

INQUIRY UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976 INTO THE SUDDEN DEATH OF STEPHEN WILLIAM BARCLAY

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT DINGWALL

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

DETERMINATION

by

ALASDAIR LORNE MACFADYEN, Sheriff of Grampian, Highland and Islands at Dingwall

In

FATAL ACCIDENT INQUIRY

into the death of

STEPHEN WILLIAM BARCLAY

DINGWALL, 3 July 2006

The sheriff, on resuming consideration of the evidence and submissions in the fatal accident inquiry DETERMINES:

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

That Stephen William Barclay, born 12 September 1965, of 8 Harrowden Road, Inverness, then in the course of his self-employment as a market gardener, was cycling southwards on the A835 Ullapool to Tore road on the Leanaig Brae about half a mile south of the Maryburgh roundabout when he was struck by a lorry also travelling southwards on the same road and suffered multiple injuries from which he died at 8.31pm that night at Raigmore Hospital, Inverness.

In terms of section 6(1)(c) of said Act:

That had Angus MacPhail, 28 Smithton Villas, Smithton, Inverness, driven the Leyland DAF motor lorry registered number KU52 JYW at no more than the maximum permissible speed for such a vehicle on that road, namely 40 miles per hour, had said Angus MacPhail kept a proper lookout and had he given Mr. Barclay as a pedal cyclist on said road adequate room, then those were reasonable precautions whereby the death and the accident might have been avoided.

In terms of Section 6(1)(e) of the Act:

The facts relevant to the circumstances of death are set out in the note appended to this Determination.

NOTE

This inquiry was convened to examine the circumstances of the death of Stephen William Barclay, born 12 September 1965, on 1 April 2005.

At the inquiry parties were represented as follows:

- The Crown: Mr. Urquhart, Procurator Fiscal, Dingwall;
- The family of the deceased: Mr. Muir, solicitor, Dundee;
- The Scottish Ministers: Mr. Ferguson, solicitor, Edinburgh;
- Angus MacPhail and Sharpe Express Delivery: Mr. Goodbrand, solicitor, Edinburgh;
- Miss Julie Henderson, business partner of the deceased, represented herself.

It is, I think, worth noting the purposes of an inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. Those are, to paraphrase the remarks of Sheriff Kearney in the determination which he issued in the case of *Mildred Allan* on 14 December 1985, the enlightenment of those legitimately interested in the death, i.e. the relatives and dependants (if any) of the deceased as to the cause of death and any accident resulting in the death and the enlightenment of the public at large, including the relatives, as to whether any reasonable steps could or should have been taken whereby the death might have been avoided.

A fatal accident inquiry is a fact finding exercise. It is no part of the sheriff's function to apportion fault or blame for the death in his determination.

Further, in my view, the terms of the sheriff's determination to be issued in terms of section 6(1) of the 1976 Act must be based and indeed can only be based on evidence led and submissions made during the inquiry. It cannot be based on speculation or theory, unless the latter can be inferred from evidence led at the inquiry.

As the matters at the inquiry developed, there turned out to be little, if any, dispute on the evidence as to the circumstances of the accident which caused Mr. Barclay's death. Evidence was led by the Procurator Fiscal from the following witnesses:

- Julie Henderson
- Roger Humphry
- Brian Sharpe

- Charles Cumming
- Angus MacPhail
- Police Constable Colin Mitchell
- Police Constable Grant McDowall
- Detective Constable John Hansen
- Sergeant John Miller
- Detective Constable Craig Dingwall
- Mrs. Joanne Seath
- Police Inspector Robert Cronie

An autopsy report by pathologists, Doctors James McPhie and Mark Ashton, was admitted as evidence in terms of Rule 10 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Rules 1977.

The productions included a tachograph chart of the lorry and lorry driver involved in the accident which led to Mr. Barclays' death and a thoroughly prepared and very helpful collision investigation report produced by Constable McDowall. Mr. Muir made use of an analysis report of the tachograph disc produced by a Mr. J.B. Marshall of Incinalysis Limited for cross-examination purposes. No other witnesses were led by any party.

Mr. Barclay was employed part-time as a nurse at Raigmore Hospital, Inverness. In addition he was a partner in a business along with Miss Julie Henderson, known as 'Dandelion Partnership'. The business activity of that partnership was the growth and sale of organically produced vegetables. The vegetables were produced at a market garden at Brahan, Ross-shire. Customers, consisting of private individuals, hotels, restaurants and delicatessens, usually collected their purchases at Brahan. However, as a service to customers who did not drive, Mr. Barclay provided a delivery service.

Mr. Barclay was a keen and experienced cyclist. The impression gained from the evidence was that he placed a premium on safety and was acutely aware of the dangers faced by cyclists on busy trunk roads. It seemed that he did what he could to minimise risk to himself when cycling on such roads. During his training as a nurse some years ago, he cycled each week from Inverness to Fort William and back. He cycled from his home at 8 Harrowden Road, Inverness to Raigmore Hospital. He used his bicycle to deliver produce to customers, usually carrying the vegetables in a pannier attached to his bicycle. He intended to travel to Zimbabwe and to cycle there. He regularly cycled between Inