoner, ie. put him in a Cell with another prisoner.

Mr Burns was aware that on several occasions prisoners have made complaints against Prison Officers. On some of these occasions the complaints have been unsubstantiated and dismissed; on other occasions the complaints have been sustained and upheld.

There are four sections on the second landing/floor/flat in "C" Hall. There are approximately 20 prisoners in each section. When the prisoners are let out to get their tea in the afternoon, they do so one section at a time. As soon as one section has obtained its tea and the

prisoners in that section have returned to their Cells, another section comes out and the process is repeated until all the prisoners on the landing have obtained their tea. In these circumstances a prisoner, such as Mr William Wotherspoon, who was in a separate section from Mr Drummond would not have been out on the landing at the same time as Mr Drummond. He would accordingly have been unable to observe what, if anything was happening in the landing in relation to the prisoners from another section who were out. In particular, he would have been unable to observe what, if anything was happening on the landing in relation to Mr Drummond. It was virtually impossible for a prisoner in one section to see what a prisoner in another section was doing while out of his cell getting his tea. On occasions, however, it could happen that stragglers from one section were not all returned to their cells before the prisoners from the next section were let out of theirs. In these circumstances it could sometimes happen that there would be a small overlap between prisoners from different sections. No such overlap occurred between the respective sections of Mr Wotherspoon and Mr Drummond in the afternoon of Tuesday, 29 February, 2000 such as enabled Mr Wotherspoon to observe any assault by Mr Burns on Mr Drummond when the latter was returning to his cell with his tea (see Finding-in-Fact No. (135) (supra)).

If Mr Burns and Mr Richmond had shouted abuse at Mr Drummond from the landing in "C" Hall or if he (Mr Burns) had struck Mr Drummond while he was out of his Cell, then there would in all probability have been a riot involving the not inconsiderable number of prisoners who would have been around and who would have witnessed the incident.

Mr Burns first became aware of the allegation that he had struck Mr Drummond when the latter was returning to his Cell with his tea in the afternoon of Tuesday, 29 February, 2000, on only the morning before he gave evidence at the present Inquiry, viz: on Tuesday, 11 June, 2002. Accordingly, it was not until nearly 2 years and 4 months after the incident is alleged to have taken place that Mr Burns first became aware of the allegation. He was very shocked to hear about it after such a long period of time. He had never been questioned about it by anybody. In particular, he had never been questioned about it by anybody who had been involved in the preparation for the present Inquiry. If such an incident had in fact taken place a complaint would very probably have been made against him either by Mr Drummond or by a prisoner who witnessed it or even by another member of staff. No complaint had ever been made against him by anybody in relation to Mr Drummond. Had such a complaint been made Mr Burns would have expected to have been suspended from duty pending its investigation.

Mr Burns has a generally good relationship with the prisoners in Barlinnie. He does not pick on "every wee boy" of around Mr Drummond's age, viz: 21 years old or hit them about the head or body. If something like that were to happen, a complaint could be expected to be made on each occasion. Throughout the 14 years during which Mr Burns had worked as a Prison Officer at Barlinnie (see Finding-in-Fact No. (131) (supra) no complaint had ever been made against him of assaulting a young prisoner. Likewise, no complaint had ever been made against him of bullying a prisoner. In particular at no time did he bully Mr Drummond (see Finding-in-Fact No. (137) (supra)).

If Mr Burns had seen that Mr Drummond was suffering from acute symptoms of drug withdrawal he would have called the Health Centre and obtained the services of a nurse (see Finding-in-Fact No. (139) (supra)). He was aware of the "ACT" procedure but had himself never placed a prisoner on that procedure.

At no time did the prisoner, Mr Wotherspoon or anybody else ask either Mr Burns or his colleague Mr Richmond to get a doctor or medical assistance with regard to Mr Drummond's condition. Accordingly, neither Mr Burns nor Mr Richmond ignored any such requests from

Mr Wotherspoon. At no time did Mr Wotherspoon express any concerns to either Mr Burns or Mr Richmond about Mr Drummond's condition, particularly in relation to the possibility that Mr Drummond may have been suffering from acute symptoms of drug withdrawal. Mr Burns was always quite pleased to receive information from a prisoner at any time with regard to another prisoner's well-being or otherwise.

Mr Burns had never heard of any allegations that during the nightshift on Tuesday, 29 February, 2000 to Wednesday, 1 March 2000 after both he and Mr Richmond had gone off duty at about 9.30 pm (see Finding-in-Fact No. (131) (supra)) that a Prison Officer, on hearing Mr Drummond's Cell buzzer sound, went to his Cell door (Cell No. 2/21) and shouted at him words along the lines "Get your fucking head down. If you need to get taken out of the Cell you will get leathered." (see Finding-in-Fact No. (107) (supra)).

Mr Burns accepted that during his shift in "C" Hall on Tuesday, 29 February, 2000 (see Findings-in-Fact Nos. (131) and (132) (supra)), it was possible that Mr Drummond could have pressed the buzzer in his Cell to attract the attention of a Prison Officer. However, as the pressing of a Cell buzzer was "a sort of routine thing" Mr Burns had no specific recollection of Mr Drummond's Cell buzzer being pressed. In this connection, Mr Burns pointed out that buzzer lights go on all the time and that buzzer lights would have gone on during his shift on Tuesday, 29 February, 2000. Mr Burns did not however have any recollection of Mr Drummond's activating his buzzer on Tuesday, 29 February, 2000 because he was feeling unwell or for any other reason. As narrated in Finding-in-Fact No. (131) (supra) Mr Burns did not even remember seeing Mr Drummond in "C" Hall at any time on Tuesday, 29 February, 2000. As at February/March 2000 prisoners used their buzzers for a variety of reasons, such as when they wanted to go to the toilet or to fill up their water jugs or to obtain cigarette papers. They also, of course, used their buzzers in order to attract attention if they were feeling unwell.

Mr Burns accepted that it would be a serious matter if a prisoner, such as Mr Drummond was suffering from acute symptoms of drug withdrawal and nothing was done about it. On occasions it could be dangerous and lead to the prisoner's suffering spasms or fits or even heart failure. As narrated in Findings-in-Fact Nos. (139) and (145) (supra) if Mr Burns had seen a prisoner, such as Mr Drummond suffering from acute symptoms of drug withdrawal he would have acted upon it by calling the Health Centre and obtaining the services of a nurse. In these circumstances, the "ACT" procedure could, if appropriate, have been instigated (see Finding-in-Fact No. (145) (supra)).

Some prisoners who are suffering from acute withdrawal symptoms prefer to be put in a Cell on their own as opposed to being "doubled up" with another prisoner/other prisoners (see Finding-in-Fact No. (139) (supra)). In these circumstances, a prisoner is asked if he wants to be "doubled up" as opposed to being "doubled up" automatically. On Tuesday, 29 February, 2000 Mr Burns did not even remember seeing Mr Drummond in "C" Hall (see Finding-in-Fact No. (133) (supra)). As such, he could not have had any concerns that Mr Drummond may have been suicidal.

There is a Complaints Procedure (CP) in place at Barlinnie. Some prisoners used the prisoner complaints forms for more mundane complaints such as matters relating to diets, letters, visits etc as opposed to more serious complaints such as allegations of threats and intimidation on the part of Prison Officers. In relation to said more serious complaints, a prisoner was more likely to take it up with the Hall Supervisor as opposed to writing it down on a prisoner complaint form. This avoided other prisoners seeing that the prisoner concerned was making a formal complaint. By taking a complaint to the Hall Supervisor, a prisoner could speak to him in confidence. It was also always open to a prisoner to take his

complaint directly to the Prison Governor. In addition, a prisoner sometimes complained by using an "external" method such as the telephone. In these circumstances, the individual to whom the prisoner had complained usually contacted the prison but might on occasions even contact the police or a lawyer.

Physical threats and bullying of prisoners by Prison Officers are not common features of life in "C" Hall. In particular, neither Mr Burns nor Mr Richmond habitually threatened or struck prisoners in "C" Hall who were "junkies" or drug addicts. In relation to that allegation, Mr Burns stated that it was ludicrous and simply not feasible. In this connection as at February/March, 2000 there were approximately 300 prisoners and 16 members of staff in "C" Hall at any one time. In these circumstances, neither the prisoners nor other members of staff would allow a Prison Officer to get away with such conduct.

Prison Officer John Richmond ("Mr Richmond") was 35 years of age. He worked in Barlinnie and had been a Prison Officer for 10 years. He had worked in Shotts Prison until the end of March, 1998. As at February/March, 2000 he was working in "C" Hall in Barlinnie. He remembered Mr Drummond as being a very quiet boy who did not bring any attention upon himself. He never saw Mr Drummond suffering from drug withdrawal symptoms. Mr Richmond only saw Mr Drummond in "C" Hall when he was on two backshifts there, viz: on Monday, 28 February and Tuesday, 29 February, 2000. Each of said backshifts commenced at approximately 1.15 pm and finished at approximately 9.30 pm.

Mr Richmond believed that Mr Cairns was a long-term prisoner. He had a general conversation with him about prisoners from Shotts Prison, where Mr Richmond had at one time worked. That was the only occasion on which Mr Richmond could remember speaking to Mr Cairns. At no time was Mr Richmond involved in disciplining Mr Cairns. By the time Mr Richmond came on duty in "C" Hall at approximately 1.15 pm on Tuesday, 29 February, 2000 (see Finding-in-Fact No. (153) (supra)) Mr Cairns had already been removed to the Segregation Unit (see Findings-in-Fact Nos. (13), (16), (30), (132) and (134) (supra)). Accordingly, Mr Richmond never saw Mr Cairns at any time on Tuesday, 29 February, 2000. In these circumstances, he was unable to comment on the allegation that Mr Cairns was assaulted on that date in the Cell (Cell No. 2/21) which he shared with Mr Drummond. In view of the fact that Mr Cairns had already been removed from his Cell to the Segregation Unit by the time Mr Richmond started his shift in the early afternoon of Tuesday, 29 February, 2000 Mr Richmond could not and was not involved on any assault on Mr Cairns (see Finding-in-Fact No. (134) (supra)). Mr Richmond knew nothing about any allegation that Mr Cairns was dealing in drugs in Barlinnie.

At no time did Mr Richmond see Mr Burns bullying Mr Drummond in an attempt to get him to disclose information about where Mr Cairns may have hidden his supply of illicit drugs (see Finding-in-Fact No. (137) (supra)). Whilst Mr Richmond could not entirely discount the possibility that such a thing might have happened, from his knowledge of Mr Burns he thought it highly unlikely.

Mr Richmond knew Mr William Wotherspoon and also knew that he had been a prisoner in "C" Hall in Barlinnie in February/March, 2000. There had never been any "bad blood" between them. Mr Richmond had no idea why Mr Wotherspoon would make up the allegation referred to in Finding-in-Fact No. (136) (supra) which Mr Richmond denied completely. There had also never been any "bad blood" between Mr Richmond and Mr Cairns. Mr Richmond did not know where Mr Cairns was. He could not give any explanation as to why Mr Cairns might have alleged that Mr Richmond, along with other prison officers had wanted to know where Mr Cairns was hiding his drugs and that they were bullying Mr Drummond to try to obtain this information from him. Mr Richmond denied said allegations.

At no time did he bully Mr Drummond to try to get such information from him (see also Findings-in-Fact Nos. (137) and (155) (supra)).

If Mr Drummond had telephoned his brother Mr Robert Drummond on Sunday, 27 February, 2000 to say that someone called "Richmond" had been giving him "bother" or "hassle" that could not have referred to Mr Richmond, because he did not come on shift in "C" Hall until the afternoon of Monday, 28 February, 2000 (see Finding-in-Fact No. (153) (supra)). By reference to Production No. 1 for the Scottish Prison Officers' Association (see also Finding-in-Fact No. (131) (supra)) Mr Richmond was off duty over the weekend of Saturday, 26 February and Sunday, 27 February, 2000. Mr Drummond was not transferred from "A" Hall to "C" Hall until Saturday, 26 February, 2000 (see Findings-in-Fact Nos. (12) and (23) and Production No. 2 for the Scottish Prison Service). Prior to Monday, 28 February, 2000 Mr Richmond had last been on duty in "C" Hall on Friday, 25 February, 2000. He had a rest day ("RD") on Wednesday, 1 March, 2000 ie. the day on which Mr Drummond's body was found (see Production No. 1 for the Scottish Prison Officers' Association) (see also Finding-in-Fact No. (131) (supra)). Accordingly, Mr Richmond's first contact with Mr Drummond on Monday, 28 February 2000 was not until the day after the alleged telephone call between Mr Drummond and his brother was (at least initially) allegedly made ie. on Sunday, 27 February, 2000. Mr Richmond did not know Mr Drummond's family. He could give no explanation as to why Mr Drummond's brother would make up what he said in relation to the telephone conversation. Mr Richmond had no recollection of Mr Wotherspoon's having expressed concerns to him about Mr Drummond's condition on Tuesday, 29 February, 2000 indicating that he (Mr Richmond) should get a doctor. Accordingly he had no recollection of having brushed off any such concerns. Mr Wotherspoon expressed no such concerns to Mr Richmond.

As Mr Richmond was off duty on the weekend of Saturday, 26 and Sunday, 27 February, 2000 he had no knowledge about any allegation that Mr Drummond's uncle had left money for him at Barlinnie on Saturday, 26 February, 2000, or that on the following day (ie. Sunday, 27 February, 2000) Mr Drummond had telephoned home to say that the money was not there for him and that he had no money.

By reference to Crown Production No. 1, photograph B, so far as the various spots/blotches of staining in the middle of the floor in front of the door to Cell No. 2/21 were concerned Mr Richmond did not know what these were but surmised that they were just wear and tear in the general area where prisoners walked backwards and forwards or were even cigarette burns. He also surmised that the staining might have been where the linoleum had been scraped off or scored or perhaps simply where mould or paint had come off the floor. So far as the concentrated patch of staining immediately to the left of the bed was concerned, Mr Richmond had "no idea" what this was but again surmised that it was just wear and tear. Whilst he accepted that the staining could have been blood he thought that that was extremely unlikely (see Finding-in-Fact No. (138) (supra)). The first time that the staining on the floor of Cell No. 2/21 had ever been brought to Mr Richmond's attention was when he was referred to photograph B of Crown Production No. 1. At no time did Mr Richmond see any blood in Mr Drummond's Cell.

If Mr Richmond had seen that Mr Drummond had been suffering from acute symptoms of drug withdrawal he would have removed him immediately from his Cell and brought someone such as a nurse to speak to him. If a nurse had not been available and Mr Richmond had considered that Mr Drummond was "strung out" he would have put him immediately into an observation Cell in the bottom flat. If Mr Drummond had told him that he was not coping, Mr Richmond would have tried to ascertain the reason for that and would

have tried to provide Mr Drummond with any help which was available within Barlinnie in an effort to deal with the situation (see Finding-in-Fact No. (139) (supra)).

Some prisoners, no matter what their age, prefer to be left alone in their Cells; others prefer to have a cell mate/cell mates. That was not something which Mr Richmond was able to dictate. It also depended, to some extent on the number of prisoners within Barlinnie at any particular time. On occasions there is over-crowding on the second floor/flat; on other occasions it is not completely full. Mr Richmond, never having known Mr Drummond well enough to make a judgement was unable to say what Mr Drummond's preference was in relation to being in a Cell on his own or to sharing it with another prisoner/other prisoners.

Photograph A of Crown Production No. 1 is the door to Cell No. 2/21 in "C" Hall, looking from the outside.

Mr Richmond had been on an introductory course to the "ACT" procedure (see Findings-in-Fact Nos. (40) to (50), (55) to (57), (64) to (75) and (78) to (87) (supra)) but had not carried out the full training in that procedure. He was however aware of the "ACT" policy and had placed prisoners on the "ACT" procedure before. He stated that he "possibly could be aware" from his observations of a prisoner on the landing that the prisoner was a potential suicide risk. In this connection he might know, for example, that a prisoner was a drug abuser or might consider him to be a potential suicide risk from the nature of the crime in respect of which he had been convicted. Mr Richmond was unable to say if suicides in prison occur more often when a prisoner is alone in his Cell or if he is sharing it with another prisoner/other prisoners.

Mr Richmond considered that if the allegations that he [and Mr Burns] had shouted abuse at Mr Drummond from the landing of "C" Hall at around tea-time (ie. 4.00 pm) on Tuesday, 29 February, 2000 and that Mr Burns had hit Mr Drummond on the back of the head or clipped him about the ear as Mr Drummond was returning to his Cell, were correct, which he denied, then he would have expected Mr Burns to have been suspended "and put on a discipline form". In this connection, there would have been a number of witnesses to the incident and Mr Burns would probably have been the subject of a complaint by a prisoner. Mr Richmond was unaware of any complaints having been made with regard to any of the allegations. Further, he had never heard any rumours or suggestions that the alleged incidents had ever taken place (see also Findings-in-Fact Nos. (135), (142), (143) and (151) (supra)).

Mr Richmond denied the allegation made by Mr Wotherspoon that he frequently shouted abuse at the prisoners. He described the allegation as "absolute nonsense". Mr Richmond did not frequently shout abuse at prisoners (see also Finding-in-Fact No. (152) (supra)).

Mr Richmond had never heard of any allegations that during the nightshift on Tuesday, 29 February, 2000 to Wednesday, 1 March, 2000 after both he and Mr Burns had gone off duty at about 9.30 pm (see Finding-in-Fact No. (131) (supra)) that Mr Drummond had been calling out for help to the nightshift officers from his Cell and that these officers (or one of them) had shouted at him words along the lines "Get your fucking head down. If you need to get taken out of the Cell you will get leathered." (see also Findings-in-Fact Nos. (107) and (147) (supra)).

Had Mr Wotherspoon ever expressed any concerns to Mr Richmond about Mr Drummond's condition, which he did not, particularly in relation to the possibility that Mr Drummond may have been suffering from acute symptoms of drug withdrawal, Mr Richmond would have had Mr Drummond seen by a nurse straight away and if a nurse had not been available he would have placed Mr Drummond in an observation Cell until a professional member of staff came and attended to his needs (see also Findings-in-Fact Nos. (146) and (160) (supra)).

From the very brief contact which Mr Richmond had with Mr Drummond he had no suspicions that Mr Drummond was suffering from acute symptoms of drug withdrawal. Had he had any such suspicions it would have registered with him (see also Finding-in-Fact No. (153) (supra)).

Mr Richmond had never heard of any allegations that Mr Drummond had been bullied by Prison Officers, particularly in relation to their trying to obtain information from Mr Drummond with regard to where Mr Cairns may have been secreting his supply of illicit drugs. To Mr Richmond's knowledge, such bullying never took place (see also Findings-in-Fact Nos. (132) and (137) (supra)).

Throughout Mr Richmond's 10 years' service as a Prison Officer with the Scottish Prison Service (see Finding-in-Fact No. (153) (supra)) he had never had any complaints or allegations made against him in relation to his having assaulted or bullied prisoners. He considered that he had a good working relationship with the prisoners with whom he worked. Mr Richmond accepted that if a prisoner had lodged a complaint against a Prison Officer, the other Prison Officers could make that prisoner's life very unhappy, but that it would be very unprofessional to do so. He stated that he had never witnessed such a situation. If a serious complaint is made by a prisoner against a Prison Officer, the Prison Officer is suspended pending investigation of the complaint (see also Finding-in-Fact No. (164) (supra)).

If, when a prisoner was locked in his Cell, he felt "strung out" or was having difficulty with coping, he could attract the attention of a Prison Officer by pressing the buzzer in his Cell. By this method, he could summon assistance. Mr Richmond had no recollection of Mr Drummond's ever having activated his Cell buzzer for assistance when he, Mr Richmond was on duty in "C" Hall on either Monday, 28 February, 2000 or Tuesday, 29 February, 2000 (see Finding-in-Fact No. (153) (supra)).

So far as the operation of the Cell buzzers is concerned, on pressing a button inside the Cell a light comes on outside the Cell. There is no bell or other indication to an office that the buzzer in a particular Cell has been activated. Staff in the Gallery are able to see the light on outside the Cell and are accordingly able to identify the particular Cell from which assistance is being sought. There is, however, a control panel at the main desk on entering the Hall. The main desk is where all movements in the Hall are logged. The control panel is a sort of master plan on which the bottom, second and top flats are indicated by reference to lightbulbs. In this connection, if, for example there are two Prison Officers on a flat in the course of a patrol shift and a lightbulb is activated, the Prison Officers are able to identify from which particular flat assistance is being sought. They accordingly make their way to that flat where they will see the light on outside the particular Cell from which assistance is being sought. The light outside Cell No. 2/21 is just off the extreme right-hand side of photograph A of Crown Production No. 1 (towards the top of the photograph). The buzzer inside Cell No. 2/21 is to the left of the Cell door shown in photograph B of Crown Production No. 1 (not shown in the photograph).

Mr Richmond stated that a prisoner who is suspected of being a suicide risk and put on high risk and who subsequently comes off high risk and is reduced to low risk, would normally be placed in a Cell along with another prisoner/other prisoners. He stated that such a low risk prisoner would not normally be left in a Cell on his own on his being reduced to a low risk category.

A case conference system was in operation in Barlinnie. Mr Richmond was aware of its existence and how it operated. If, on admission to Barlinnie, a prisoner is assessed as being a high suicide risk (ie. on 15 minute observations) having been seen by a doctor within 24

hours of his admission (see Finding-in-Fact No. (94) (supra)) a care plan is made up for the prisoner. In this connection, an attempt is made to identify the prisoner's problem(s). The prisoner can indicate that he wants to speak to someone from the Medical Health Team or drug counsellors or social workers in which case arrangements are made, before the next case conference to involve such persons in assisting the prisoner with his rehabilitation (see also Finding-in-Fact No. (61) (supra)). If a prisoner is initially assessed as being a high suicide risk he is either taken to the surgery or placed in a Cell on his own on 15 minute (ie. "high risk") observations. In these circumstances, the prisoner is often put in an anti-ligature Cell. If there is a suspicion that a prisoner is a high suicide risk, it is considered preferable that he be placed in an anti-ligature Cell on his own rather than with another prisoner. Once it is considered that the prisoner is at low risk, he is generally placed in a Cell along with another prisoner/other prisoners (see Finding-in-Fact No. (173) (supra)).

Mr Richmond, from his brief observations of Mr Drummond had no concerns that he might be suicidal. Had he had such concerns he would have immediately initiated the "ACT" procedure (see Finding-in-Fact No. (163) (supra)). By reference to the Scottish Prison Health Care Records in relation to Mr Drummond (see Crown Production No. 3) it was apparent in light of the various Reception Risk and Nurse Risk Assessments and other records, that Mr Drummond had been in various establishments within the Scottish Prison Service.

Prisoners and ex-prisoners have in the past made complaints against Prison Officers, which, on investigation have been found to be unsubstantiated and without merit and accordingly dismissed. On the other hand, complaints against Prison Officers have also, on investigation been substantiated and found to be of merit and upheld. Mr Richmond accepted that there were situations where prisoners are treated badly by Prison Officers.

Mr James McGougan ("Mr McGougan") was 36 years of age. He had been a Prison Officer for almost 7 years, two of which had been served at HM Prison, Saughton, Edinburgh. He had served the rest of his time at Barlinnie. Mr McGougan was working nightshift in "C" Hall at Barlinnie during the night of Tuesday, 29 February, 2000 to 1 March, 2000. He was working the nightshift along with Prison Officer, Ms Abigail Thompson ("Ms Thompson"). The nightshift commenced at about 9.00 pm on Tuesday, 29 February, 2000 and finished at about 06.15 am on Wednesday, 1 March, 2000. Mr McGougan and Ms Thompson were the only Prison Officers working nightshift in "C" Hall during that night.

Nothing of particular note happened in "C" Hall during the nightshift of 29 February/1 March, 2000. Mr McGougan had no recollection of Mr Drummond until he learned at about 7.00 am on Wednesday, 1 March, 2000 that Mr Drummond had committed suicide. In this connection, Mr McGougan had already returned home at the end of the nightshift when he received a telephone call from Barlinnie advising him about what had happened. He went straight back to Barlinnie. He was surprised on learning of the death of Mr Drummond. When he returned to Barlinnie and was advised that it was Mr Drummond who had committed suicide he still had no recollection of him.

Some prisoners in "C" Hall would have pressed their buzzers for assistance during the nightshift of 29 February/1 March, 2000. Buzzers often went off during the nightshift. Mr McGougan had no recollection of any specific prisoner buzzing for assistance that night. In particular, he had no recollection of Mr Drummond's buzzing for assistance that night. Sometimes prisoners press their buzzers simply to have their lights turned off. (See Findings-in-Fact Nos. (172) (supra) and (185) (infra)).

When Mr McGougan was advised that a prisoner (viz: Mr Drummond) had committed suicide in Cell No. 2/21 in "C" Hall on the night of 29 February/1 March, 2000, he went back into "C"

Hall to ascertain where exactly Cell No. 2/21 was located. Having done so, he was able to confirm that he had had no contact whatsoever with the door to Cell No. 2/21 during the course of his nightshift. Mr Drummond did not press his Cell buzzer for assistance at any time during the night of Tuesday, 29 February, 2000/Wednesday, 1 March, 2000.

Mr McGougan was the only male Prison Officer working nightshift in "C" Hall on the night of Tuesday, 29 February/Wednesday, 1 March, 2000 (see also Finding-in-Fact No. (177) (supra)). Mr McGougan denied Mr Wotherspoon's allegation that at around 10.00 pm to 11.00 pm on the night of Tuesday, 29 February, 2000 and Wednesday, 1 March 2000 he went to Cell No. 2/21 from where Mr Drummond had buzzed for assistance and from where he was calling for help and that he shouted at him words along the line "Get your fucking head down. If you need to get taken out of the Cell you will get leathered." Mr McGougan could give no explanation for Mr Wotherspoon's allegation. Mr Wotherspoon's name meant nothing to him. Mr McGougan did not shout these words at Mr Drummond. No such incident as alleged by Mr Wotherspoon took place (see Findings-in-Fact Nos. (107) and (166) (supra)).

Mr McGougan was unaware that some prisoners, including Mr Drummond's former Cell mate, Mr Cairns had been removed to the Segregation Unit sometime during the course of the morning of Tuesday, 29 February, 2000 (see Finding-in-Fact No. (13) (supra)).

If the buzzer to Cell No. 2/21 had been pressed by Mr Drummond in the course of the nightshift of Tuesday, 29 February/Wednesday, 1 March, 2000 and Mr Drummond had told Mr McGougan that he (Mr Drummond) was not coping and that he appeared to be sweating heavily and suffering from drug withdrawal symptoms, Mr McGougan would have alerted the nightshift Supervisor. In these circumstances, the probability is that the Supervisor would have come into the Hall and spoken to Mr Drummond and then taken a decision as to what to do and in particular would have decided whether or not medical assistance was required. To do nothing would not have been an option.

When Mr McGougan and his colleague come on nightshift they are advised about any late "observations" who require to be checked. Once they have their observation lists they then check that the Cell doors are secure and also check any prisoners "on observations". Thereafter, they do their nightshift rounds of the Hall and check the prisoners "on observations", whether that be every 15 minutes or every hour (see also Finding-in-Fact No. (201) (infra)). Situated at various locations in the walls of the Hall are what are known as "pegging points". These in effect are keys which, when put into a clock and turned, show that a Prison Officer was at a particular point in the Hall at a particular time in the evening.

If a Cell buzzer is activated, Mr McGougan would always go to the Cell concerned and check on the prisoner. The buzzer lights outside the Cells do not go out automatically after a certain period of time. They require to be switched off from outside the Cell (see Findings-in-Fact Nos. (172) and (179) (supra)).

In 2000 "C" Hall in Barlinnie was generally quite a noisy place at night. Prisoners used to shout at each other from one Cell to another. Whilst Mr McGougan was unable specifically to remember the noise level in "C" Hall on the night of Tuesday, 29 February, 2000/Wednesday, 1 March, 2000, shouting was the norm. There was always someone shouting somewhere. The situation was not such that one could hear a pin drop in "C" Hall on the night of Tuesday, 29 February, 2000/Wednesday, 1 March, 2000. "C" Hall was not extremely quiet that night. However, the noise level in "C" Hall generally tends to quieten down sometime between 12 midnight and 1.00 am (see also Findings-in-Fact Nos. (194) and (205) (infra)).

If a Prison Officer had shouted words at a prisoner along the lines and in the circumstances alleged by Mr Wotherspoon (see Finding-in-Fact No. (181) (supra)) the likelihood is that the other prisoners would have started banging their Cell doors and caused a commotion.

Mr McGougan had never heard anything about any allegation that Mr Burns had hit Mr Drummond on the back of the head at around tea-time (ie. 4.00 pm, on Tuesday, 29 February, 2000) (see Finding-in-Fact No. (135) (supra)).

Mr McGougan had never heard anything about any allegation that Mr Cairns, who had previously shared his Cell (Cell No. 2/21) with Mr Drummond had been beaten up by Prison Officers [sometime on Tuesday, 29 February, 2000] (see Findings-in-Fact Nos. (13), (23) and (134) (supra)).

Mr McGougan had never heard anything about any allegation that a Prison Officer [eg. Mr Burns/Mr Richmond] had tried to force Mr Drummond to clean/mop up Mr Cairns' blood from the floor of Mr Drummond's Cell (Cell No. 2/21) (see Finding-in-Fact No. (136) (supra)).

Mr McGougan did not know Mr Richmond and had never worked a nightshift with him. He was accordingly unable to comment on any allegation that Mr Richmond was always shouting/screaming at prisoners in the course of his work. See Findings-in-Fact Nos. (152) and (165) (supra)).

Mr McGougan had never heard anything about any allegations that Prison Officers [eg. Mr Burns/Mr Richmond] had tried to force Mr Drummond to provide information as to where in his Cell (Cell No. 2/21) Mr Cairns may have been hiding his supply of illicit drugs or that Prison Officers [eg.. Mr Burns/Mr Richmond] had threatened to label Mr Drummond a "grass" if he did not do so (see Findings-in-Fact Nos. (137), (155) and (156) (supra)).

Mr McGougan had never at any time heard any rumours that Mr Drummond was being bullied by Prison Officers (see Findings-in-Fact Nos. (155) and (156) (supra)).

In view of the fact:

(i)that Mr McGougan did not shout the words he is alleged to have shouted at Mr Drummond, all in the circumstances alleged by Mr Wotherspoon (see Finding-in-Fact No. (181) (supra)) and

(ii)that the only other Prison Officer on duty with Mr McGougan on the night of Tuesday, 29 February/Wednesday, 1 March, 2000 was female, viz: Ms Thompson, any words shouted at Mr Drummond along the lines suggested by Mr Wotherspoon could only have been shouted by another prisoner. When prisoners in "C" Hall are for example trying to get to sleep, it is common for them to shout at other prisoners who are making a noise. At no time during the night of Tuesday, 29 February/Wednesday, 1 March, 2000 did Mr McGougan hear Mr Drummond's shouting for help or saying words along the lines "I can't handle this. I need out of hear." At no time did Mr McGougan have any reason to go to Mr Drummond's Cell door (Cell No. 2/21).

To access a prisoner's Cell in "C" Hall during the nightshift, a prison officer, before starting his shift has to go to the Control Room in Barlinnie where he takes possession of a sealed pack. This is effectively a key, which is contained within a sealed pack. The only way a Prison Officer can get access to a Cell during the nightshift is for him to break open the sealed pack, retrieve the key and then open the Cell door in question. Thereafter, the only

way in which the pack can be re-sealed is for the Prison Officer to take it back to the Control Room where it is re-sealed by the Supervisor in charge of the nightshift.

At no time during the night of Tuesday, 29 February/Wednesday, 1 March, 2000 did Mr McGougan break open his sealed pack. Accordingly, he never had access to any prisoner's Cell in the course of that night. Had Mr McGougan needed to gain access to a prisoner's Cell in an emergency, he would have required to break open his sealed pack. Once a sealed pack has been broken open the prison officer requires to complete a report form to explain the reason why this was done.

At no time during the nightshift of Tuesday, 29 February/Wednesday, 1 March, 2000 did Mr McGougan have any reason to go to Mr Drummond's Cell (Cell No. 2/21). At no time during that night did any other prisoners contact Mr McGougan requesting help for Mr Drummond. Had that situation arisen, Mr McGougan would have gone along to check the position. At no time during that night was Mr McGougan of the view that Mr Drummond should have been removed from his Cell (Cell No. 2/21). At no time during that night did Mr Drummond give Mr McGougan any reason to assume that he wished to be removed from his Cell (Cell No. 2.21).

Prisoner Derek Stevenson ("Mr Stevenson") alleged from what he said he had been told by Mr Cairns that Mr Drummond pressed the buzzer to his Cell (Cell No. 2/21) during the night of Tuesday, 29 February/1 March, 2000 when Mr McGougan was on duty and that a Prison Officer responded by telling Mr Drummond that he would get his testicles booted "if he did not stay off his buzzer". Mr McGougan was not involved in any such incident. At no time did he make any physical threats to Mr Drummond (see also Finding-in-Fact No. (221) (infra)).

Mr McGougan had received training in the "ACT" procedure (see Findings-in-Fact Nos. (40) to (50), (55) to (57), (64) to (75) and (78) to (87) (supra)). He was aware of the suicide prevention strategy in Barlinnie. On the night following Mr Drummond's suicide ie. on Wednesday, 1 March/Thursday, 2 March, 2000 a prisoner in "C" Hall attempted to commit suicide but was prevented from doing so by the actions of Mr McGougan and Ms Thompson (see Finding-in-Fact No. (177) (supra)). Because of what had happened to Mr Drummond, before the Prison Officers commenced their nightshift on the following night, they looked through the spyholes of every Cell door in "C" Hall to check all the prisoners. This is now the current practice in "C" Hall.

On the occasion of the attempted suicide referred to in Finding-in-Fact No. (199) (supra) when Mr McGougan checked a spyhole to one of the Cells he found a prisoner in the process of putting a noose around his neck. The prisoner was in a single Cell. Mr McGougan called for the assistance of Ms Thompson and a radio message was put out that there was a "Code 1" in progress, calling for immediate assistance and specifying the location (see also Findings-in-Fact Nos. (18) and (89) (supra)). Both Mr McGougan and Ms Thompson broke open the same sealed pack (see Finding-in-Fact No. (195) (supra)), entered the Cell and stopped the prisoner from hanging himself. Mr McGougan was not allowed to enter the Cell on his own until another Prison Officer had arrived at the scene. This was in order to avoid a potential hostage situation.

If prisoners are not "on observations" (see Finding-in-Fact No. (184) (supra)), Prison Officers do not look through the spyholes of the Cell doors at any time during the nightshift, unless they are summoned to a particular Cell door. Prisoners are entitled to a degree of privacy. They sometimes, not unreasonably get quite upset if they are trying to get to sleep and not being "on observations" their Cell light comes on. Accordingly it is now part of the policy at Barlinnie for Prison Officers to check the entire Hall at the start of the nightshift at around

9.00 pm by looking through the spyholes of each Cell door and thereafter to repeat the exercise at the end of the nightshift at around 6.15 am. That policy was not in place at the time of Mr Drummond's death in February/March, 2000. Accordingly, the present policy is that (apart from checking all the spyholes at the beginning and end of each nightshift) unless a Prison Officer is summoned to a prisoner's Cell or the prisoner is "on observations", the Prison Officers to not look through the spyholes between the hours of about 9.00 pm and 6.15 am. To do so would be unreasonable (see also Finding-in-Fact No. (184) (supra)).

Words along the lines alleged by Mr Wotherspoon to have been shouted by a male Prison Officer [eg. Mr McGougan] at Mr Drummond in the course of the nightshift of Tuesday, 29 February/1 March, 2000 (see Finding-in-Fact No. (181) (supra)) could have been shouted at him by another prisoner (other prisoners). Mr McGougan had no recollection of any such things being shouted by anyone.

In "C" Hall in Barlinnie, it is sometimes quite difficult to locate precisely where any shouting is coming from. There are four flats in the Hall and approximately 50 Cells on each flat. Whilst a Prison Officer can try to locate where shouting may be coming from, unless he is standing next door to or in the vicinity of its source or the shouting is continuous or constantly repeated such as to give him time to pinpoint the source, it is often impossible to do so. In these circumstances, there is nothing the Prison Officer can really do. Moreover, the position can be compounded because of the shouting of prisoners and banging of Cell doors, the sounds of which often reverberate all around the Hall.

If Mr McGougan did in fact know where a particular disturbance (eg. shouting or banging of Cell doors) was coming from or that a prisoner had been shouting abuse or directing threats at another prisoner he would have gone to the prisoner responsible for the disturbance and told him to stop (see also Finding-in-Fact No. (203) (supra)).

"C" Hall is always quite noisy up until round about midnight, when all the Cell lights are put off. Before that, there is always quite a lot of noise with prisoners shouting amongst themselves and banging Cell doors. However, things tend to quieten down once the Cell lights have been put off (see also Findings-in-Fact Nos. (186) and (194) (supra)).

Ms Abigail Thompson ("Ms Thompson") had been a Prison Officer in Barlinnie since 27 July, 1997. She had only worked as a Prison Officer at Barlinnie. She was working nightshift duty in "C" Hall in Barlinnie during the night of Tuesday, 29 February/Wednesday, 1 March, 2000. She was working the nightshift along with Mr McGougan. Ms Thompson started her shift at about 9.30 pm on Tuesday, 29 February, 2000 and finished at about 6.15 am on Wednesday, 1 March, 2000. As narrated in Finding-in-Fact No. (177) (supra) Ms Thompson and Mr McGougan were the only Prison Officers working nightshift in "C" Hall during that night.

Ms Thompson did not remember anything in particular happening during the nightshift of Tuesday, 29 February/1 March, 2000. She did not remember Mr Drummond. She first heard of Mr Drummond's suicide on her telephone answering machine when she arrived home from Barlinnie on Wednesday, 1 March, 2000, following her completion of the nightshift. When she received this information she still did not remember who Mr Drummond was.

At no time during the nightshift of Tuesday, 29 February/1 March, 2000 was Ms Thompson called to Cell No. 2/21. At no time that night did the buzzer light come on outside Mr Drummond's Cell (Cell No. 2/21). Ms Thompson was however probably called to several Cells that night. It was a normal occurrence. At no time did Ms Thompson hear Mr McGougan or anybody else shouting "Get your fucking head down. If you need to get taken out of the Cell you will get leathered." It is however possible that another prisoner could have

shouted these words but that Ms Thompson simply did not hear them. Whilst it is also possible that Mr McGougan shouted these words and that Ms Thompson again simply did not hear them, it is unlikely that that was the position, in that Mr McGougan and Ms Thompson were generally in each other's company or at least in the same general area or vicinity when they did their rounds of "C" Hall during the course of a nightshift. Mr McGougan did not shout these words or words along these lines at Mr Drummond (see also Findings-in-Fact Nos. (147), (166) and (181) (supra) and Finding-in-Fact No. (211) (infra)).

Ms Thompson had known Mr McGougan for about 21/2 to 3 years, during which time she had worked alongside him in different capacities. She considered Mr McGougan to be professional, articulate, accurate and fair and from her dealings with him she always felt confident in his abilities. From her own experience of working with Mr McGougan, she had no concerns whatsoever about his abilities as a Prison Officer to do his job.

If, in the course of the nightshift, a prisoner, who appeared to be suffering from acute drug withdrawal symptoms had pressed his buzzer and told Ms Thompson that he could not cope and that he had to get out [of his Cell], Ms Thompson would have stood at the Cell door and talked to the prisoner. She would also have requested the nightshift Supervisor to attend immediately. They would then have entered the Cell and spoken to the prisoner and tried to assess the situation. There was however not much which Ms Thompson could herself have done apart from talk to the prisoner behind the Cell door and tried to ensure that he did not do anything erratic. She would also have tried to calm the situation down if the prisoner appeared to have been acting strangely. Thereafter the nightshift Supervisor would have taken command and, if the situation appeared to have merited it, referred the prisoner to the Barlinnie Health Centre.

As narrated in Finding-in-Fact No. (208) (supra) Mr McGougan and Ms Thompson were generally in each other's company or at least in the same general area or vicinity when they did their rounds of "C" Hall during the course of a nightshift. Any prisoners who are on "strict observations" (ie. 15 minute observations) are located on the ground/lower flat. If, for example, Mr McGougan in the course of his rounds had to go up to one of the higher flats or stories, Ms Thompson would usually, but not invariably go with him. Even if Ms Thompson had remained on the ground flat checking the prisoners who were on "strict observations", she would probably have been able to hear if Mr McGougan had shouted abuse at a prisoner, such as Mr Drummond in Cell No. 2/21 along the lines and in the circumstances alleged by Mr Wotherspoon (see also Findings-in-Fact Nos. (181) and (194) (supra)).

Ms Thompson did not consider that Mr McGougan was the sort of Prison Officer who would shout abuse at prisoners. She had never heard Mr McGougan shouting abuse at prisoners. There was nothing to be gained by a Prison Officer shouting abuse at prisoners during the nightshift as one of the objectives of the nightshift was to keep the Hall as quiet as possible. If for some reason, a Prison Officer were to shout abuse at a prisoner during the nightshift the likelihood is that the prisoners would start shouting and banging their Cell doors and that pandemonium would break out.

If a prisoner had shouted out for help, as Mr Wotherspoon alleged Mr Drummond had done during the nightshift of Tuesday, 29 February/Wednesday, 1 March, 2000 (see Findings-in-Fact Nos. (181) and (194) (supra)) Ms Thompson would have expected Mr McGougan to attend immediately and try to locate where the shouting was coming from. Thereafter, she would have expected Mr McGougan to identify the problem and deal with it as the situation demanded (see Findings-in-Fact Nos. (183) and (210) (supra)). For the reasons narrated in Finding-in-Fact No. (203) (supra), it can, however, often be very difficult/impossible to locate precisely where shouting in "C" Hall is coming from.

If a prisoner presses his buzzer during the course of the nightshift, Ms Thompson always goes to investigate the situation to find out the reason for the prisoner's doing so. She was certain that Mr Drummond did not press the buzzer to Cell No. 2/21 at any time during the nightshift of Tuesday, 29 February/Wednesday, 1 March, 2000 (see also Finding-in-Fact No. (181) (supra)). There was, however, no means of checking up after the event as to whether or not a prisoner had pressed his buzzer on a particular occasion.

Ms Thompson did not know Prison Officer Burns (see Finding-in-Fact No. (131)). She had no knowledge of any allegation that Mr Burns had hit Mr Drummond on the back of the head while he was out of his Cell (Cell No. 2/21 getting his tea at around 4.00 pm) in the course of the afternoon of Tuesday, 29 February, 2000 (see also Findings-in-Fact Nos. (135), (142), (143) and (164) (supra)).

Ms Thompson had no knowledge of any allegation that the prisoner Mr Cairns had been assaulted by prison staff. She had never heard of any rumour(s) to that effect. She had no knowledge of any allegations that Prison Officers had tried to force Mr Drummond to clean/mop up Mr Cairns' blood (see Findings-in-Fact Nos. (134), (136) and (138) (supra)). Further, she had no knowledge of any allegation that Prison Officers had tried to force Mr Drummond to give them information about (the whereabouts of) a supply of illicit drugs held by Mr Cairns (see Findings-in-Fact Nos. (132), (137) and (155) (supra)).

Ms Thompson had no knowledge of Prison Officer Richmond (see Finding-in-Fact No. (153) (supra)).

Ms Thompson had never shouted abuse at prisoners. In particular she never shouted abuse at Mr Drummond in the course of the nightshift on Tuesday, 29 February/Wednesday, 1 March 2000 or at any other time. She also never ignored cries for help from Mr Drummond during the course of that night. At no time did she hear any such cries.

At no time did Mr Wotherspoon or any other prisoner(s) contact Ms Thompson in the course of the nightshift of Tuesday, 29 February/Wednesday, 1 March, 2000 to voice any concerns about Mr Drummond. Had Ms Thompson seen a Prison Officer assaulting a prisoner she would have immediately contacted the nightshift Supervisor. At no time during the said nightshift did she, Mr McGougan or anyone else enter Mr Drummond's Cell (Cell No. 2/21). At no time did Ms Thompson herself break open the sealed pack and enter Mr Drummond's Cell (see Finding-in-Fact No. (195) (supra)).

Ms Thompson had received training in the "ACT" procedure (see Findings-in-Fact Nos. (40) to (50), (55) to (57), (64) to (75) and (78) to (87) (supra)). She accordingly knew what to do in the event of her being summoned during the night by a prisoner who was feeling say, suicidal. She had however, never been required to implement the "ACT" procedure during the nightshift.

Mr Derek Stevenson ("Mr Stevenson") was a prisoner serving a 5 years' prison sentence in HM Prison, Perth for assault and robbery. He was due to be released on 31 July, 2002. He was in "A" Hall in Barlinnie in February/March, 2000. On Wednesday, 1 March, 2000 he found himself handcuffed to Mr Cairns (see Finding-in-Fact No. 13 (supra)) with whom he had a conversation. Mr Cairns told him that he (Mr Cairns) had spent the previous night, viz: Tuesday, 29 February/1 March, 2000 in the Segregation Unit. Mr Stevenson went to Court on Wednesday, 1 March, 2000 and thereafter returned to "A" Hall. On his return to "A" Hall he heard general talk from prisoners coming in from "C" Hall about what was alleged to have happened to Mr Drummond on the previous night. He was unable to go into detail. From where Mr Stevenson was in "A" Hall he had been unable to hear what was going on in "C"

Hall. Similarly, Mr Cairns, whilst in the Segregation Unit would have been unable to hear what was going on in "C" Hall. (See also Finding-in-Fact No. (198) (supra)).

Mr Stevenson was familiar with the term "going on protection" and with what it meant within the prison environment. In this connection, a prisoner could be asked to be put on protection if, for example he thought that he was going to be slashed by another prisoner or that he was being bullied. Being "put on protection" meant in essence that the prisoner's Cell door would be locked and opened at different times from those of other prisoners. It might also involve the prisoner's being moved to a different Hall.

Mr Stevenson was aware of the complaints procedure (see Finding-in-Fact No. (151) (supra)) in Barlinnie in relation to any complaint which a prisoner may have against a specific Prison Officer (see also Findings-in-Fact Nos. (164) and (170) (supra)). To lodge a written complaint against a specific Prison Officer, it might in certain circumstances lead to friction between the prisoner concerned and the Prison Officer. Mr Stevenson had a lengthy criminal record. He was fairly experienced so far as the Criminal Justice system was concerned. Even in these circumstances he stated that he would have reservations about making a complaint against a Prison Officer for fear of the possible repercussions.

Mr Francis MacDonald ("Mr MacDonald") was 27 years of age and unemployed. He lived in Possilpark in Glasgow. In February/March, 2000 he was a remand prisoner in "C" Hall in Barlinnie on a charge of being concerned in the supply of illegal drugs in respect of which he was subsequently convicted and sentenced to a period of 5 years' imprisonment. He was released from that sentence in May, 2002.

Whilst on remand in "C" Hall in February, 2000 (see Finding-in-Fact No. (224) (supra)) Mr MacDonald had once or twice seen Mr Drummond walking around the exercise area taking exercise just like a normal prisoner. Mr MacDonald had never seen Mr Drummond before. He described Mr Drummond as being a quiet person. He thought that he had last seen Mr Drummond about two days prior to his committing suicide (ie. about 27/28 February, 2000) when he described him as not looking "in top shape". He was however unable to provide any further details of Mr Drummond's appearance and was unable to say whether or not he might have been displaying symptoms of "rattling" (see Findings-in-Fact No. (103) (supra)). In Mr Stevenson's opinion however, Mr Drummond did not appear to be unwell.

Mr MacDonald knew that Mr Cairns, along with about three other prisoners had been removed from "C" Hall to the Segregation Unit in Barlinnie on Tuesday, 29 February, 2000, leaving Mr Drummond alone in his Cell (Cell No. 2/21) (see Findings-in-Fact Nos. (13) and (23) (supra)). Mr MacDonald stated that he also knew that Mr Cairns had illegal drugs in the prison.

On the night of Tuesday, 29 February/Wednesday, 1 March, 2000 Mr MacDonald stated that there was a lot of noise in "C" Hall such as shouting and banging on Cell doors. He described this noise as a commotion. He said that it came from both the prisoners and the Prison Officers, but that as he had problems of his own at the time he "wasn't really getting interested in what other people was [sic] doing..." He further stated however, that there was always shouting and banging on Cell doors in "C" Hall during the night. He said that as he was at the opposite end and on the other side from Mr Drummond's Cell (Cell No. 2/21) he would have been unable to hear if Prison Officers had shouted anything at Mr Drummond during the night. He stated "most Prison Officers aren't nice people" and also confirmed that he was not abusing controlled drugs at the time.

Mr MacDonald had never seen Mr Drummond being assaulted by a Prison Officer. In particular, he had never heard of Mr Drummond's being hit on the head by a Prison Officer [eg. Mr Burns] (see Finding-in-Fact No. (135) (supra)).

Mr MacDonald stated that, even when locked, some Cell doors had gaps along their tops and down their sides at the hinges through which a prisoner could see, provided he was standing either at the side of the door or looking over the top. At one point in his evidence Mr MacDonald estimated that a prisoner could see a distance of about 3 or 4 metres on the other side of the door. At another point in his evidence, he stated that a prisoner could probably see right across to the other side of the gallery. He also stated that a prisoner could sometimes see through the spyhole of a Cell door if, for example, it had jammed for some reason or a Prison Officer had failed to shut it properly. On the night of Tuesday, 29 February/Wednesday, 1 March, 2000 Mr MacDonald did not see anything outside his Cell which caused him any concern in relation to Mr Drummond (see also Finding-in-Fact No. (227) (supra)).

Mr William Wotherspoon ("Mr Wotherspoon") was 34 years of age. As at June, 2002, he was a prisoner in Kilmarnock Prison serving a 4 year sentence for drugs offences. He was due to be released in August, 2002. Crown Production No. 10 was the Schedule of Previous Convictions in relation to Mr Wotherspoon. This was accepted by him as accurate. This disclosed some 6 pages of previous convictions dating back to 1984, including inter alia numerous convictions for crimes of dishonesty and violence for which he had served many custodial sentences. In particular, he had convictions for theft by opening lockfast places, theft and theft by housebreaking; assault and contraventions of section 41 of the Police (Scotland) Act 1967. On 10 March, 1989 he was convicted after trial of attempted murder at the High Court in Edinburgh in respect of which he was sentenced to a period of detention of 10 years in a Young Offenders' Institute. Said offence involved the use of a firearm. Mr Wotherspoon gave evidence in his own defence at the said trial.

As at February/March 2000 Mr Wotherspoon was a remand prisoner on the second floor/flat in "C" Hall in Barlinnie when he first met Mr Drummond. He had been on remand in Barlinnie since November, 1999. As at February, 2000 Mr Wotherspoon abused illicit drugs, particularly heroin in Barlinnie. He was in Cell No. 30 on the second floor/flat (Cell No. 2/30). He shared this Cell with another prisoner. As narrated in Finding-in-Fact No. (1) (supra) between 29 February and 1 March, 2000 Mr Drummond was the sole prisoner occupying Cell No. 21 on the second floor/flat (Cell No. 2/21) in "C" Hall.

Mr Wotherspoon's Cell (Cell No. 2/30) was diagonally opposite Mr Drummond's Cell (Cell No. 2/21) on the second floor/flat in 'C' Hall (see also Finding-in-Fact No. (231) (supra)). Mr Wotherspoon stated that he could see out of his Cell door (Cell No. 2/30) through cracks about half a cm wide. His vision was however restricted and he was unable to get a clear picture of anything which may have been taking place outside.

Mr Wotherspoon first met Mr Drummond on the second floor/flat in "C" Hall on Tuesday, 29 February, 2000 when Mr Drummond was "slopping out". On said occasion, Mr Wotherspoon arranged to obtain some heroin for Mr Drummond that night and try to get it to him first thing the following morning (ie. Wednesday, 1 March, 2000). That was the last time Mr Wotherspoon saw Mr Drummond. Although Mr Wotherspoon was in fact unable to get any heroin to Mr Drummond he himself took some heroin at about 8.30 pm on 29 February, 2000.

Mr Wotherspoon described the Prison Officers in Barlinnie as "rats" and "just pure pigs" (see Notes of Evidence, Vol I, p 46, lines 22 - 25). At no time did he express any concerns which

he may have had about Mr Drummond's general health/condition to either Prison Officers Burns or Richmond or to anyone else (see also Finding-in-Fact No. (146) (supra)).

On the morning of Wednesday, 1 March, 2000 Mr Wotherspoon heard what he described as a "Code Blue" [ie "Code 1"] being sounded. This, he explained, meant that there had been a death in custody. He stated that it was Prison Officer Smith who "put the Code Blue out" by shouting "Code Blue, Cell 21" (see Findings-in-Fact Nos. (9) and (18) (supra)).

Mrs Drummond, the mother of Mr Drummond (see Findings-in-Fact Nos. (4) to (8) (supra)) went to visit Mr Drummond in Barlinnie along with her friend Margaret Burns on Tuesday, 29 February, 2000. She was denied admission to the prison when she arrived there shortly after 6.00 pm on that date because she was late. She stated that her brother Mr Richard McLaren had gone to visit Mr Drummond on the previous Saturday, (ie. 26 February, 2000) and had left some money for him. He had however not waited to see Mr Drummond.

Mrs Drummond first heard officially from the police that her son had died when they came round to her house at about 7.30 pm on Wednesday, 1 March, 2000 to inform her of the position. They told her that Mr Drummond's father had also been notified. He however had died nearly two years previously. Prior to being informed by the Police Mrs Drummond had heard on the radio at around 5.00 pm about the death in Barlinnie of a 21 year old from Tollcross. Her sister had also heard about it on the radio and had telephoned her to see if she was all right. Mrs Drummond thought that her son must have been involved in some sort of an incident, such as a fight.

After hearing the radio report at around 5.00 pm about the death in Barlinnie of a 21 year old youth from Tollcross and after having been telephoned by her sister and other people in that regard (see Finding-in-Fact No. (237) (supra)) Mrs Drummond first telephoned Barlinnie at around 5.30 pm to try to obtain some information. On said occasion she was told that there had been an incident but that the family [of the prisoner concerned] had been contacted. In these circumstances, she presumed that the incident was nothing to do with her son. However, about a quarter of an hour later, at about 5.45 pm, Mrs Drummond again telephoned Barlinnie. On said occasion she spoke to the Acting Manager on duty. He asked her for all her son's details and advised her that so far as Barlinnie was concerned, the family of the youth involved had been notified, but that according to the details Mrs Drummond had given him, that youth was Mr Drummond.

On the day following upon Mr Drummond's death (ie. on Thursday, 2 March, 2000) Mrs Drummond received a letter from Barlinnie inviting her to go to see the Governor. In response to said letter Mrs Drummond, together with her brother and sister-in-law Mr Richard McLaren and Mrs Jeanette McLaren went to Barlinnie. Mrs Drummond spoke to the Governor who explained to her the circumstances in which Mr Drummond had spent the night alone in his Cell (Cell No. 2/21) on Tuesday, 29 February/Wednesday, 1 March, 2000. He also told her that so far as Barlinnie was concerned Mr Drummond had not displayed any suicidal tendencies.

On some previous occasions when Mr Drummond had been detained in custody, he had been placed in a Cell on his own. On said occasions he "had been fine" and Mrs Drummond had been unaware of any causes for concern. She stated that Mr Drummond "could cope with being himself".

About three weeks after Mr Drummond's death on Tuesday, 29 February/Wednesday, 1 March, 2000 Mrs Drummond received a telephone call at her home from Mr Cairns in Barlinnie (see Finding-in-Fact No. (13) (supra)), advising her that he had shared a Cell with Mr Drummond and inviting her to go up to see him. This came as a surprise to Mrs

Drummond. She agreed however to meet Mr Cairns in Barlinnie. In this connection, Mr Cairns suggested that Mrs Drummond use her maiden name (ie. McLaren) as opposed to her married name when visiting Barlinnie.

Following upon said telephone call from Mr Cairns (see Finding-in-Fact No. (241) (supra)), Mrs Drummond (using her maiden name McLaren) together with her late husband's sister, Mrs Anne Drummond went to see Mr Cairns in Barlinnie. Mrs Drummond had a conversation there with Mr Cairns. Mr Cairns told Mrs Drummond that during the six days when he said that he had shared a Cell with Mr Drummond, Mr Drummond had been questioned by Prison Officers regarding the whereabouts of illicit drugs which Mr Cairns had been selling in the prison. Mrs Drummond stated that Mr Cairns had told her that the Prison Officers had told Mr Drummond that if he did not assist them in this regard they would put it around that he (Mr Drummond) was a "grass". Mr Cairns also told Mrs Drummond that the Prison Officers had fabricated a story about Mr Cairns' being in possession of a knife, and that this had been used as a pretext "for doing searches" when in fact it was illicit drugs which they had been searching for.

During the course of the conversation which Mrs Drummond had with Mr Cairns in Barlinnie (see Finding-in-Fact No. (242) (supra)), Mrs Drummond stated that Mr Cairns had mentioned that a Prison Officer by the name of Richmond (see Finding-in-Fact No. (153) (supra)) had been one of the Prison Officers who was bullying Mr Drummond and trying to get information from him as to where Mr Cairns was hiding his illicit drugs. In this connection, Mrs Drummond stated that Mr Cairns had told her that he had been in a Cell on the occasions when Mr Drummond had been removed from it by Prison Officers for intense questioning with regard to Mr Cairns' hidden drugs supply and that when Mr Drummond was returned to the Cell, Mr Cairns was himself removed from it and told by the Prison Officers that Mr Drummond had supplied them with information which he, Mr Cairns could not deny. Mrs Drummond stated that Mr Cairns had told her that the Prison Officers had picked on Mr Drummond "because he was a wee, daft 21 year old in a Cell" (see Notes of Evidence Vol II, p 240, lines 22 and 23) who had no experience of being in Barlinnie. Mr Cairns told Mrs Drummond that he did not however believe that Mr Drummond had supplied the Prison Officers with any information because he, Mr Cairns had not been "daft enough" to tell Mr Drummond where he had kept his stash of drugs. Mr Cairns stated to Mrs Drummond that her son "was feart that other people would think that he [Mr Drummond] was [a clipe] (ie. an informer)" (see Notes of Evidence, Vol II, p 241, lines 4 and 5).

During the course of the conversation which Mrs Drummond had with Mr Cairns in Barlinnie (see Findings-in-Fact Nos. (242) and (243) (supra)), Mrs Drummond stated that Mr Cairns had told her that he [Mr Cairns] "had been knocked about on a few occasions" (see Notes of Evidence, Vol II, p 238, lines 1 and 2) (ie. assaulted by Prison Officers). Mr Cairns also told Mrs Drummond that during the time he had shared a Cell with her son in Barlinnie they had become quite friendly. In this connection, from the personal details which Mr Cairns was able to relate to Mrs Drummond about herself and her family, Mrs Drummond believed that Mr Cairns and her son had had a lot of discussions during the time they shared a Cell in Barlinnie.

Some weeks after the conversation which Mrs Drummond had with Mr Cairns in Barlinnie and in particular in relation to her being informed that unless Mr Drummond assisted the Prison Officers in supplying them with information as to where Mr Cairns had hidden his supply of illicit drugs, they would put it around the prison that he [Mr Drummond] was a "grass" (see Finding-in-Fact No. (242) (supra)), Mrs Drummond, with the assistance of Strathclyde Police, contacted a Mrs Ford, Procurator Fiscal Depute and subsequently had a

meeting with her at the Procurator Fiscal's Office. Mrs Drummond stated that she told Mrs Ford the same as what she had said in evidence at the present Inquiry.

Mrs Drummond was aware that Mr Cairns had subsequently been interviewed by the Procurator Fiscal's Office in Glasgow. In this connection she had been advised by the Procurator Fiscal Depute that Mr Cairns had stated that he was unwilling to be cited as a witness or to appear in Court to give evidence in relation to these matters [at any Inquiry]. In this connection, 2 days after the conversation which she had with Mr Cairns in Barlinnie (see Findings-in-Fact Nos. (242) to (244) (supra)), Mr Cairns had telephoned her to say that the Prison Officers knew who Mr Drummond was (notwithstanding the fact that she had used her maiden name McLaren when visiting Mr Cairns in Barlinnie) (see Finding-in-Fact No. (242) (supra)). In this connection, Mr Cairns told her that the Prison Officers had said to him: "We know who that [ie. Mrs Drummond] was. You play ball with us and we'll play ball with you."

On being informed by the Procurator Fiscal Depute that Mr Cairns was unwilling to be cited as a witness or to appear in Court to give evidence in relation to these matters [at any Inquiry] (see Finding-in-Fact No. (246) (supra)), Mrs Drummond wrote a letter to Mr Cairns in Barlinnie advising him of what the Procurator Fiscal Depute had told her and that she appreciated that he had got to watch his own back (see Notes of Evidence, Vol II, p 245, lines 9 and 10). Mrs Drummond was unaware whether or not Mr Cairns ever received her letter. She has had no contact with him since.

Mr Robert Drummond ("Robert") was 21 years of age. He lived with his mother, Mrs Drummond at No. 884 Shettleston Road, Glasgow. He was unemployed. He was the younger brother of Mr [James] Drummond. In his evidence which he gave to the Inquiry on Monday, 10 June, 2002 he corroborated Mrs Drummond's evidence that Mr Drummond telephoned home from Barlinnie on Sunday, 27 February, 2000 (see also Finding-in-Fact No. (8) (supra)). Robert stated that he answered the telephone and spoke to Mr Drummond who just wanted to know if his mother was coming up to Barlinnie to see him and also if anyone had left any money at the Refectory for him to enable him to buy cigarettes and the like. Robert told Mr Drummond that his uncle [Mr Richard McLaren] had already been up to Barlinnie and left money there for him. Robert stated that Mr Drummond was unaware that any money had been left for him. He also stated that he told Mr Drummond that his mother was coming up to visit him on the following Tuesday, (ie. 29 February, 2000).

In the course of the telephone conversation between Mr Drummond and Robert (see Finding-in-Fact No. (248) (supra)) Mr Drummond "sounded all right". Robert stated that Mr Drummond told him that he was getting "hassle" (a bit of/a lot of) from someone called Richmond. At the time Robert thought that Mr Drummond was referring to another prisoner. He thought that Mr Drummond was simply referring to "somebody who was in next to him". He stated that it was not until a few weeks later that he "found out that it was actually a guard in the prison" whom Mr Drummond was referring to. Mr Drummond did not explain what sort of "hassle" he said he was getting. He just said that he had to get off the telephone as there were other people waiting to use it and asked Robert to "make sure my Ma comes up to see me" (see Notes of Evidence, Vol I, p 17, lines 7 and 8).

Robert was close to his big brother (ie. Mr Drummond) and would have been able to tell from speaking to him if anything had been upsetting him. Nothing in particular appeared to be upsetting Mr Drummond. So far as Mr Drummond's committing suicide was concerned, Mr Drummond was "not the kind of person to do that". In this connection, Robert stated that it was "just something that would not occur to you to think about James" (ie. Mr Drummond). There was nothing in the telephone conversation which Robert had with Mr Drummond

which caused Robert to have any concerns about him. So far as any further details about the telephone conversation were concerned Robert stated that it "was that long ago I can hardly remember" (see Notes of Evidence, Vol I, p 18, lines 8 and 9). Robert was surprised when he found out that Mr Drummond had committed suicide.

So far as the evidence which Robert gave to the Inquiry on 10 June, 2002 in relation to the date of the telephone conversation between him and Mr Drummond which he said had taken place on Sunday, 27 February, 2000 was concerned, having heard the evidence of inter alios Robert and Mr Richmond (who was alleged to have given "hassle" to Mr Drummond) to the effect that he did not come on shift in "C" Hall until the afternoon of Monday, 28 February, 2000 (see Findings-in-Fact Nos. (153) and (157) (supra)) the Procurator Fiscal Depute moved me on 12 June, 2002 to allow Mrs Drummond to be recalled (for a third time) to rectify what Mrs Drummond stated was an error in her earlier evidence. This was opposed by Mr Mowat on behalf of the Prison Officers and by Miss Lyle on behalf of the Scottish Prison Service. After hearing submissions, I allowed Mrs Drummond to be recalled.

In her evidence which she gave to the Inquiry on Wednesday, 12 June, 2002 Mrs Drummond stated that she thought that the evidence which Robert had given to the Inquiry on Monday, 10 June, 2002 to the effect that Mr Drummond had telephoned home from Barlinnie on Sunday, 27 February, 2000 was wrong. In this connection, Mrs Drummond then stated that the said telephone conversation had in fact taken place on Monday, 28 February, 2000. In response to the question as to why it had taken her two days to raise the issue with the Procurator Fiscal Depute, Mrs Drummond replied:-

"Simply because of what I heard this morning as regards to Mark Cairns because it was him that lent James a phonecard to phone the house and according to this morning's evidence Mark Cairns spent the Monday [28 February, 2000] with Jamie and so Jamie didn't know Mark Cairns on the Sunday [27 February, 2000]. Plus, when this originally came around and myself and Robert spoke about it, Robert told James on the phone that I was coming up to see him [on] one of two days' off."

(see Notes of Evidence, Vol III, p 388, lines 5 - 14).

Mrs Drummond stated that the "two days' off" which she had during the week in which Mr Drummond died were Wednesday, 1 March, 2000 and Thursday, 2 March, 2000 and that these were in fact the "two days off" to which Robert had been referring when he spoke to Mr Drummond on the telephone. It was Mrs Drummond's position that Robert had told Mr Drummond that she was going up to see him in Barlinnie on one of her "two days' off" (ie. on either Wednesday, 1 March, 2000 or Thursday, 2 March, 2000). As Robert was the last person in the Drummond family to whom Mr Drummond spoke, Mrs Drummond stated that she and Robert "were trying to work out the day [that] Jamie phoned". In this connection, she stated that she told Robert that the telephone call from Mr Drummond was made two days before her first day off ie. two days before Wednesday, 1 March, 2000. On that basis, Mrs Drummond stated that the telephone call had in fact been made on Monday, 28 February, 2000 (on which date Mr Richmond commenced his afternoon shift) and not, as stated by Robert in his evidence on Sunday, 27 February, 2000 (when Mr Richmond was off duty).

In the event, however, as narrated in Finding-in-Fact No. (236) (supra) Mrs Drummond along with her friend, Margaret Burns in fact tried (unsuccessfully) to visit Mr Drummond in Barlinnie in the early evening of Tuesday, 29 February, 2000. Mrs Drummond stated that the reason for her visiting Mr Drummond on a day earlier than had been originally planned was because Margaret Burns' son offered his mother and Mrs Drummond a lift up to Barlinnie on the Tuesday evening (ie. Tuesday, 29 February, 2000) and that Mrs Drummond had been happy to accept this offer of transport.

In discussing with Robert and trying to work out with him the date on which he received the telephone call from Mr Drummond from Barlinnie (see Finding-in-Fact No. (248) (supra)) Mrs Drummond's position was that when Robert in evidence gave that date as being Sunday, 27 February, 2000, it had been calculated on the basis that she (Mrs Drummond) had in fact visited Barlinnie on Tuesday, 29 February, 2000 (see Finding-in-Fact No. (236) (supra)) and that instead of calculating the date of the telephone call as being two days prior to the first of Mrs Drummond's two days' off." (ie. two days prior to Wednesday, 1 March, 2000), viz: Monday, 28 February, 2000) (when Mrs Drummond was supposed to be going up to visit her son) Robert had erroneously calculated the date as being two days prior to the date on which Mrs Drummond and her friend had in fact visited Barlinnie (ie. two days prior to Tuesday, 29 February, 2000), viz: Sunday, 27 February, 2000). It was in these circumstances that Mrs Drummond maintained that the correct date on which the telephone call had in fact been made was Monday, 28 February, 2000 (and not Sunday, 27 February, 2000) and that "a genuine mistake on the family's part, myself and Robert" had occurred (see Notes of Evidence, Vol III, p 396, lines 10 and 11).

Mrs Drummond denied that she had changed her evidence in relation to the date on which the telephone call between Mr Drummond and Robert had taken place because it did not tie in with Mr Richmond's evidence to the effect that he was not even on duty in "C" Hall on Sunday, 27 February, 2000 (see Findings-in-Fact Nos. (153) and (157) (supra)). When asked how she knew what Mr Drummond had said to Robert when he telephoned Mrs Drummond replied: "Because Robert and I have had 2 years to talk about it." (see Notes of Evidence, Vol III, p 392, lines 19 and 20). She also accepted that her knowledge of the contents of that conversation had been derived just from what she had heard from Robert, who was her son (see Notes of Evidence, Vol III, p 392, lines 22 and 23). She also commented "There is no need for Robert to lie." (see Notes of Evidence, Vol III, p 396, line 16).

Pursuant to Mrs Drummond's being allowed to be recalled to give evidence on Wednesday, 12 June, 2002 (see Findings-in-Fact Nos. (251) and (252) (supra)), there was no opposition to a similar motion by the Procurator Fiscal Depute in relation to Robert. Robert was accordingly recalled and also gave further evidence to the Inquiry on Wednesday, 12 June, 2002. He had not discussed his further evidence with Mrs Drummond and did not know the reason for his being recalled; he knew, however, that he was going to be asked some more questions, but did not know what they were going to be about.

When asked if he remembered what day he had said that Mr Drummond telephoned the house from Barlinnie, Robert replied: "The Sunday" [ie. 27 February, 2000]. When asked why he said it was the Sunday he replied: "Because it was a Sunday. I remember it was a Sunday." (see Notes of Evidence Vol III p 422, lines 3 - 7). Robert confirmed that Mr Drummond had asked him about when his mother was going up to see him in Barlinnie and replied that he told Mr Drummond that his mother was off on the Tuesday [ie. 29 February, 2000] and that she was going up to see him on the Tuesday. When asked if he was sure about that he replied "Yes I think so" (see Notes of Evidence, Vol III, p 423, lines 3 - 8).

When Robert was asked how he knew what his mother's shifts were, in relation to his telling Mr Drummond that his mother was going up to see him on the Tuesday [ie. 29 February, 2000] he replied: "Because she told me". In this connection, he stated that the rotas of all Mrs Drummond's shifts - "the days she is on, the days she is off, are always in the house. So I just had to look at them and I would know, but I already knew she was off on the Tuesday." (see Notes of Evidence, Vol III, p 423, lines 21 - 25). Robert confirmed that Mr Drummond told him that although he had no money, he was able to make the telephone call because he had got a loan of a telephone card from somebody who was next to him in the Jail. In this connection, Robert confirmed that Mr Drummond had not been on the telephone for long as he was unable to get a lot of credit. Robert did not know the name of the person who had lent the phone card to Mr Drummond.

When it was put to Robert that Mrs Drummond and he had (erroneously) tried to work out the date on which Mr Drummond had telephoned the house from Barlinnie by reference to the fact that it was two days before Mrs Drummond had in fact gone to see him in Barlinnie (ie. two days before Tuesday, 29 February, 2000, viz: Sunday, 27 February, 2000) as opposed to the correct date which should have been worked out by reference to it's being two days before Mrs Drummond was supposed to have gone to see him in Barlinnie (ie. two days before Wednesday, 1 March, 2000, viz: Monday, 28 February, 2000) Robert replied: "My Mum was trying to work it out. I knew what date it was. My Ma was saying...I knew it was Sunday. There is no doubt in my mind that it was the Sunday." (see Notes of Evidence, Vol III, p 426, lines 6 - 9). When, in that connection it was put to Robert that he was wrong in saying that the telephone call from his brother was on the Sunday (ie. 27 February, 2000) Robert replied "I thought it was a Sunday" (see Notes of Evidence, Vol III, p 426, lines 16 and 17).

When it was put to Robert in relation to the allegation that Mr Drummond was being "hassled" by a Prison Officer called Richmond (see Finding-in-Fact No. (249) (supra)) that the first day on which Mr Richmond had occasion to be working in "C" Hall when Mr Drummond was there was Monday, 28 February, 2000, Robert replied "It [ie the telephone conversation] must have been the Monday then. I thought it was the Sunday" (see Notes of Evidence, Vol III, p 427, lines 7 and 8) (see also Finding-in-Fact No. (153) (supra)). Robert was unable to remember Mr Drummond's telling him in the course of the telephone conversation that he had got his phonecard from a Cell mate by the name of Mark Cairns. Whilst it was put to Robert that the only day Mr Drummond shared a Cell with Mr Cairns [in "C" Hall] was on the Monday (ie. 28 February, 2000) to which Robert replied " - it [ie. the telephone conversation] must have been the Monday, then I am mistaken" (see Notes of Evidence, Vol III, p 427) lines 19 and 20), in fact, as narrated in Finding-in-Fact No. (23) (supra) Mr Drummond shared a Cell (Cell No. 2/21) with Mr Cairns for two nights, viz: Sunday, 27 and Monday, 28 February, 2000 (see also Finding-in-Fact No. (12) (supra) and Production No. 2 for the Scottish Prison Service). At one stage in his evidence Robert eventually stated "It [ie. the telephone conversation] cannot [have been on] the Sunday because of my Ma's evidence saying that it was the Monday...I don't know what you want me to say. I don't know" (see Notes of Evidence, Vol III, p 428, lines 3 to 5 and 8 and 9). However, when asked what made him think that the telephone call from his brother was on a Sunday, Robert replied "I don't know. I am just going on my mind that it was a Sunday" (see Notes of Evidence, Vol III, p 428, lines 12 and 13).

When it was again put to Robert that he, like his mother Mrs Drummond had confused the day when she was supposed to visit Mr Drummond in Barlinnie (ie. Wednesday, 1 March, 2000) with the day when she actually tried to visit him in Barlinnie (ie. Tuesday, 29 February, 2000) and, in an attempt to work out the day on which Mr Drummond telephoned home from

Barlinnie, calculated two days back from Tuesday, 29 February, 2000 (to get Sunday, 27 February, 2000) instead of calculating two days back from Wednesday, 1 March, 2000 (to get Monday, 28 February, 2000) Robert replied: "It is possible, aye." (see Notes of Evidence, Vol III, p 431, line one).

Robert accepted that he might have used his mother's (Mrs Drummond's) work rotas to try to work out when Mr Drummond telephoned from Barlinnie. In this connection he said "It could have happened like that, aye. I could have used the rotas to work back. I'm not exactly sure." (see Notes of Evidence, Vol III, p 431, lines 24 and 25 and p 432, lines 1 and 2). Mr Drummond telephoned home from Barlinnie at or around 4.00 pm and that ever since that call Robert had thought that it had been made on the Sunday before Mr Drummond died, ie. on Sunday, 27 February, 2000.

Robert confirmed that his mother, Mrs Drummond had been trying to calculate the date of Mr Drummond's telephone call from Barlinnie by working back with reference to her shift rotas, but that he had always thought that the call had been made on the Sunday (ie. 27 February, 2000). In this connection, he confirmed that he and his brother had been close and that after his brother's suicide, he had always looked back to that telephone call as being the last time he had spoken to him.

Robert confirmed that in the course of his telephone conversation with his brother from Barlinnie he told him that his mother, Mrs Drummond was off work on the Tuesday, (ie. 29 February, 2000) and that she was going up to Barlinnie to see him on that date (see Findings-in-Fact Nos. (248) and (257) (supra)). Robert stated that his mother told him that she was going up to see Mr Drummond in Barlinnie on the Tuesday, (see Notes of Evidence, Vol III, p 435, lines 4 - 18). As narrated in Finding-in-Fact No. (236) (supra) Mrs Drummond, along with her friend Margaret Burns did in fact go up to Barlinnie on Tuesday, 29 February, 2000 to try to see her son.

Mr Drummond made a telephone call home from Barlinnie at or around 4.00 pm on either Sunday, 27 February, 2000 or Monday, 28 February, 2000. On said occasion he spoke to his brother Robert.

NOTE:

On 10, 11 and 12 June, 2002, I heard evidence in the Fatal Accident Inquiry into the death of James Taylor McLaren Drummond, aged 21 years who by agreement was pronounced dead at 0900 hours on Wednesday, 1 March, 2000 within Cell No. 2/21 in 'C' Hall, in HM Prison, Barlinnie, Glasgow. I also heard submissions in relation to the evidence from the Procurator Fiscal Depute (Miss Henderson) on behalf of the Crown on 12 June, 2002 and further submissions in relation to the evidence from Mr Mowat on behalf of the Prison Officers' Association and from Ms Lyle on behalf of the Scottish Prison Service on 13 December, 2002. In connection with the submissions from both Mr Mowat and Miss Lyle, I had the benefit of comprehensive written submissions which were supplemented orally by them at the adjourned Hearing on 13 December, 2002. There was no separate legal representation on behalf of the deceased's family.

The Crown led evidence from the following persons:-

Mrs Maureen Drummond, mother of the deceased (see Notes of Evidence, Vol I, pp 3 - 14).

Mr Robert Drummond, brother of the deceased (see Notes of Evidence, Vol I, pp 14 - 19).

Mr Derek Stevenson, prisoner in Perth Prison (see Notes of Evidence, Vol I, pp 19 - 30).

Mr William Wotherspoon, prisoner in Kilmarnock Prison (see Notes of Evidence, Vol I, pp 30 - 81).

PC David Bellingham, Police Officer in Strathclyde Police (see Notes of Evidence, pp 81 - 92).

Dr Dominic Gonzalez, Occupational Physician (formerly employed by the Scottish Prison Service) (see Notes of Evidence, Vol I, pp 92 - 151).

Mr Francis MacDonald (former remand prisoner in Barlinnie Prison) (see Notes of Evidence, Vol I, pp 151 - 168).

Mr William Wotherspoon (Recalled), prisoner in Kilmarnock Prison (see Notes of Evidence, Vol 2, pp 171 - 174).

Mr Neil Hainey, Prison Officer, Barlinnie Prison (see Notes of Evidence, Vol II, pp 174 - 205).

Mr Alan Spencer, Nurse Practitioner, Barlinnie Prison (see Notes of Evidence, Vol II, pp 205 - 231).

Mrs Maureen Drummond (first Recall) mother of the deceased (see Notes of Evidence, Vol II, pp 231 - 245).

Mr David Greenhill, former General Nurse in Barlinnie Prison (see Notes of Evidence, Vol II, pp 245 - 273).

Mr Gerald Smith, Prison Officer, Barlinnie Prison, (see Notes of Evidence, Vol II, pp 273 - 298).

Mr John Richmond, Prison Officer, Barlinnie Prison (see Notes of Evidence, Vol III, pp 301 - 351).

Mr Gerard Burns, Prison Officer, Barlinnie Prison (see Notes of Evidence, Vol III, pp 351 - 386).

Mrs Maureen Drummond (second Recall), mother of the deceased (see Notes of Evidence, Vol III, pp 386 - 399).

Mr James McGougan, Prison Officer, Barlinnie Prison (see Notes of Evidence, Vol III, pp 399 - 419).

Mr Robert Drummond (Recalled), brother of the deceased (see Notes of Evidence, Vol III, pp 419 - 435).

Ms Abigail Thompson, Prison Officer, Barlinnie Prison (see Notes of Evidence, Vol III, pp 435 - 457).

On behalf of the Crown, the Procurator Fiscal Depute invited me to make a Determination in terms of Section 6(1)(a) of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act ("the 1976 Act") that James Drummond died in Barlinnie Prison in Glasgow in Cell No. 21 on the second floor. In this connection I was invited to find that that death took place between the hours of 11.00 pm on 29 February, 2000 and 9.00 am on 1 March, 2000 failing which, I was invited to find that death took place when life was pronounced extinct at 9.00 am on 1

March, 2000. In relation to the cause of death in terms of Section 6(1)(b) of the 1976 Act, I was invited to find, as had been agreed in terms of the Joint Minute of Agreement among all the parties represented at the Inquiry, that the cause of death was death by hanging (see Findings-in-Fact Nos. (128) and (130) (supra)). The Procurator Fiscal Depute also invited me to make a Determination in terms of Section 6(1)(c) of the 1976 Act in relation to any reasonable precaution which could have been taken whereby the death of James Drummond might have been avoided. To that end, the Procurator Fiscal Depute highlighted the testimony of Mr William Wotherspoon. In this connection, and subject to my assessment of Mr Wotherspoon's credibility and reliability, the Procurator Fiscal Depute submitted that his testimony included the evidence that he had seen the deceased in the days leading up to his death and on the day prior to his death, viz: 29 February, 2000 "rattling", that is suffering from acute symptoms of drug withdrawal. She stated that Mr Wotherspoon said that he could see that the deceased was sweating heavily and that as a drug abuser previously himself, he knew the signs. She also submitted that Mr Wotherspoon's evidence was supported by that of Dr Gonzalez who stated that if the deceased had been sweating heavily, he would describe that as an acute symptom of drug withdrawal which could lead to depression and hallucination. The Procurator Fiscal Depute submitted that Dr Gonzalez stated that he would certainly have a concern about the well-being of a prisoner who was displaying such symptoms. The Procurator Fiscal Depute also referred to the evidence of Prison Officer Gerald Smith, who stated that in that situation he would be concerned and would contact his Hall Supervisor, failing which the Medical Centre, so that medical assistance could be offered to any prisoner who was suffering from acute drug withdrawal. Notwithstanding the fact that there was evidence that the deceased was prescribed medication and given specific treatment for his drug withdrawal over a number of days prior to his death, the Procurator Fiscal Depute accepted that against that background Dr Gonzalez would not, in his experience expect someone to be suffering from acute symptoms of drug withdrawal, but that he "couldn't rule it out". In this connection, the Procurator Fiscal Depute submitted that if I accept that part of Mr Wotherspoon's testimony that the deceased was suffering from acute symptoms of drug withdrawal, then there was ample evidence given by witnesses at the Inquiry that there were reasonable precautions, such as being referred to a Medical Centre, seen by a nurse or doctor, given support, placed in a Cell with no ligatures or in a Cell with another prisoner, which might have prevented the death occurring.

The Procurator Fiscal Depute then moved on by referring to that part of Mr Wotherspoon's testimony where he stated that he saw the deceased being assaulted by Prison Officer Burns during dinner time on 29 February, 2000. She also stated that Mr Wotherspoon said that he heard the deceased being threatened by Mr Burns and his colleague Mr Richmond at his Cell door in the evening of 29 February, 2000. In this connection, she stated that the deceased was ordered to clean blood from the floor which was said to be Mark Cairns' blood. She said that Mr Wotherspoon gave evidence that he could hear the deceased in a state of distress saying "I'm not cleaning it up, it wasn't me that is responsible for it." In these circumstances, she submitted that there was evidence that the Prison Officers' threatening behaviour, if accepted was having an effect on the deceased. The Procurator Fiscal Depute accepted however that there was no direct forensic evidence as to what the staining on the Cell floor was and that in the absence of any such evidence it could have been anything such as blood or spilt tea or coffee. In this connection, she submitted "we have to take the case with the evidence we have...and there is some support...there is something on the floor in those pictures. We never know what that something is but it is open to your Lordship to find that what is in those pictures is capable of supporting or pointing to the fact that Mr Wotherspoon is telling the truth. It doesn't do so conclusively and I am not trying to persuade

your Lordship that it does but it is there and it is capable of doing that." The Procurator Fiscal also pointed out that there was evidence that there appeared to have been no blood coming from the deceased. In this connection, she submitted that it was also capable of supporting Mr Wotherspoon's testimony. She stated "It is there and it is a small circumstantial piece of evidence".

The Procurator Fiscal Depute then pointed out that there was evidence that the deceased was threatened on two occasions during the night of 29 February, 2000, round about 10.00 pm and 11.00 pm and that he was crying for help. She stated that there was also evidence that those cries for help went unanswered and "worse than that, he [ie. the deceased] was threatened and told to shut up, to get his fucking head down and threatened with physical violence, namely getting leathered if he had to be moved from the Cell. The Procurator Fiscal Depute submitted that if I accept that evidence then, in terms of section 6(1)(c) of the 1976 Act there were reasonable precautions which could have been taken whereby the death of the deceased might have been avoided. In this connection, she submitted that instead of ignoring the deceased's cries for help, and, worse than that, threatening him with physical violence, he could have been referred to the Medical Centre or removed from his Cell and put into another Cell without ligatures. She also submitted that if "the female Prison Officer" [ie. Ms Abigail Thompson] had been able to speak to the deceased and ask him what was wrong and stay with him [until assistance arrived] that these were all reasonable precautions which could have been taken whereby the deceased's death might have been avoided.

In relation to Mr Wotherspoon's appalling criminal record going back many years and including previous convictions for crimes of dishonesty such as theft, housebreaking and opening lockfast places and crimes of violence such as assault and attempted murder, the Procurator Fiscal Depute accepted that his record did not help his credibility and his reliability. In this connection, however, she stated:-

"I am not trying to make out that he [ie. Mr Wotherspoon] is a pillar of the community by any standard but I am sure my Lord is capable of finding that even persons with ridiculous...ridiculously bad previous convictions are capable of telling the truth."

The Procurator Fiscal Depute then proceeded to highlight some of the points which I may like to consider when attempting to assess Mr Wotherspoon's credibility and reliability. In this connection, she stated:-

" - "Yes, he [ie. Mr Wotherspoon] has previous convictions, my Lord, but there is such a thing as honour amongst thieves and I am sure your Lordship is well aware of it and notwithstanding that Mr Wotherspoon may not always [respect?] the law on every occasion, it doesn't mean that he is capable of ...he thinks James Drummond was done wrong on 29 February, 2000 and he wanted to say something about it and I would ask your Lordship to take into account he has no personal gain whatsoever to make from this. In fact he is a person in custody, albeit he is not in Barlinnie and he is making serious allegations and he

has to return to a prison where Prison Officers work. It hardly rings that he is in it for personal gain".

When I pointed out to the Procurator Fiscal Depute that at one stage in his evidence Mr Wotherspoon had referred to Prison Officers as "scum" and "rats" and that in these circumstances it may reasonably be inferred that he was not favourably disposed towards them, she responded as follows:-

"No, indeed he is not, my Lord, and your Lordship may wish to say that this is perhaps something that he [ie. Mr Wotherspoon] is doing because he has a grudge and that is the grind, a grudge against Prison Officers; but he has somewhat gone out of his way by contacting the mother of the deceased and willing to provide a statement and giving evidence on oath which he knew was subject to cross-examination and he said he has got no reason to lie about this. One would think, if he was wanting to be malicious to the Prison Officers, perhaps he would [have been] a lot better at just making a complaint himself that something had happened [than] seeking maliciously to have a Prison Officer suspended or in some way dealt with by disciplinary procedures as opposed to this perverse way, putting the mother through what must have been very uncomfortable procedures."

The Procurator Fiscal Depute then sought to highlight, as supporting Mr Wotherspoon's evidence, the hearsay evidence given by Mrs Drummond as to what Mark Cairns told her. In this connection she stated:-

"Now, I don't think it is disputed, the fact that she [ie. Mrs Drummond] was contacted by a male saying he was Mark Cairns shortly after her son died - three weeks...She went and visited this person. She did so and she appears to be a law abiding citizen. She did so giving false...not a false name, her maiden name to the prison authorities but she was intending to throw off her identity; she didn't particularly want them to know who she was and she said that he [ie. Mark Cairns] told her he had shared a Cell with her boy [ie. the deceased] and what had happened that night was...leading up to saying he [ie. Mark Cairns] had been bullied, he had been drug dealing. They wanted to know where his, [ie Mark Cairns'] drugs were. The Prison Officers were pressurising her son to tell the Prison Officers where the drugs were and that he [ie Mark Cairns] believed he owed it to her to let her know about this and had to do something. She is also aware that after her visit, the Prison Officers realised who she was and she hears from him, and that in some way he had been given a threat about 'you play ball with us and we'll' play ball with you'. So, Mark Cairns isn't here today, is that because he just for some perverse reason - put Mrs Drummond through the agony of hearing what happened to her son?"

When asked about Mr Cairns' whereabouts the Procurator Fiscal Depute replied:-

"We can't find him, my Lord."

In any event, the Procurator Fiscal Depute stated:-

"We do know there was evidence that the Prison Officers became aware of what was going on and some threat was made to him [ie. Mark Cairns] and ever since that date he has not co-operated with any of the authorities in relation to this Inquiry."

When I pointed out to the Procurator Fiscal Depute that albeit I can have regard to the hearsay evidence of Mark Cairns:-

"It is difficult to assess the worth of that evidence in the absence of Mark Cairns himself."

The Procurator Fiscal Depute responded as follows:-

"It is difficult, my Lord, but it is not impossible. The fact that he is not here may speak to the fact that this was just something malicious he did informing the mother of the deceased and putting her through that or it may be because having thought about it and having been threatened - as we are told he was by Mrs Drummond - that he has thought better of it and is thinking of personal gain now, and that is why he is not here. So it is not impossible to find that he told Mrs Drummond the truth, but simply he has lost his bottle now and isn't prepared to come to Court and tell us. That is one way of looking at it, my Lord."

When I asked the Procurator Fiscal Depute about the evidence from certain prisoners to the effect that the reason Mr Cairns had been removed from his Cell had nothing to do with a hostage situation but was simply a ruse or hoax to enable Prison Officers to enter the Cell and search it in the absence of Mr Cairns and also to enable them to put pressure on the deceased to give them information with regard to where Mr Cairns had stashed his drugs, she responded as follows:-

"That is another part of the evidence that comes from the hearsay evidence of Mark Cairns and also other prisoners commented on the fact that they think that it is just nothing but a hoax by the Prison Officers to have certain prisoners put into the Segregation Unit and to apply pressure to James Drummond. Again, I would invite your Lordship to take that into account. It would seem to be supported - if your Lordship accepts the evidence of Robert Drummond - that his brother [ie. the deceased] told him he was being bullied by a Richmond is how he referred to Mr Richmond. He didn't say he was a Prison Officer, and that would seem to support the theory by the prisoners that this was - - - it was illegitimate that there was going to be a hostage situation. We have also heard, my Lord, from the prisoners that this particular officer [ie. Prison Officer Marilyn Dewar]...there is just no way that these prisoners could have taken her hostage. The Prison Officers have reported that although...one of them I think accepted that...she was quite sturdily built."

So far as the telephone conversation between the deceased and his brother Robert was concerned, although Robert stated that the deceased had told him that he was getting "hassle" from someone called Richmond (who at the time he assumed to be a fellow prisoner) but that according to Mrs Drummond's evidence it was not until about three weeks after the deceased's death (ie. after her conversation with Mr Cairns in Barlinnie) that it was realised that the Richmond referred to was in fact a Prison Officer and not a fellow prisoner, the Procurator Fiscal Depute commented in relation to that chapter of the evidence:-

"Yes, I am saying to you, my Lord, that evidence is there and your Lordship may wish to accept from Robert Drummond that on whatever day he had received a telephone call from his brother that James told him he was being bullied by a Richmond and if your Lordship accepts that, it is capable of supporting Mr Wotherspoon and the hearsay evidence of Mark Cairns."

So far as the vexed question as to when the telephone conversation between the deceased and his brother Robert was made, the Procurator Fiscal Depute made the following submissions:-

"Turning to the question of when the phone call was made. We have heard the explanation given by Mrs Drummond, I don't think there is any...it is open to your Lordship to find Mrs Drummond is just desperately trying to blame someone for her son's death and she has changed her testimony after what she heard in Court this morning [viz: from Mr Richmond] to try and secure blame at the door of Mr Richmond. You saw the way she gave her testimony. I would respectfully suggest she gave her testimony in a very truthful manner, she seemed genuinely distressed by this mistake she had made. I think...I submit that it is telling that when Robert Drummond gave evidence, it was clearly a surprise to him he had been asked these questions and he kept talking about 'well, you see, my Mum was off on the Tuesday and Wednesday of that week' yet Mrs Drummond - and she did say earlier in her evidence, the very first time she gave evidence, that she was due to go on the Wednesday but she ended up going on the Tuesday and she said that the very first time she gave evidence. There appears to be genuine confusion between Mrs Drummond and her son [ie. Robert] as to when she was off that week, and given the explanation we have from Mrs Drummond of how important those days off were and retrospectively working out when the last time Robert spoke to his brother. It is very telling, my Lord, that they are a day out when it comes to the days off and I do think it is a genuine mistake on behalf of the family...and I don't think it is that absurd, my Lord, that the family would retrospectively try to work out 'when did you speak to him?' and in their heads, there would be this idea that it was 'two days before I went to see him and at some point, the two days before I went has got mixed up from the two days I was meant to go and the two days before I actually went.' And wasn't it telling, my Lord, when you asked Robert Drummond about 'Well why was it the Sunday? Were you working at that time? Were you off work? Was there anything happening that day?' and a Sunday is a bit different from the Monday, he couldn't give you a reason and he just kept saying 'Well, I just thought it was the Sunday' and he seemed flabbergasted and he couldn't explain it. Again, I submit, my Lord, for over two years it has been in Robert Drummond's head that he spoke to his brother [ie. the deceased] on a Sunday and he hasn't ever really questioned that and there does seem to be a genuine confusion between the two of them as to how they came about that".

When asked how she thought they had come about that, the Procurator Fiscal Depute replied:-

"I would ask your Lordship to accept the evidence of Mrs Drummond that they worked it out retrospectively and she said to him [ie. Robert] 'Well, he [ie. the deceased] phoned two days before I was going to see him' because she had said she would be up in two days and then she never [?], 'Well, I went on the Tuesday, it must have been Sunday', she said that to you. She has given an explanation, she has thought about it, she has worked it out. Robert Drummond was...I would submit was completely confused by the end of his evidence."

So far as this aspect of the evidence was concerned, the Procurator Fiscal Depute further submitted:-

"And it is not incredulous that the conversation with the deceased would be along the lines of 'Mum will be coming up in two days' time' and this two days would be bandied about".

When I asked the Procurator Fiscal Depute if it was her submission that I should accept Mrs Drummond's evidence in that regard and hold that the telephone conversation took place on the Monday, 28 February, [2000] she replied:-

"Yes I will highlight why your Lordship should do that. That would then support the evidence of Mr Wotherspoon that Mr Richmond was bullying him [ie. the deceased] and that...the evidence that Mr Richmond was bullying him was coming from the one person we can't ask today which is the deceased. The deceased told his brother [ie. Robert] on the phone he was being bullied and that is how we have heard of it today and that has been supported by the evidence of Mr Wotherspoon who directly saw it. I would also highlight the circumstantial evidence of the fact that...money had been left at the prison for the deceased. The deceased - we have heard - had to borrow a card to phone. He seemed not to have had access to that [ie. money] and that seems to be supported by the hearsay evidence of Mark Cairns who said they were holding back his [ie. the deceased's] money or his entitlement".

In this connection, there was evidence from both Robert Drummond and his mother that the deceased's uncle [ie. Richard McLaren] had left money for the deceased at Barlinnie on the Saturday [ie. 26 February, 2000]. The Procurator Fiscal Depute stated in that regard:-

"After the Saturday, [ie. 26 February, 2000] he [ie. the deceased] had to borrow a card to make a phone call. Now, the evidence of Mark Cairns is that they were holding things back from him [ie. the deceased] because they were bullying him and trying to find out where the drugs were and he wouldn't have had to borrow a card if he had access to the money...it all sort of runs together, my Lord. I would also highlight, my Lord, I regret to say there is part of the testimony...given by Mr Richmond which I would suggest came across as incredulous

and that was his reaction when asked to look at the photographs. He said it was [scuffed linoleum?] and then at one point suggested that it looked like cigarette burns. We are not forensic scientists, my Lord, and we don't know what is on that floor but I respectfully submit that no way would a reasonable person say that it looked like cigarette burns....And also I would ask your Lordship to...I would highlight his demeanour when he was asked questions about that. I would respectfully submit he looked uncomfortable and I said at one point 'are we looking at the same picture?' and his response was very much exaggerated and he seemed very uncomfortable with the questions that were being asked. He seems at pains to avoid the suggestion it was blood. We have also heard from the police officer who said that it looked like dried in paint or liquid. I have to accept, my Lord, that when it comes to the evidence of Mr Burns - who is also alleged to have been bullying - I can't highlight anything in his evidence that you would doubt Mr Burns. He seemed to be very comfortable and when it was suggested to him that he had been bullying, he didn't in any way look uncomfortable and he politely said that is not true and there is nothing really I can say in his evidence how he reacted to questioning."

When I put it to the Procurator Fiscal Depute that the position could have been that only one of the Prison Officers, eg. Mr Richmond had been bullying the deceased she accepted that that could have been the position. I also put it to the Procurator Fiscal Depute that, so far as Mr Burns was concerned, the position could have been that he did not assault the deceased at any time. In response to this suggestion she stated:-

"Yes, my Lord, I accept that's also open [in assessing the evidence?]. I would also highlight in Mr Richmond's evidence that he was asked about...'have you never heard of a complaint being upheld?' I would suggest that the way he...answered that question, he seemed very unwilling to concede that in this day and age Prison Officers ever are found guilty - as it were - in disciplinary procedures of not dealing with prisoners properly..."

In this connection, I pointed out that in nearly 10 years' experience [as a Prison Officer], Mr Richmond's initial position was that at no time had he heard of any complaint made by a prisoner against a Prison Officer being upheld. In response to this observation the Procurator Fiscal Depute commented:-

"And then, there was some sort of dubiety about how clear your Lordship's question was and he seemed to say 'oh, is that what you thought? Is that what I was being asked?' And again, I suggest he came across as just simply not being truthful and he changed his position and gave a very weak and lame excuse for why he didn't understand the question 'Oh I thought that you meant a complaint was upheld that the Prison Officer went into custody or was dismissed.' It is a matter for your Lordship."

At this point in her address to me, the Procurator Fiscal Depute appeared to submit that it was open to me:-

To accept the evidence of Mr Wotherspoon and Robert and all the other circumstantial evidence and

To reject the evidence of Mr Richmond and conclude that bullying had in fact taken place.

However, in this connection, she further submitted:-

"On the other side of the coin, my Lord, I do represent the public interest and I have to - in my duties - highlight evidence which shows that there was no bullying going on or nothing the prison could have done to prevent the death of James Drummond. We know from the medical records that he was seen by the nurse every day. If he was seen by the nurse every day when she was giving him [his prescribed medication?], why was the nurse not able to see the fact he was suffering from acute withdrawal symptoms? Mr Wotherspoon tells us he was "rattling" coming off drugs. Is the nurse part of the conspiracy too? Dr Gonzalez is an experienced doctor and thinks it extremely unlikely that someone who is receiving [prescribed medication?] daily - as the deceased was - would be suffering from acute drug withdrawals."

In this connection, the Procurator Fiscal Depute stated:-

"...from the medical records, Dr Gonzalez has told us - in Production No. 3...I think it is the very last page of Production No. 3, my Lord - Dr Gonzalez took us through the prescriptions pages - pp 36 and 37 - and from that particular page - 36 - we can see that every single day, the deceased was seen by a nurse and was given librium. We don't know the name of the nurse, my Lord, we just know it was a nurse. The deceased was seen by a Reception Officer, [and] two nurses - David Greenhill and Alan Spencer...the Reception Officer - Neil Hainey - and Dr Gonzalez, and all of them assessed the deceased, spoke to him, asked him questions...took observations of him and he was no apparent risk in terms of suicide. In trying to be aware as to where we can prevent persons taking their own lives, we have to take into account the family saying the deceased - James Drummond - was never suicidal. Coming from the family, it appears there is nothing to suggest the prison should have known he had suicidal tendencies. The prisoner - Mr MacDonald - appears to contradict William Wotherspoon as to the noise that was going on in the prison the night before James Drummond's death on 29 February. Mr Wotherspoon says that a pin could have dropped when he is describing how clearly he could hear that a Prison Officer was threatening the deceased....If your Lordship doesn't accept that the telephone call was on the Monday [ie. 28 February, 2000] we have shifts that show in Productions that have been lodged - that Mr Richmond never met the deceased James Drummond in "C" Hall until the Monday. It all seems to hinge on removing Mark Cairns from a Cell to put the deceased in a Cell alone in order to apply pressure to the deceased and we know from the Officers, they had the power to search for drugs anyway."

In this connection, I pointed out to the Procurator Fiscal Depute that the Officers had said that if they were searching a Cell for drugs and there were to be any further Court proceedings, that [ie. the search] would have to be done in the presence of the inmate of the Cell. The Procurator Fiscal Depute continued with her submissions as follows:-

"I would also highlight to your Lordship the evidence given by nightshift Officers and [in] that regard in relation to Mr McGougan. There is nothing, I can say about Mr McGougan's testimony in any aspect but to highlight that your Lordship should doubt what he says. He appeared - when it was suggested to him of the allegations - he didn't appear uncomfortable and was polite and forthright in his answers. However, my Lord, I would highlight the evidence of Abigail Thompson. Despite - Abigail Thompson went to great lengths - I would submit - to show how physically it was impossible in a prison with over 200 prisoners - it could get very noisy - how at any point in the night, her male colleague - Prison Officer - could shout and threaten a prisoner and she just wouldn't know about it. That is not what Mr McGougan says. He says...I said 'Is it possible that this happened?' He said 'well, except the fact that I was the only male Prison Officer at...male Officer on, yet it is possible it happened, but I was the only male Officer on so it is not possible.' He was quite willing to make concessions that things would go on and he wouldn't hear them...But he went further than that, my Lord, he said it was possible another Prison Officer could have done something but on that night it wasn't possible because he was the only male [Prison Officer there]. ...I would submit that Abigail Thompson wasn't persuasive in her argument for how it just physically wasn't possible for this to happen. She didn't hear it. Given...how noisy the prison can be, I would suggest that that evidence [is incredible/unreliable?]"

At this point in the Procurator Fiscal Depute's submissions I interjected by stating:-

"...Wotherspoon spoke to the assault by Burns on the deceased and also spoke to Richmond bullying the deceased and he also spoke to hearing - in the course of the night although he didn't see it - he also spoke to hearing a male voice at 10.00 pm or 11.00 pm in the night saying the things that he says they said."

In response the Procurator Fiscal Depute said:-

"He did speak to seeing someone, my Lord. That's...I was going to address your Lordship on the question of, could this have been prisoners that were shouting? Mr Wotherspoon gave evidence - he was crossed [on] this - that how could he see through this prison door and explained that he had...a door in his Cell that was one of the few doors that if you try and barricade yourself, the Prison Officers can remove the door out the way - coming away from the Cell - and he was trying to explain that there were gaps - although I think there was confusion that he meant gaps within the door itself - there were gaps between the door and the wall and this was supported by another prisoner - Francis MacDonald - who said 'oh, yeah, you can see people walking past and if you want to get a message to someone, no problem, you can see [?] it through the door'".

The Procurator Fiscal Depute accepted that Mr Wotherspoon was unable to identify the Prison Officer whom he said was shouting at the deceased's Cell door. In this connection she stated:-

"No, he didn't say who it was but he did say he could tell...he made the assumption that the deceased must have called for help although he seemed to think it was a buzzer that sounded downstairs in the office. It is perhaps understandable, he doesn't know exactly how the whole system works and how the person would end up at the deceased's Cell but he assumed it happened because he could see...his mattress was on the floor - it was a warm night - and he wanted the draughts from the doorway and he could see a Prison Officer at the Cell door of the deceased. He couldn't make out anything about the Prison Officer and he heard the Prison Officer - this was diagonally opposite his Cell - shout the threats towards the deceased and he heard [the deceased shout] 'you will have to get me out of here' and he heard that on two occasions but he did describe seeing someone at the Cell door. Now, if Mr Wotherspoon is accepted, I would suggest there isn't really any room for doubt that this was a prisoner who was shouting this because the Cells are locked for the night."

The Procurator Fiscal Depute further submitted:-

"If that bullying [ie. by Mr McGougan] is correct, my Lord, I am submitting that the reasonable precautions are that when Mr James Drummond called for help, he could have been given help, they could have spoken to him, they could have referred him to their Supervisor, they could have taken him to the Medical Centre, they could have put him into a Cell with no ligatures, they could have put him into a Cell with another prisoner and the death may have been avoided. If your Lordship is not minded to find [circumstances] established [to enable a Determination to be made] under sub-section (c), I would move the Court to make a finding under sub-section (e) which [relates to] any other facts which are relevant to the circumstances of the death. Without going over all the evidence I have already [referred to], I would repeat my submissions wholly, my Lord which are the facts which are relevant to the circumstances of the death are that James Drummond was bullied by Prison Officers. He was threatened, he was deliberately placed on his own, his calls for help were unanswered. In fact he was threatened again or that he was suffering from drug withdrawal and he wasn't given assistance or both, and those facts are relevant to his death..."

This concluded the submissions by the Procurator Fiscal Depute.

The following written submissions were lodged by Mr Mowat on behalf of the Scottish Prison Officers' Association:-

"As stated at the outset of this Inquiry, I represent the Prisoner Officers' Association Scotland and specifically the following witnesses who gave evidence at the Inquiry:-

Neil Hainey

David Greenhill

Gerald Smith

John Richmond

John Gerard Burns

James McGougan

Abigail Thomson

I adopt the Procurator Fiscal's submission in relation to section 6(1)(a) and section 6(1)(b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

The Procurator Fiscal has also submitted that a finding should be made either under section 6(1)(c) or alternatively under section 6(1)(e) of the 1976 Act. The reasonable precautions suggested under section 6(1)(c) were that the Prison Officers could have spoken to the deceased when he called for help, could have placed him in a cell with another Prisoner, could have referred him to the Health Centre or could have placed him in an anti ligature cell. In terms of section 6(1)(e) it was suggested that a finding should be made that the deceased was bullied by Prison Officers. It was suggested that he was threatened, that he was not given assistance and that those factors were relevant to the deceased's death.

In my submission, the central issue in considering the Procurator Fiscal's submissions under section 6(1)(c) and section 6(1)(e) is that of credibility. The principal sources of the allegations upon which the Procurator Fiscal founded her submissions were prisoners William Wotherspoon and Mark Cairns. The allegations were categorically denied by each of the Prison Officers concerned. Assessment of the credibility of Mr Wotherspoon and Mr Cairns is therefore central to any assessment of the various allegations.

William Wotherspoon

There are two general factors which indicate that Mr Wotherspoon's evidence requires to be considered with caution. The first is his extensive criminal record. That record includes a number of crimes of dishonesty and, by his own admission, he has previously been disbelieved by a jury in the High Court in relation to a serious criminal matter. Mr Wotherspoon is a man who has lied in Court before.

The second general factor is that Mr Wotherspoon does not have a high regard for Prison Officers. Various in his evidence he described C Hall Officers as "rats" and "pure pigs".

I would suggest that this indicates that he has an interest in making the allegations which he has made in relation to this Inquiry. I would also suggest that, for this reason, his evidence must be considered very carefully.

I will consider each of the allegations made by Mr Wotherspoon. These are as follows:-

An Assault by Prison Officer Burns on the deceased.

Prison Officers Burns and Richmond screamed at the deceased that he was to clean up Mark Cairns' blood.

An assault by Prison Officers on Mark Cairns.

Prison Officers Burns and Richmond ignored Mr Wotherspoon's warning about the deceased's withdrawal symptoms.

Night shift Prison Officers ignored the deceased's cries for help and shouted abuse at him.

This incident was alleged to have taken place at the door of the deceased's cell at teatime on 29 February 2000.

Even if such an event were to have taken place, I would suggest that it is unlikely that William Wotherspoon would have been in a position to see it at all. We heard in evidence that Mr Wotherspoon was in a different section of the second floor C Hall flat from that occupied by the deceased. We heard that there are four sections in the flat and that, while there was sometimes some overlap, the members of one section are let out to obtain their food and are then returned to their cells before the next section is let out. In his evidence, Mr Wotherspoon said that he could not see the door of the deceased's cell when he was locked in his cell. It seems therefore probable that Mr Wotherspoon was in his cell and would not have been in a position to see what he claims to have seen.

There are several other factors which indicate that this incident did not take place. Prison Officer Burns told us that an assault by a Prison Officer on a prisoner would not be tolerated by either prisoners or staff. We heard that there would have been numerous other witnesses to the incident. Yet, only Mr Wotherspoon appears to have come forward and, at that, only shortly prior to the commencement of this Inquiry. This vouched for both by the fact that he was a very late addition to the witness list, but also by Prison Officer Burns who told us that, prior to his giving evidence, he wasn't called upon to participate in the Inquiry or the investigation which preceded it.

We heard about the confidential complaints procedure through which a prisoner can make a complaint against a Prison Officer. We also heard about other mechanisms through which complaints by prisoners could be made. These were by complaint directly to the Governor, to a legal representative or to the police. We heard from Prison Officer Burns that he has never been the subject of a complaint following this alleged incident. In my submission, it is inconceivable that an assault by a Prison Officer on a prisoner in a very public arena such as that described by Mr Wotherspoon would not result in a complaint by either prisoners or staff. I would suggest that an uncorroborated allegation of assault made by a Prisoner against a Prison Officer and coming to light at such a late stage must be treated with suspicion. Indeed I would suggest that there are no other witnesses to the incident and no complaint has been made because the alleged assault did not take place. In evidence, both Prison Officers Burns and Richmond categorically denied that the incident took place and I would invite your Lordship to prefer the evidence provided by them.

2. & 3. We heard that the blood cleaning incident was alleged to have taken place in the course of the back shift worked by Prison Officers Burns and Richmond on 29 February

2000. Prior to considering this allegation, it is necessary to consider the evidence relating to the allegation that Mark Cairns was assaulted by Prison Officers when he was moved from his cell to the segregation unit on the morning of 29 February 2000. Mr Wotherspoon told the Inquiry that he had heard about this incident but did not identify the source of the information. Maureen Drummond also indicated that she had been told about it by Mark Cairns. Interestingly, no mention was made of this incident by Derek Stevenson. Mr Stevenson's evidence also seems to have originated from Mark Cairns. There was no evidence of any complaint having been made by Mark Cairns to Derek Stevenson that he had been assaulted by Prison Officers.

There was no evidence that any complaint had been made by Mr Cairns that he had been the victim of an assault. There was no evidence that he had complained of any injury requiring treatment by the Prison Medical Centre.

There was also no evidence of the existence of blood in the cell. It was suggested by the Procurator Fiscal that a conclusion could be drawn that the discoloured patch of flooring in Production 1 Photograph B was blood. In my submission that conclusion cannot be drawn. There was no evidence that said patch of flooring was blood. The witnesses were invited to speculate as to whether the patch of flooring was discoloured by blood. The answers themselves amounted to nothing more concrete than guesswork. Prison Officer Smith told us that he did not see any blood when he entered the deceased's cell after finding his body on 1 March 2000. Similarly Constable Bellingham told us that he saw no blood in the cell in the course of his visit later that day.

In my submission, it would be impossible to conclude on the basis of the evidence provided to this Inquiry that any patch of flooring in the deceased's cell was discoloured by blood.

I would also suggest that there is no reliable evidence that Mr Cairns was the victim of an assault. Mr Cairns did not give evidence to the Inquiry and the evidence originating from him was not therefore tested. For this reason and for other reasons to which I will return later in this submission I would suggest that any evidence originating from Mr Cairns is extremely unreliable. There was no direct evidence that this incident took place, there was no evidence of the existence of blood in the cell and there was no evidence that any complaint was made. I would submit that the reason for the absence of evidence in each of these areas is that the incident did not take place.

Again there is no evidence of a complaint having been made by either prisoners or staff in relation to the alleged blood cleaning incident. Again Mr Wotherspoon appears to have been the sole witness. I would again suggest that there is an absence of further evidence because this incident did not take place. In evidence, both Prison Officers Burns and Richmond categorically denied that the incident took place and I would invite your Lordship to prefer the evidence provided by them.

4. We heard evidence that Mr Wotherspoon told Prison Officers Burns and Richmond about his concerns in relation to the deceased and the deceased's withdrawal symptoms but that he was ignored. This was denied by both Prison Officers.

I would suggest that there must be some doubt as to whether the deceased was suffering from withdrawal symptoms on 29 February 2000, some six days after the date of his admission to HMP Barlinnie. In evidence, Dr Gonzalez told us that the medication provided to new admissions would allay withdrawal symptoms and that he would not have expected the deceased to be suffering from withdrawal symptoms six days after admission.

We also heard evidence that the deceased would have known how to obtain medication for physical symptoms related to drug withdrawal. Dr Gonzalez told us that prisoners would be provided with their medication by the nursing staff on a twice daily basis. We heard from the officers concerned about the steps that would be taken in cases where they had a concern in respect of a prisoner suffering from withdrawal symptoms. Mr Wotherspoon told us that he intended to assist the deceased by supplying him with heroin.

We also heard evidence from Robert Drummond, the deceased's brother, relating to a telephone call the exact timing of which was in dispute and to which I will refer later in this submission. In that telephone call there was no suggestion that a complaint was made by the deceased that he was suffering from drug withdrawal.

We heard that the deceased was the subject of assessment from admission to the Prison onwards. That included medical assessment and assessment by Prison Officers. At no stage was he assessed as a suicide risk on the ground of drug withdrawal or for any other reason.

William Wotherspoon provides the only evidence of this allegation. Despite contact with nursing staff, Prison Officers and other prisoners there is no evidence other than that provided by Mr Wotherspoon, that the deceased was in fact suffering from withdrawal symptoms or was otherwise troubled by ill health. I would suggest that both the absence of evidence from sources other than Mr Wotherspoon allied to the evidence provided by Dr Gonzalez casts considerable doubt on the suggestion that the deceased was suffering from withdrawal symptoms. This would in turn cast doubt on Mr Wotherspoon's assertion that he required to approach any individual Prison Officer to assist the deceased.

In evidence, both Prison Officers Burns and Richmond denied that the incident took place and I would invite your Lordship to prefer the evidence provided by them.

5. Mr Wotherspoon told us that a male night shift officer told James Drummond to "Get your fucking head down" and "If you need to get taken out of the cell you will get leathered". It is alleged that this incident took place on 29 February 2000. We heard in evidence that James McGougan was the only male Prison Officer on duty on the night in question.

As set out at 4 above, there is some doubt as to whether or not the deceased was suffering from withdrawal symptoms by 29 February 2000. If he were not, there is no obvious reason why he would have required to shout for the assistance of Prison Officers in the course of the night. When questioned as to how he was in a position to hear what was said, Mr Wotherspoon suggested that it was quiet in the hall. This evidence was directly contradicted both by the Prison Officers who worked on the night shift and by the prisoner Francis MacDonald who was in a different cell on the same flat but who did not hear the deceased calling for help or any abusive responses by a male Prison Officer. Again I would invite your Lordship to prefer the evidence of the officers concerned. We heard in evidence that C Hall can be noisy at night and that prisoners often shout at each other. If the deceased was spoken to in the manner suggested, I would suggest that it is more likely that another prisoner was responsible. The prison officers concerned would have had little to gain by causing unrest in the Hall by shouting abuse at prisoners.

Additionally, Mr Wotherspoon gave evidence that he had taken heroin at approximately 8 pm on the night in question. This must have had some bearing on his powers of recollection in relation to an incident which allegedly took place outside his locked cell door while he was lying on a mattress on the floor of the cell. For this reason, his evidence relating to this particular allegation should, in my submission be considered with even greater suspicion than the remainder of his evidence. In evidence, both Prison Officers McGougan and Thomson categorically denied that the incident took place and I would invite your Lordship to prefer the evidence provided by them.

In conclusion, I would suggest that the evidence provided by Mr Wotherspoon was neither credible nor reliable. It was either uncorroborated, or it was hearsay. It was contradicted by other evidence and categorically denied by the Prison Officers concerned. It was provided by a man with a history of dishonesty.

Mark Cairns

I would suggest that the evidence which originated from Mr Cairns should be viewed with even greater caution than that of Mr Wotherspoon.

We heard in evidence that Mr Cairns spent 3 days with James Drummond (27, 28 and 29 February) and not the 6 days that he told the deceased's mother, Maureen Drummond.

We also heard in evidence that Mr Cairns was removed from C Hall by C Hall Prison Officers. We heard that the reason for his removal was in relation to an alleged hostage situation. For this reason, Mr Cairns had a very clear interest to make these complaints about C Hall Officers.

It is also, in my submission, worthy of comment that Mr Cairns was not available to give evidence to the Inquiry. As has been referred to above, an allegation was made that Mr Cairns was assaulted by Prison Officers. He should therefore have a clear interest in providing this information to the Inquiry. He has not however done so. Excluding the hearsay evidence referred to above, there is no evidence that any formal complaint was made by Mr Cairns to the prison authorities or the police that he had been the victim of an assault. There was no evidence that he complained of any injury requiring treatment by the Prison Medical Centre..

It was also suggested that the deceased had been threatened that he would be labelled a grass in exchange for the provision of information about the supply of drugs. Maureen Drummond told us that Mark Cairns named Prison Officer Richmond in relation to this. We heard in evidence that Prison Officer Richmond did not participate in the search of the deceased's cell. None of the Prison Officers who gave evidence had any knowledge of a drug search. We heard that a separate special search procedure would have been used had the Prison Officers required to search for drugs. They would not have required to resort to an elaborate ruse of the sort described in the court at this Inquiry. There was no evidence that any drugs were found in the cell. Considering all of these factors together, I would suggest that there was no search for drugs and the Prison Officers concerned did not threaten to label the deceased a grass in exchange for information about drugs.

In conclusion, the hearsay evidence originating from Mark Cairns is, in my submission, unreliable. It is untested and originates from a man with an interest in complaining about C Hall Prison Officers. Again I would invite your Lordship to prefer the evidence provided by the officers concerned.

Telephone Call

We heard various pieces of evidence relating to a telephone call between the deceased and his brother, Robert Drummond. It was suggested that in the course of that telephone call, the deceased mentioned that "Richmond is giving me a lot of hassle". The timing of the phonecall was a matter of dispute. When Robert Drummond first gave evidence he told us that the phonecall took place on the Sunday before his brother's death (27 February 2000). When Maureen Drummond first gave evidence she told us that the deceased had spoken to his brother by telephone on the Sunday prior to his death.

We heard in evidence that, had the telephone call taken place on that day, the deceased would not have had any contact with Prison Officer John Richmond due to the fact that Mr Richmond's shift pattern precluded any contact with the deceased prior to Monday 28 February 2000. After this had been established, it was suggested by Maureen Drummond on the third occasion which she gave evidence that the telephone call had in fact taken place the following day (28 February 2000). She maintained that this error had become clear to her as she had been told by Robert Drummond that the deceased had made the call using a phone card provided to him by his cell mate Mark Cairns. Thinking that Mr Cairns only shared a cell with her son on 28 February, she assumed that the call was made on that date.

In fact the deceased appears to have shared his cell with Mark Cairns on 27, 28 and 29 February. The phone card could therefore have been provided on each of these dates.

She also explained that the date of the call had been calculated inaccurately by her by reference to the date she tried to visit (Tuesday 29 February) and not the date upon which she originally intended to visit (Wednesday 1 March). Her earlier inaccuracy appears to have first become apparent to her after hearing the other evidence at the Inquiry and particularly the evidence relating to the shift patterns worked by Prison Officer Richmond. For this reason I would suggest that this portion of her evidence should be considered with extreme caution.

Robert Drummond then gave evidence again and after initially maintaining that he was certain the telephone call took place on the Sunday and that he did not require to calculate the date of the call, he seemed to become confused as to whether this was in fact accurate. He also told us that the telephone call was made at 4pm.

In my submission, the uncertainty created by the evidence given by Robert Drummond and his mother in relation to this telephone call merely served to confuse the issue. What was however clear was that when Mr Drummond first gave evidence, he indicated that he did not have any specific concerns in relation to his brother. There was no clarification of the nature of the "hassle" which the deceased was experiencing. It would appear that Robert Drummond did not consider the matter serious enough to merit further inquiry or complaint. Similarly it seems that the deceased did not volunteer any further information about the matter and appeared more interested in establishing whether his mother would be coming up to visit him and whether any money had been dropped off for him. The deceased does not appear to have stated that he was being bullied by Prison Officer Richmond. Indeed when she gave evidence for a second time Mrs Drummond indicated that Robert Drummond first formed the view that the deceased had been talking about a Prison Officer after Mark Cairns mentioned the name "Richmond" to his mother in the course of the visit which took place after the deceased's death.

We heard in evidence that the deceased was first admitted to C Hall on 26th February 2000. Prison Officer Richmond told us that he was not on duty on 26th February or 27 February. On 28 February and 29 February he worked the back shift which commenced at 1.15 pm. If Robert Drummond spoke to his brother on 27 February the telephone call took place before the deceased had had any contact with Prison Officer Richmond. If the telephone call took place at 4pm the following day then Prison Officer Richmond would have been on shift for approximately 2 hours 45 minutes while the deceased was in C Hall. While it would not of course be impossible for the deceased to have come into contact with Prison Officer Richmond within the timescale, I would suggest the scope for contact between the two was limited taking account of the comparatively short period of time and the fact that Prison Officer Richmond would no doubt have required to carry out other duties after commencing his shift.

In evidence, Prison Officer Richmond categorically denied the allegation that he bullied the deceased. None of the other Prison Officers who gave evidence at this Inquiry had any knowledge of Prison Officer Richmond bullying the deceased. Prison Officer Richmond was in fact commended as a good officer by his colleague Prison Officer Burns. Other than the evidence provided by Mr Wotherspoon there was no evidence that Prison Officer Richmond bullied the deceased. For all of these reasons I would respectfully submit that there is no reliable evidence on the basis of which a finding can be made that Prison Officer Richmond bullied the deceased.

In her submissions the Procurator Fiscal commended to your Lordship the evidence provided by Prison Officer Burns and McGougan. I would endorse the Procurator Fiscal's comments. I would also invite your Lordship to accept as credible the evidence given by all of my clients. The Procurator Fiscal commented particularly on the evidence of Prison Officers Richmond and Thomson.

In assessing Prison Officer Richmond's evidence the Procurator Fiscal pointed to answers relating to the discoloured flooring in the deceased's cell. He was asked to speculate on the reason why the flooring was discoloured. Prison Officer Richmond then proceeded to guess as requested and was subsequently criticised for his answers. I would suggest that he simply did not know the cause of the discoloured flooring and that this was confirmed by the improbable nature of his guesswork. Indeed in cross-examination Prison Officer Richmond conceded that the marks could have been caused by "absolutely anything".

Similarly, he was criticised for his answers when asked about complaints made against Prison Officers. I would suggest that Prison Officer Richmond answered the first question without thinking the question through. This caused him to answer incorrectly. He then appeared to become confused. When he thought about the question he realised that his first answer had been inaccurate which he then confirmed. I would suggest that this inaccuracy was not in any way an attempt to mislead the Inquiry. I would commend to your Lordship the direct manner in which he sought to answer the questions put to him. It was in respect of questions requiring more thought that Prison Officer Richmond encountered difficulties and I would suggest that this was caused by answering without properly considering the question.

Prison officer Thomson was criticised by the Procurator Fiscal for seeking to distance herself from her colleague, Prison Officer McGougan. I would suggest that she did not do this in the course of her evidence. At one stage she referred to him as "articulate, accurate and fair". She also described as "rubbish" the suggestion that she was seeking to distance herself. Prison Officer Thomson was not on the witness list for this Inquiry but, like Prison Officer Burns, she agreed to give evidence at the request of the POAS and the Scottish Prison Service. She did so in order to answer the allegations made in relation to the night shift in the course of which the deceased died. In giving evidence she answered the questions put to her directly and I would invite your Lordship to accept that she was a credible witness.

Conclusion

For the reasons set out above, I would suggest that the evidence provided by the Prison Officers and medical staff should be preferred in relation to the various allegations made in the course of the Inquiry. For this reason, it is my submission that there is no evidence to support a finding under either sections 6(1)(c) or 6(1)(e) of the 1976 Act.

I invite your Lordship to make a formal Determination in terms of sections 6(1)(a) and 6(1)(b) of the 1976 Act with no other findings."

At the adjourned Hearing on 13 December, 2002, as a supplement to the above written submissions, Mr Mowat made the following additional oral submissions:-

"So far as the evidence of Mr Wotherspoon was concerned, Mr Mowat pointed out that he had only come forward as a witness at the Inquiry "right at the last minute". In this connection, he stated that the allegation of assault by Prison Officer Burns on the deceased had only come to light in the course of Mr Wotherspoon's evidence. Mr Wotherspoon had only appeared on the Crown list of witnesses late in the day. Mr Mowat pointed out that Prison Officer Burns stated in his evidence that no complaints had been made against him. In these circumstances, I was advised that it was only as a result of requests from both the Scottish Prison Officers' Association and the Scottish Prison Service that Prison Officer Burns came to give evidence at the Inquiry to rebut these allegations. Mr Mowat was unable to say what Mr Wotherspoon's motives were, but surmised that he may just have had an axe to grind against Prison Officers and that this [ie. the Inquiry] was an opportunity to do it."

He stated that it was similarly only as a result of requests from both the Scottish Prison Officers' Association and the Scottish Prison Service that Prison Officer Abigail Thompson came to give evidence at the Inquiry.

Mr Mowat then proceeded to deal with the two issues founded upon by the Crown as casting assertions on Prison Officer Richmond's credibility, viz:-

his description of the stains on the Cell door as being "scuffed linoleum" and

his apparently being initially unaware of any successful complaints being made against Prison Officers in his (nearly 10 years') experience as a Prison Officer.

With regard to the above, Mr Mowat submitted that I should not make an inference that Prison Officer Richmond was trying to conceal something. So far as Prison Officer Richmond's credibility was concerned, Mr Mowat referred me to the penultimate and pre-penultimate paragraphs (before the heading "Conclusion") of his written submissions.

So far as the staining to the Cell floor was concerned (with the suggestion that it might be Mr Cairns' blood), Mr Mowat pointed out that Mr Wotherspoon's evidence was that Mr Cairns

had been punched by Prison Officer Burns, and not in fact by Prison Officer Richmond in the Cell. He submitted that no allegation of assault had been made by Mr Cairns and there was not evidence that he had received any medical treatment. In Mr Mowat's submission, the evidence of Mr Wotherspoon ran contrary to every other source of evidence led at the Inquiry, other than the hearsay evidence of Mr Cairns - spoken to by Mrs Drummond - including that of Mr Derek Stevenson who had been earlier handcuffed to Mr Cairns. In this connection, Mr Mowat pointed out that no mention of any assault appears to have been made by Mr Cairns to Mr Stevenson.

Mr Mowat further submitted that it had not become clear to Robert Drummond that Richmond was the name of a Prison Officer until Mrs Drummond visited Mr Cairns. In this connection, he stated that Robert Drummond spoke to the deceased's being given "hassle" by someone called Richmond, but not such that Robert Drummond appeared to have any particular concerns. Mr Mowat accepted that the word "hassle" could be interpreted as "bullying". I was however invited not to draw that conclusion because there was doubt about the time of the telephone call ie. if the call took place when we were first told it took place on Sunday, 27 February, 2000, Prison Officer Richmond was not on duty. In this connection Mr Mowat pointed out that Prison Officer Richmond stated that he came on duty at 1.15 pm on Monday, 28 February, 2000 (supported by the records) and Robert Drummond stated that the telephone call to him was made either at 4.00 pm on the Sunday or 4.00 pm on the Monday. In these circumstances, Mr Mowat submitted that if the call was made at 4.00 pm on the Sunday, then Prison Officer Richmond could not have been involved; if, on the other hand it was accepted that the call was made at 4.00 pm on the Monday, then it stretched credibility that so much of significance took place between 1.15 pm and 4.00 pm on the Monday.

Mr Mowat submitted that two other factors could be used to infer that the deceased was not being bullied, viz:-

within the overall scheme of the telephone call as originally described by Robert Drummond, the particular issue of being bullied did not appear to be the central issue discussed between them. It was more in the nature of a throw-away comment rather than something that the deceased felt particularly troubled by and wanted to go into;

there was also no indication as to what the nature of the "hassle" was. In this connection, Mr Mowat submitted that the use of the word "hassle" was not in itself sufficient to draw a conclusion, on the balance of probabilities that the deceased was being bullied by a Prison Officer. Further, there had been no mention that a Prison Officer had been involved, which only appears to have come to light later. Mr Mowat stated that he was not suggesting that Robert Drummond had been untruthful in his evidence, but rather that he did not say that the deceased had said that a Prison Officer had been involved. In these circumstances, Mr Mowat submitted that one could not draw the inference that a Prison Officer had bullied the deceased.

Mr Mowat stated that if I accepted the credibility and reliability of the evidence of Mr Wotherspoon and the hearsay evidence originating from Mr Cairns, then, taking all of those factors together, he would accept that, on the balance of probabilities, the Prison Officer referred to may have been Prison Officer Richmond. He submitted that in his evidence, Mr

Wotherspoon had focused principally on Prison Officers Burns and McGougan and not on Prison Officer Richmond. In this connection, he stated that whilst Prison Officer Richmond was mentioned, he was not the principal focus of the allegations made by Mr Wotherspoon. Mr Mowat continued by stating that if I did not accept the credibility and reliability of Mr Wotherspoon and the hearsay evidence of Mr Cairns, then in his submission, it was a step too far to conclude, on the balance of probabilities, that the deceased referred to Prison Officer Richmond in the telephone call. Further, Mr Mowat submitted that if I did not accept the credibility and reliability of Mr Wotherspoon and the hearsay evidence from Mr Cairns, then I could not conclude, on the balance of probabilities, that these incidents took place at all.

It was Mr Mowat's position that there was nothing to support, quantum valeat any allegation that the deceased had been hit in any way by any Prison Officer. In this connection, he pointed out that there were no marks of deliberate violence on the deceased.

In conclusion, Mr Mowat adopted and reinforced the contents of his written submissions. He stated that all proper medical attention had been given to the deceased on his admission to Barlinnie and subsequently and that each of the Officers complied fully in their duties to observe the deceased and there was no evidence to suggest that they had failed in that regard. In these circumstances, I was again invited to make formal Determinations only in terms of section 6(1)(a) and (b) of the 1976 Act.

At the conclusion of Mr Mowat's submissions, he informed me that Mr Wotherspoon's name had been given to him on 5 June, 2002, ie. five days before the start of the Inquiry and he had been told that Mr Wotherspoon would speak to certain matters relating to the nightshift. I was advised that Mr Mowat was given a copy of Mr Wotherspoon's precognition which mentioned in general terms his allegations but which omitted arguably the most serious allegation concerning the assault by Prison Officer Burns, by hitting the deceased on the back of the head. The Procurator Fiscal Depute stated that Mr Wotherspoon gave a precognition in May, 2002 (ie. a month before the Inquiry) and that it was not strictly accurate to say that everything Mr Wotherspoon said from the witness-box was the first time he had said it. In this connection, I was advised that some of it had appeared in the precognition. It was however the position that Mr Wotherspoon came forward as a late witness and that his allegations came just before the Inquiry. On the other hand, Mrs Drummond's hearsay evidence in relation to Mr Cairns was known, more or less from the outset of the Inquiry. So far as the credibility and reliability of Mr Wotherspoon's evidence and Mrs Drummond's hearsay evidence in relation to Mr Cairns was concerned, I was advised that they only supported each other in the general finding that the deceased had been bullied, but not in relation to the specifics.

The Procurator Fiscal Depute informed me that attempts had been made to trace Mr Cairns in the Dumbarton area, but that this had proved negative. The position accordingly was that Mr Cairns could not be traced. His mother had however been traced and she had apparently informed the police that she had not seen her son for years and that he was "not welcome". In these circumstances, the Procurator Fiscal Depute stated that on the face of it, the police were instructed to trace Mr Cairns, but without success.

Mr Mowat stated that because Mr Wotherspoon's evidence and Mr Cairns' hearsay evidence only really supported each other in general terms, then that was another reason why their evidence should be viewed with suspicion. So far as the position of Mr Cairns is concerned, Mr Mowat pointed out that whilst Mr Cairns had apparently contacted Mrs Drummond in relation to this matter, he had not sought to make himself available to give evidence at this Inquiry, even when there was an allegation that he himself had been assaulted by being punched in the face.

The following written submissions were lodged by Ms Lyle on behalf of the Scottish Prison Service:-

"I respectfully submit that the following matters should be taken into account in reaching a Determination in terms of Section 6 of the 1976 Act:

Section 6 (1) a

The circumstances as evidenced show that James Drummond died within cell 21 on the 2nd floor of C Hall in HMP Barlinnie, Glasgow on 1 March 2000. The time of death cannot be accurately established. James Drummond was pronounced dead at 0628 hours on 1 March 2000.

Section 6 (1) b

The cause of death was hanging.

Section 6 (1) c

There was no evidence led to suggest that there were any reasonable precautions which could have been taken which might have avoided the death;

There was no evidence that James Drummond presented as a suicide risk. The Scottish Prison Service has a suicide prevention strategy in place entitled ACT. James Drummond was assessed on admission to HMP Barlinnie on 23 February 2000, by both a reception risk officer and nurse and on 24 February 2000 by a doctor. Such assessments included the Determination as to whether James Drummond was at risk of suicide and concluded that he was of no apparent risk.

James Drummond was assessed by a doctor on 24 February 2000 and was placed on a detoxification programme in respect of his then current history of heroin use.

The Procurator Fiscal Depute suggested that your Lordship may accept the evidence of prisoner William Wotherspoon, that James Drummond was suffering from acute drug withdrawals. Furthermore, if this was accepted the Procurator Fiscal Depute suggested that the following would have been reasonable precautions:

(i) to refer James Drummond to the healthcentre

(ii) for James Drummond to have seen a nurse or a doctor

(iii) for James Drummond to have been placed in an anti-ligature cell

(iv) for James Drummond to have been placed in a cell with another prisoner.

I would respectfully submit that with regard to the allegations that James Drummond was suffering from acute drug withdrawals, your Lordship should prefer the evidence of the medical professionals involved in the care of James Drummond.

Nurse Alan Spencer: Mr Spencer used his professional skills to assess James Drummond on the date of his admission to HMP Barlinnie, on 23 February 2000. On this date, Mr Spencer carried out an assessment of James Drummond with Nurse David Greenhill. They both had access to James Drummond's physical care records from previous admissions. This assessment is confirmed in the production, Nurse Risk Assessment dated 23 February 2000 and was referred to in evidence. The Nurse Risk Assessment includes a mental health assessment requiring various questions to be put to the prisoner. As part of this assessment James Drummond was specifically asked "Do you have or had a drug problem"? and responded yes. James Drummond elaborated that he was an intravenous drug user and had last used heroin 2 days prior to admission. Mr Spencer correctly detailed this information in the general observation section on the assessment form. In evidence Mr Spencer explained that the assessment was not merely a case of asking the prisoner the questions detailed on the assessment form but also involved observations of the prisoner's demeanour and body language. In evidence Mr Spencer accepted that if he had any concerns in respect of a prisoner he would detail these in the general observations section of the assessment. Accordingly, it follows that acute drug withdrawals were not detailed in this section and that in Mr Spencer's professional opinion James Drummond was not suffering from these. In addition, if James Drummond had complained of severe drug withdrawals it would have been detailed here and acted upon.

Clinical Manager David Greenhill: On assessing James Drummond with Mr Spencer, Mr Greenhill completed the production, SPS healthcare records, re-admission interview form. This detailed in the medical history section, that James Drummond had a drug problem; that his current medication was nil; that he illicitly took £30 to £40 worth of heroin intravenously

each day and last used 2 days prior to admission. In the section detailed, other relevant information there was nil of note.

Doctor Dominic Gonzalez: Doctor Gonzalez assessed James Drummond on 24 February 2000, 24 hours following admission, as is standard procedure. A record of Doctor Gonzalez's consultation is detailed in the production Scottish Prison Service physicalcare records. Doctor Gonzalez ascertained that James Drummond used £40 worth of heroin a day and accordingly prescribed a drug detoxification course of medication to counter any symptoms of withdrawal James Drummond may have experienced. Doctor Gonzalez prescribed, librium, colofac, loperamide and ibuprofen. The purpose of these drugs was explained in evidence by Doctor Gonzalez, librium is a sedative; colofac is used to treat stomach cramps; loperamide is for any diarrhoeal symptoms and ibuprofen to treat muscular aches and pains. Doctor Gonzalez gave further evidence that this combination of drugs alleviated the majority of any drug withdrawal symptoms, which may be experienced. Doctor Gonzalez was not of the opinion that James Drummond was suffering from acute drug withdrawals. Indeed if he had had any concern, he would have ensured that James Drummond was removed to the hospital wing and further medicated.

Doctor Gonzalez further explained that James Drummond was seen by a member of the nursing staff twice a day to receive his medication. This is detailed in the production, prescription recording sheet. There were no further entries in the physicalcare records to detail any complaints from James Drummond or concerns in respect of drug withdrawal. Doctor Gonzalez confirmed that prisoners could easily access nursing staff and thereafter a doctor. Prisoners could report sick at anytime if required. Doctor Gonzalez gave evidence that the nursing staff are very experienced in the area of drug withdrawal and are able to assess individuals to determine whether or not they are suffering from significant withdrawals.

In addition, Doctor Gonzalez advised that the severity of symptoms of drug withdrawal was higher in the first few days of withdrawal and the symptoms were more visible at this stage. It therefore follows that if James Drummond was not demonstrating any visible signs of withdrawal on 23 and 24 February 2000 that symptoms would not be expected to increase with time. As a symptom sweating would not be expected to occur for more than a day or two.

Officer Burns and Officer Richmond: In evidence William Wotherspoon further claimed that on 29 February 2000 he advised Officers Richmond and Burns that he was concerned for James Drummond. On being directly asked if this had occurred, both prison officers denied that William Wotherspoon had spoken to them regarding this and I would submit that the evidence of both officer's should be preferred. Furthermore, both officers advised that they did not see any symptoms that James Drummond was suffering from drug withdrawal. If either had seen James Drummond suffering from acute symptoms of drug withdrawal they would have removed James Drummond from his cell and alerted a nurse. If a nurse was unavailable they would have placed him in an observation cell on the bottom flat of the Hall.

The Procurator Fiscal Depute further suggested that if your Lordship found there was evidence that James Drummond was bullied, that the following would have been reasonable precautions:

(i) James Drummond should have been given help

(ii) James Drummond should have been placed in an anti-ligature cell

(iii) James Drummond should have been put in a cell with another prisoner

The majority of the evidence the court heard to support the proposition that James Drummond was the victim of bullying again came from William Wotherspoon. William Wotherspoon described four separate incidents that allegedly occurred on 29 February 2000, the day before James Drummond died.

The first incident was when William Wotherspoon stated he allegedly witnessed Officer Burns strike James Drummond around the ear on 29 February 2000. According to William Wotherspoon, Officer Burns was bullying James Drummond.

The second incident again described by William Wotherspoon was when he stated that on 29 February 2000, he allegedly witnessed Officers Burns and Richmond at James Drummond's cell door, where they were shouting at him to get the blood cleared off the floor in the cell. William Wotherspoon stated the blood was Mark Cairns' blood. Officer Burns had allegedly punched Mark Cairns earlier that day resulting in blood on the cell floor.

The third incident again described by William Wotherspoon allegedly occurred at approximately 10 pm on 29 February 2000. James Drummond was allegedly screaming to be let out of his cell and the night-shift officer responded at his cell door and threatened James Drummond and told him to "get his head down".

The fourth incident again described by William Wotherspoon allegedly occurred at approximately 11 pm on 29 February 2000. James Drummond had requested assistance from the night shift officer and was again allegedly threatened, this time that if he had to go to James Drummond's cell door again he would be "leathered".

Dealing with each allegation in turn, the Court heard the following responses to the allegations made by William Wotherspoon:-

Officer Burns categorically denied this incident. I would submit that Officer Burns' evidence should be preferred. Indeed, if an incident had occurred such as described by William Wotherspoon, we heard in evidence that the prisoners witnessing this assault would have reacted and in most likelihood an official complaint would have been made. Officer Richmond corroborates this. We heard in evidence that a prisoner complaints system is in place and complaints can be written or made orally. In addition, Francis MacDonald who was a prisoner on the 2nd flat of C Hall at the time of the incident, stated in evidence that he

never saw James Drummond being assaulted or threatened by Officer Burns or indeed any other prison officer.

Both Officers Burns and Richmond categorically deny this incident. I would again respectfully submit that their evidence should be preferred to that of William Wotherspoon's. William Wotherspoon stated that he had been told that the alleged blood on the cell floor had resulted from Officer Burns punching Mark Cairns earlier that day. However we heard in evidence that when Officer Burns came on shift on 29 February 2000, that Mark Cairns had already been removed to the segregation unit. Furthermore, the suggestion by the Procurator Fiscal Depute that there was blood on the cell floor and that this was evidenced in the production photographs was unsubstantiated. The discovery of blood was not detailed in a police report as would be expected. Police Constable David Bellingham who attended the cell following the death of James Drummond, did not note any blood on the cell floor and on questioning with regard to photograph B, detailing staining on the cell floor suggested it was dried paint. All witnesses questioned as to what the substance was in photograph B were unclear and I would suggest that the evidence of Police Constable Bellingham, Officer Richmond, Officer Burns should be preferred in respect that it was dried paint.

Officer McGougan categorically denies this incident. I would submit that Officer McGougan's evidence is preferred to that of William Wotherspoon's. Officer McGougan explained in evidence that he had no contact with James Drummond on the night shift of 29 February 2000. James Drummond did not activate his buzzer. If James Drummond had been shouting for help he or his colleague Officer Abigail Thomson would have responded. Officer Abigail Thomson corroborated this.

Again Officer McGougan categorically denies this incident for reasons as detailed above. I would submit that Officer McGougan's evidence is preferred.

I would submit that for the reasons narrated above, William Wotherspoon's evidence was not credible. In addition, he was contradicted in evidence by Francis MacDonald who advised that C Hall was generally noisy at night and had indeed been noisy on the night of 29 February 2000, William Wotherspoon had insisted it was so quiet "you could hear a pin drop". In addition, it should be of relevance in assessing his credibility that he had used heroin on the evening of 29 February 2000. Furthermore during his evidence he referred to prison officers as "pure pigs" and it was clear that he held a great deal of contempt towards prison officers.

The remaining evidence heard with regard to alleged bullying came from James Drummond's mother Mrs Maureen Drummond, her son Robert Drummond and prisoners Derek Stevenson and Francis MacDonald. Dealing with each witness in turn:

Mrs Drummond: Mrs Drummond narrated what she was told by Mark Cairns. Mrs Drummond had gone to HMP Barlinnie to visit Mark Cairns after James Drummond's death. Mark Cairns had requested she visit him as he had information with regard to her son's death. Mrs Drummond and her sister in law duly visited Mark Cairns and at his suggestion she used her maiden name. In essence she explained Mark Cairns had told her that at the date James Drummond was in HMP Barlinnie, Mark Cairns supplied prisoners with drugs. Mark Cairns shared a cell with James Drummond. Mark Cairns had told her he had been removed from C Hall on 29 February 2000 as a result of his drug dealing within the prison. However the prison officers had fabricated a story that the reason for his removal was that intelligence

had been received that some prisoners, including Mark Cairns intended to take a prison officer hostage. Thereafter, Mark Cairns explained that James Drummond was being bullied by prison officers to tell them where Mark Cairns stored his drug supply. In addition, prison officers had allegedly entered James Drummond's cell and threatened that if he didn't tell them where Mark Cairns stored the drugs, they would tell the prisoners in the Hall that he had grassed on Mark Cairns. Mark Cairns was not in court to speak to any of the above. Mrs Drummond explained that this was as a result of when she visited Mark Cairns at HMP Barlinnie. Mark Cairns had told her that the prison officers in charge of visits had realised who she was and had thereafter approached him and struck a deal with him, so he would not attend the Inquiry to speak to what he knew.

Whilst I'm sure Mrs Drummond is narrating what she was told by Mark Cairns, Mark Cairns did not attend the Inquiry to give evidence. I would submit that the credibility of what he has told Mrs Drummond cannot be assessed in his absence. Turning to the evidence heard in respect of the allegations made by Mark Cairns:

Mark Cairns only shared a cell with James Drummond from Monday, 28 February 2000 until 29 February 2000, not as Mrs Drummond was under the impression, from James Drummond's admission on 23 February 2000.

Prison Officers are entitled to search cells for drugs and this is a legitimate requirement, therefore there was no need to fabricate a perceived hostage threat.

Mark Cairns was removed to segregation on the morning of 29 February 2000 and therefore was not in C Hall when the alleged bullying occurred.

Officers Richmond and Burns were not yet on duty when Mark Cairns was removed to the segregation unit on 29 February 2000.

I would submit that the suggestion that the prison officers on visits realised who Mrs Drummond and her sister were and then struck a deal with Mark Cairns not to attend the Inquiry is incredulous.

Robert Drummond: Robert Drummond advised the Court that he was the last member of the family to speak to James Drummond. Robert Drummond explained that James Drummond phoned home on Sunday 27 February 2000. He seemed fine on the phone and told Robert Drummond he was getting hassle from a Richmond. Following Mark Cairns' meeting with Mrs Drummond when he stated that James Drummond was being bullied by officers, in particular Officer Richmond, the family assumed the Richmond who had been mentioned on the phone was Officer Richmond.

Officer Richmond categorically denies bullying James Drummond. This was corroborated by Officer Burns. In addition, Francis MacDonald a prisoner in "C" Hall at the same time as James Drummond never witnessed him being bullied by any prison officers.

Officer Richmond was not on duty on the date of the phonecall on Sunday 27 February 2000 and his first contact with James Drummond was on Monday, 28 February 2000.

Robert Drummond stated that his brother had said to him that he was getting hassle from Richmond, this surname could have belonged to another prisoner in "C" Hall. James Drummond did not say Richmond was a prison officer.

If James Drummond had been referring to hassle from Officer Richmond, the inference to be taken from his conversation and use of this word, is not strong enough to suggest that he was being threatened.

Robert Drummond thought his brother seemed fine on the phone and was not concerned. At no time did James Drummond voice any suicidal thoughts to his brother or appear from the conversation to be suicidal.

Following Officer Richmond's evidence, Mrs Drummond requested to be recalled. She advised the court that a confusion had arisen with regard to the date of the phonecall from James Drummond. James Drummond had phoned home on Monday, 28 February, not as she had earlier stated in evidence Sunday 27 February 2000. Mrs Drummond explained that she only realised this as a result of hearing evidence that Mark Cairns had only shared a cell with James Drummond from Monday, 28 February 2000. Robert Drummond had told her that James Drummond had said that he had borrowed the phone card he was using from Mark Cairns, therefore the phone-call couldn't have been Sunday. With all due respect, the recall came directly after Officers Richmond and Burns' evidence, when the court heard Officer Richmond was not on duty on Sunday 27 February 2000 and with respect her evidence should be lessened as a result.

Robert Drummond was then recalled, he remained adamant the phonecall took place on Sunday, 27 February 2000, however following extended questioning became confused. Her mother, Mrs Drummond, had gone up to HMP Barlinnie on Tuesday, 29 February and he knew when he spoke to James Drummond that she was planning to go to visit him on Tuesday. Furthermore he never stated in evidence that James Drummond had told him that the phone card he was using to call home with he had borrowed from Mark Cairns.

Derek Stevenson: Derek Stevenson also only narrated what Mark Cairns had told him. Derek Stevenson was handcuffed to Mark Cairns on 1 March 2000 to attend Court. He had never met James Drummond. He had not been in C Hall with James Drummond. Mark Cairns advised him that the reason he was in the segregation unit was because the officers wanted him out of C Hall and had therefore fabricated the hostage incident. Derek Stevenson added that the hostage incident was unbelievable based upon the fact that the female officer who the prisoners had allegedly planned to take hostage was a body builder. Mark Cairns had further told Derek Stevenson that James Drummond had been on his buzzer the night of 29 February 2000, asking to use the phone and had been threatened and taunted by the prison officers on the night shift duty.

Derek Stevenson had never even met James Drummond.

Derek Stevenson was only narrating what Mark Cairns had told him.

Mark Cairns was not in C Hall the night of 29 February 2002.

Hostage intelligence requires to be taken very seriously by the Scottish Prison Service. The fact that the alleged hostage was a body builder is irrelevant.

Francis MacDonald: Explained that he had been told the hostage incident was made up and that the reason the alleged hostage threat could not be true was because the officer alleged to have been the planned hostage was a body builder.

Was in C Hall with James Drummond and only met him once in exercise.

At no time did he hear any prison officers shouting at James Drummond.

At no time did he see James Drummond being assaulted or threatened by any prison officers.

I would reiterate my submission that there were no reasonable precautions, which could have been taken which might have prevented James Drummond's death. Reasonable must be determined having regard to practicability, cost and likely benefit. Furthermore the implications for Scottish Prison Service policy, having regard to practicability, manpower and resources would require to be addressed. In my submission, there has been no evidence that there is any causal connection between the reasonable precautions suggested by the Procurator Fiscal Depute and James Drummond's death. For your Lordship to make a finding under this section there must be a causal connection and not a probability but a real possibility that the death might have been avoided by the reasonable precaution. The Scottish Prison Service has a system in place for assessing a prisoner's apparent suicide risk and James Drummond was assessed as being of no apparent risk. James Drummond's suicide was sudden and unexpected and in terms of the Act, there were no reasonable precautions required to be taken by the Scottish Prison Service which might have prevented his death.

6 (1) d

I would respectfully submit that there has been no evidence to suggest that there were any defects in the system of working. Again there would require to be a causal connection between the defect or defects and the death.

The Procurator Fiscal Depute made no submission in respect of this sub section of the Act.

6 (1) (e)

I would respectfully submit that there are no other facts relevant to the circumstances of the death.

The Procurator Fiscal Depute suggested that if your Lordship was not minded to make a finding in terms of Section 6(1)c, that the reasonable precautions she suggested in this sub section should then fall within sub section 6(1)e. For the reasons I have already narrated in my submissions with regard to section 6(1)c, these reasonable precautions or indeed other facts have not been established by evidence.

In conclusion I invite your Lordship to make a formal Determination solely in terms of Section 6(1)(a) and (b) relating to the time, place and cause of death."

At the adjourned Hearing on 13 December, 2002 the following supplementary oral submissions were made by Ms Lyle:- The Scottish Prison Service had a system in place, entitled ACT which stands for Assessment Care and Teamwork. This is a suicide prevention strategy. Prison Officers are trained in the application of suicide prevention which they implement on a day to day basis. Ms Lyle stated that the deceased was assessed under the ACT procedure, being a reception risk assessment on the day of his admission to Barlinnie. This was a specific suicide prevention strategy used to assess the risk which a prisoner may pose to himself as being at risk of suicide. In this connection, Ms Lyle stated that specific questions were put to the prisoner. In addition, his history, body language and demeanour were also assessed. Ms Lyle pointed out that the deceased was assessed by a nurse and a reception risk officer on the day of his admission on 23 February 2000. Further, on 24 February, 2000, as was the practice, he was assessed by a doctor [ie. Dr Gonzalez]. All the assessments concluded that the deceased was of no apparent risk of suicide. Ms Lyle stated that coupled with the Officers who worked in the Hall they were also trained in a suicide prevention strategy. In this connection, she stated that they were trained how to detect if someone appeared to be suicidal and indeed how to act if someone approached them stating they were suicidal.

Ms Lyle pointed out that all the Officers who gave evidence at the Inquiry were familiar with the suicide prevention strategy, and that those who had contact with the deceased were specifically asked in evidence whether the deceased appeared to be suicidal or was expressing any suicidal intention to them. In this connection, she stated that all the Officers denied observing any such tendencies or being spoken to by the deceased in that regard. Moreover, Robert Drummond stated that he was very surprised that his brother had committed suicide and that there had been nothing in the telephone conversation to indicate that his brother would do so.

Ms Lyle submitted that the deceased's death was sudden and unexpected and that there were no reasonable precautions which could have been taken by the Prison Service or the Officers which might have prevented his death. Furthermore, all the allegations of bullying were put to the Officers accused of this; they were all categorically denied and there was corroboration provided by each officer. Ms Lyle stated that there was nothing in the evidence to suggest any defect in working and pointed out that the Procurator Fiscal Depute had made no submission in respect of section 6(1)(d) of the 1976 Act.

In Ms Lyle's submission, it was not appropriate to make any Determination under section 6(1)(c) or (e) of the 1976 Act for the reasons given by Mr Mowat. In this connection, she submitted that Determinations had to be given on the basis of the evidence led at the Inquiry. She stated that both she and Mr Mowat had assisted the Inquiry by calling Prison Officer Burns to respond to the allegations made against him and Prison Officer Abigail Thompson to respond to the allegations that bullying had occurred during the nightshift on

the night prior to the deceased's body being discovered. She pointed out that the prisoner, Mr MacDonald and the Prison Officers all disputed Mr Wotherspoon's evidence that one could hear a pin drop in "C" Hall. She also stated that on the night of 29 February, 2000 Mr Wotherspoon had used heroin which may well have impaired on his recollection of what, if anything, happened.

In conclusion, and in all the circumstances I was invited to make a formal Determination solely in terms of section 6(1)(a) and (b) of the 1976 Act, relating to the time and place and cause of death.

I considered very carefully all the evidence led at the Inquiry, together with the submissions made on behalf of the Crown, the Prison Officers' Association and the Scottish Prison Service. It was Mrs Drummond's position that she thought that her son had committed suicide "because he was getting bullied by Prison Officers". In this connection, as submitted by the Procurator Fiscal Depute, I had to make my Determination on the basis of the evidence led at the Inquiry. This to a very considerable extent, depended on my assessment of the credibility and reliability of the evidence of Mr Wotherspoon and the hearsay evidence of Mr Cairns, as spoken to by Mrs Drummond and balancing their evidence against that of the medical witnesses and the Prison Officers. Whilst I accepted that it was always possible that there had been a conspiracy among the Prison Officers to conceal the truth as to what had happened to the deceased in the days and hours immediately prior to his death, on the basis of the evidence led at the Inquiry I did not feel able to conclude, on a balance of probabilities that that was the situation. When it came to a question of assessing the credibility and reliability of the evidence of Mr Wotherspoon and Mr Cairns and comparing that with my assessment of the credibility and reliability of the evidence of the medical witnesses and the Prison Officers, I preferred the evidence of the latter. In this connection, insofar as not qualified or departed from by me in this Note I would specifically adopt the submissions made by Mr Mowat at pp 121 to 127 (supra) and by Ms Lyle at pp 137 to 144 (supra) for all the reasons narrated therein. Accordingly, I do not propose to repeat these submissions in this Note. Whilst I accepted the Procurator Fiscal Depute's submission in relation to Mr Wotherspoon's evidence that there was such a thing as "honour among thieves" and the fact that Mr Wotherspoon had a lengthy Schedule of Previous Convictions including crimes of dishonesty did not necessarily mean that he was not telling the truth at this Inquiry, I did not consider that that was the position here. Moreover, in addition to having evinced feelings of ill will and even hatred towards Prison Officers in general, as narrated at p 133 (supra) Mr Wotherspoon had only come forward as a witness at the Inquiry "right at the last minute" and his allegation of assault by Prison Officer Burns on the deceased had only come to light in the course of Mr Wotherspoon's evidence or at any rate very late in the day. In any event, I found Prison Officer Burns's denial of that alleged assault to be both credible and reliable.

So far as the evidence of Mr Cairns was concerned this came from the hearsay evidence of Mrs Drummond, who stated that she had gone up to Barlinnie to speak to Mr Cairns some three weeks after the deceased's death. Whilst I had no reason to doubt that Mrs Drummond was in general attempting to narrate truthfully what she had been told by Mr Cairns, he for whatever reasons, failed to make himself available to give evidence at the Inquiry in spite of attempts by the Crown to cite him. This was against a background that he himself was

alleged to have been the victim of an assault at the hands of Prison Officers/ a Prison Officer. In these circumstances, his evidence was not able to be subjected to and tested by cross-examination. In any event, as narrated above, I preferred the evidence of the Prison Officers to the hearsay evidence of Mr Cairns. Again I would specifically adopt the submissions made by Mr Mowat at pp 127 to 129 (supra) and by Ms Lyle at pp 144 and 145 (supra) in that regard.

So far as the vexed question of the telephone call home from the deceased in Barlinnie to his brother Robert some three or four days prior to his death was concerned, I have no doubt that such a telephone call was made. I consider that the telephone call was made at around 4.00 pm on either Sunday, 27 February, 2000 or Monday, 28 February, 2000. I have however been unable to conclude, on a balance of probabilities, as to on which of these two dates that telephone call (and accordingly the conversation between the deceased and his brother took place) was made. In this connection, I have narrated in full in the Findings-in-Fact (supra) the respective positions of both Mrs Drummond and Robert when they originally gave evidence to the Inquiry on 10 June, 2002 (see Findings-in-Fact Nos. (8) and (248) to (251) (supra)) and also when they again gave evidence on 12 June, 2002 (see Findings-in-Fact Nos. (252) to (264) (supra)). On 10 June, 2002 the positions of both Mrs Drummond and Robert were that the telephone call was made on Sunday, 27 February, 2000. Even after Robert had given evidence confirming that date, Mrs Drummond did not appear to have any concerns. It was not however, until two days later, ie. on 12 June, 2002, after hearing the evidence of Prison Officer Richmond (who was alleged to have bullied the deceased) that he was not even on duty on Sunday, 27 February, 2000 and could not have had any contact with the deceased prior to coming on duty at about 1.15 pm on Monday, 28 February, 2000, that Mrs Drummond stated that both she and Robert had in fact been mistaken when they said that the telephone call had been made on Sunday, 27 February, 2000. In this connection, she stated that the telephone call had in fact been made on Monday, 28 February, 2000 (ie. after Prison Officer Richmond had come on duty). The circumstances in which the mistake is said to have come about, are fully narrated in the said Findings-in-Fact (supra) and I do not accordingly propose to rehearse them in this Note. Suffice to say that the catalyst which appears to have alerted Mrs Drummond to this alleged mistake is the erroneous belief that the deceased only shared a Cell with Mr Cairns on one day (ie. Monday, 28 February, 2000) (in spite of Mr Cairns' having apparently told her that he shared a Cell with the deceased for 6 days) when in fact he also shared a Cell with Mr Cairns on Sunday, 27 February, 2000 (see Findings-in-Fact Nos. (12) and (23) (supra)). It was in this connection, in view of the fact that the deceased was supposed to have told Robert that as he had no money he had had to borrow a phonecard from a Cell mate by the name of Cairns in order to make the phone call home, that Mrs Drummond had concluded that it must have been made on the Monday (ie. 28 February, 2000) and not on the Sunday (ie. 27 February, 2000)). She also stated that the date of the call had been calculated inaccurately by her and Robert by reference to the date she tried to visit the deceased in Barlinnie, (ie. Tuesday, 29 February, 2000) and not the date upon which she originally intended to visit (ie. Wednesday, 1 March, 2000). This was in spite of the fact that both Robert and she "had 2 years to talk about it." (See Finding-in-Fact No. (255) (supra)). My impression of Robert's evidence in this regard was that it had been his mother, Mrs Drummond (and not he) who had been trying to work out the date of the phone call, and that he had had no doubt in his own mind that it had been made on the Sunday (ie. 27 February, 2000) (see Finding-in-Fact No. (257) (supra)). He was however, prepared to concede that he might have been mistaken in this regard and appeared to have become (perhaps not altogether unsurprisingly) somewhat confused by the end of his evidence. The Procurator

Fiscal Depute asked me to accept the possibility that "a genuine mistake on the family's part, myself [ie. Mrs Drummond] and Robert had occurred". (See Finding-in-Fact No. (254) (supra)).

So far as the contents of the telephone conversation between the deceased and Robert were concerned, I got the impression that Mrs Drummond appeared to be more aware of the details of these than Robert was, in spite of the fact that it was he who took the call and that it was he and not Mrs Drummond who spoke to the deceased. In this connection, for example, Robert was unable to name Mark Cairns as the person who had lent the deceased a phonecard to phone home whereas Mrs Drummond was able to do so. Whilst Robert stated in evidence that the deceased had told him something about getting "hassle" from someone called Richmond, the emphasis to the call appeared to be in relation to when the deceased's mother was going up to visit him in Barlinnie and whether or not any money had been left for him. Robert stated that it was not until sometime later (ie. after Mrs Drummond had spoken to Mr Cairns in Barlinnie) that he realised that the "Richmond" being referred to was a Prison Officer. In my opinion, the first occasion on which any real concerns were expressed by the deceased's family that the deceased may have been bullied in Barlinnie, were following upon the conversation which Mrs Drummond had with Mr Cairns in Barlinnie some three weeks after the deceased's death. Prior to that, there appears to have been no real concerns in that regard. In view of the fact that Mrs Drummond appears to have attributed to Robert certain details concerning the contents of the telephone conversation between him and the deceased (eg. in relation to Mr Cairns) it is in my opinion a distinct possibility that the name Richmond also became wrongly attributed to that telephone conversation perhaps in the course of the 2 years during which Mrs Drummond and Robert had had to talk about it. In this connection, however, I accept that there was no cross-examination of Robert on the basis that the name Richmond was not in fact mentioned by the deceased in the course of his telephone conversation with Robert (whenever that may have been) as someone who was causing the deceased hassle. Further, I accept that there was no cross examination of Robert on the basis that the name Richmond became wrongly attributed to his telephone conversation with the deceased only after Mrs Drummond had spoken to Mr Cairns in Barlinnie and had had about 2 years to discuss the position with Robert. In the whole circumstances, however, I was prepared to accept in relation to the date on which the telephone conversation was made the possibility that "a genuine mistake on the family's part, myself [ie. Mrs Drummond] and Robert had occurred" (see Finding-in-Fact No. (254) (supra)). Accordingly, in these circumstances I was unable to come to a conclusion, on a balance of probabilities, as to on which of the two dates (ie Sunday, 27 February, 2000 or Monday, 28 February, 2000) the telephone call was made. However, so far as the telephone call and the possible consequences and inferences to be drawn if it was made on the Monday (ie. 28 February, 2000) as opposed to the Sunday, (ie. 27 February, 2000) were concerned I would specifically adopt the submissions made by Mr Mowat from the top of p 129 to the top of p 131 and again at p 134 (supra).

Mr Mowat asked me to accept as credible and reliable the evidence given by all his clients (see pp 131 and 120 (supra)). Whilst I was prepared to accept that that was in general the position, I considered that the evidence of Prison Officer Richmond was unsatisfactory in relation to the staining on the floor of the deceased's Cell. At one point, Mr Richmond even suggested that the staining might have been cigarette burns. He also suggested that the staining could have been caused for a number of reasons but eventually stated that it could

have been caused by "absolutely anything". There was however no evidence which would have entitled me to conclude, on a balance of probabilities, that the staining was Mr Cairns' blood, or even that it was blood. In this connection, it should be noted that although Prison Officer Richmond thought it unlikely that the staining was blood, he did not simply discount that possibility (see Findings-in-Fact Nos. (138) and (159) (supra)). I also considered that some of Prison Officer Richmond's answers in relation to complaints by prisoners against Prison Officers were unsatisfactory, particularly his initial assertion that in his 10 years' service as a Prison Officer, he had never heard of any such complaints being upheld. However, as narrated above, I had to make my Determination from the basis of the evidence led at the Inquiry. In this connection I found the evidence of Prison Officer Burns, who was on duty with Mr Richmond in the afternoon of Tuesday, 29 February, 2000 to be both credible and reliable and preferred his evidence to that of Mr Wotherspoon and the hearsay evidence of Mr Cairns, as spoken to by Mrs Drummond. Accordingly, whatever criticisms one may have of certain aspects of Prison Officer Richmond's evidence, I felt unable to conclude, on a balance of probabilities, in light of his own evidence and that of Prison Officer Burns that either of them had been involved in bullying the deceased. Whilst I also had some reservations about Prison Officer Abigail Thompson's evidence in relation to whether or not she would necessarily have been able to hear during the course of the nightshift her colleague, Prison Officer McGougan shouting abuse at a prisoner in his Cell as alleged by Mr Wotherspoon with regard to the deceased, I found her evidence, together with that of Prison Officer McGougan to be both credible and reliable and preferred it to that of Mr Wotherspoon. In particular, all the witnesses (including prisoner Francis MacDonald) with the exception of Mr Wotherspoon confirmed that there was generally a lot of shouting and banging of Cell doors in "C" Hall during the course of the nightshift and that that would have been/was the position on the night of Tuesday, 29 February, 2000/Wednesday, 1 March, 2000. Mr Wotherspoon on the other hand, stated that it was so quiet that one could hear a pin drop. I found him both incredible and unreliable in relation to this matter as I also did in relation to all the other allegations made by him in the course of the Inquiry (see pp 121 and 122 (supra)).

In the whole circumstances, I did not consider that there was anything which should have or could have alerted any of the authorities in Barlinnie to the fact that the deceased might have been at risk of committing suicide. Neither his mother, Mrs Drummond nor his brother Robert had any apprehensions in that regard. Moreover as narrated in detail in the Findings-in-Fact (supra) the Scottish Prison Service had a suicide prevention strategy in place in Barlinnie, entitled "ACT" in terms of which Prison Officers are trained in the application of suicide prevention which they implement on a day-to-day basis. In this connection, I would refer to Findings-in-Fact Nos. (40) to (50), (55) to (57), (64) to (75) and (78) to (87) (supra) and would specifically adopt Ms Lyle's submissions at pp 149 and 150 (supra).

So far as the Procurator Fiscal's submissions in relation to my Determination in terms of section 6(1)(a) and (b) of the 1976 Act were concerned (which were adopted by both Mr Mowat on behalf of the Prison Officers' Association and by Ms Lyle on behalf of the Scottish Prison Service), the Procurator Fiscal Depute also submitted that I should make a finding either under section 6(1)(c), viz: "the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided" or alternatively under section 6(1)(e) viz: "any other facts which are relevant to the circumstances of the death".

In this connection, in view of the fact that I have concluded, on a balance of probabilities and on the basis of the evidence led as the Inquiry -

(1) that the deceased was not suffering from acute symptoms of drug withdrawal (ie. "rattling") in the hours immediately preceding his death;

(2) that he displayed no signs of being an apparent suicide risk, either to his own family or to the medical staff or other authorities in Barlinnie and

(3) that he was not subjected to bullying at the instance of Prison Officers there, I have considered it inappropriate to make any findings in terms of either section 6(1)(c) or 6(1)(e) of the 1976 Act.

In any event, so far as section 6(1)(c) was concerned, the "reasonable precautions" which the Procurator Fiscal Depute suggested might have been taken, namely that the Prison Officers could have spoken to the deceased when he called for help; could have placed him in a Cell with another prisoner; could have referred him to the Health Centre or could have placed him in an anti-ligature Cell where all precautions which were already in place, as spoken to by several witnesses. Accordingly, even if I had concluded that the deceased was suffering from acute symptoms of drug withdrawal or was displaying signs of being an apparent suicide risk or had been subjected to bullying, the only criticisms which I might have had would have been to the effect, not that there were "reasonable precautions" which could have been taken but that the "reasonable precautions" already in place, had not been observed. So far as "reasonable precautions" are concerned, I would specifically adopt the submissions made by Ms Lyle at pp 1481/2 and 1501/2 to 151 (supra). As I have made no finding that the deceased had been bullied by Prison Officers I considered it inappropriate to make any finding to that effect in terms of section 6(1)(e). Moreover, even if I had come to the view that the deceased had been bullied by Prison Officers, I did not consider that there was sufficient evidence to enable me to conclude, on a balance of probabilities that there was necessarily a causal connection between the deceased's death and any such bullying (see Findings-in-Fact Nos. (105) and (107) (supra)).

A matter which gave me some cause for concern and which was spoken to by Mrs Drummond in the course of her evidence related to the circumstances in which she said she came to hear about her son's death. If the circumstances are as narrated in Findings-in-Fact Nos. (237) and (238) (supra) then I consider that the delays in officially informing Mrs Drummond about her son's death were totally unacceptable. In this connection, the deceased's body was found at about 6.15 am on Wednesday, 1 March, 2000 in Cell No. 2/21 (see Finding-in-Fact No. (17) (supra)). By Agreement among all the parties represented at the Inquiry, his life was pronounced extinct at approximately 9.00 am on that date (see Finding-In-Fact No. (128) (supra)). However, the first information which Mrs Drummond appears to have received concerning her son's death was a report on the radio at about 5.00 pm later that day concerning the death in Barlinnie of a 21 year old youth from Tollcross. Mrs Drummond stated that following upon that radio report, she got telephone calls from her sister and other friends enquiring as to the position. She stated that she thought that the

deceased must have been involved in an incident of some sort, such as a fight. In these circumstances, she first telephoned Barlinnie at around 5.30 pm to try to obtain some information. She stated that she was told that there had been an incident but that the family [of the prisoner concerned] had been contacted. In view of the fact that she appears not to have heard anything from Barlinnie in that regard, she assumed that the incident had nothing to do with her son. However, about a quarter of an hour later, at about 5.45 pm Mrs Drummond stated that she again telephoned Barlinnie and spoke to someone whom she described as the Acting Manager on duty. She stated that he had asked her for all her son's details and advised her that so far as Barlinnie were concerned, the family of the youth involved had already been notified, but that according to the details which Mrs Drummond had given him, that youth was in fact the deceased. Mrs Drummond stated that she was not officially informed about her son's death until the police came round to her house at about 7.30 pm that evening to inform her of the position. In this connection, she stated that the police told her that the deceased's father had also been notified. She pointed out however, that the deceased's father had died nearly 2 years earlier. No evidence was led at the Inquiry to contradict Mrs Drummond's assertions with regard to the circumstances in which she came to be informed about her son's death. On the assumption that these assertions were true, and I had no reason to doubt Mrs Drummond's credibility and reliability in relation to that part of her evidence, it seems to me that there was a gross failure in communication between Barlinnie and Mrs Drummond in relation to giving her accurate information confirming that it was in fact her son who had been found dead in his Cell earlier that morning. Moreover, Mrs Drummond's anxieties were first aroused, not as a result of any information she received from Barlinnie, but as a result of hearing the radio report at around 5.00 pm. In spite of two telephone calls to Barlinnie at around 5.30 pm and 5.45 pm it appears that Barlinnie was still unable to confirm as a matter of fact that the youth involved was her son. As narrated above, it was not until around 7.30 pm that evening ie. more than 12 hours after her son had been found hanging in his Cell and about 10 1/2 hours after he had been officially pronounced dead that Mrs Drummond stated that the police came round to her house to inform her of the position. Even then it appears that they erroneously told her that the deceased's father had been informed, albeit he had died nearly 2 years earlier. In my opinion, if the circumstances in which Mrs Drummond came to be advised of her son's death are (substantially) correct, as narrated above, then it seems to me that there was a serious breakdown in communications between Barlinnie and Mrs Drummond in that regard. In my opinion, the situation ought not to have arisen whereby the position in relation to her son's death was not finally and officially communicated to Mrs Drummond until some 10 to 12 hours after the deceased's identity ought to have been known to the prison authorities. The situation was in my view compounded by the fact that the true position appears only to have come to light following upon the radio report at 5.00 pm and the two telephone calls made by Mrs Drummond to Barlinnie at about 5.30 pm and 5.45 pm with a view to obtaining some information. However, as this aspect of the evidence was not the subject of any close scrutiny or cross-examination in the course of the Inquiry, I do not consider that it would be appropriate to make any specific recommendations or findings which would be relevant so far as my Determination in terms of section 6(1) of the 1976 Act is concerned. Accordingly, in the whole circumstances and for the reasons given above, I consider that it is only appropriate to make a formal Determination in terms of section 6(1)(a) and 6(1)(b) of the 1976 Act.

For the sake of completion, although it is narrated in Dr Ravindra Fernandez's Post Mortem Report in relation to the deceased, dated 14 March, 2000 (see Crown Production No. 5) that he was pronounced dead at 06.28 hours on 1 March, 2000 in terms of the Minute of

Agreement among all the parties represented at the Inquiry, it has been agreed that the deceased was pronounced dead at 09.00 hours on that date (see Finding-in-Fact No. (128) (supra)). Also, although Mrs Drummond and her son Robert both stated that they lived at (Flat 2), No. 884 Shettleston Road, Glasgow as at 10 June, 2002 (the date on which they first gave evidence to the Inquiry) it appears from the terms of the Post Mortem Report and also from the terms of the Procurator Fiscal's Application to hold an Inquiry into the death of Mr Drummond under the 1976 Act that he lived at No. 765 Shettleston Road, Glasgow at the time of his death. Accordingly, in my Determination in terms of section 6(1)(a) of the 1976 Act I have narrated that the deceased lived at the latter address and that his life was pronounced extinct at 09.00 hours on (Wednesday) 1 March, 2000.

SHCMcF.AH.Drummond.FAI.18.07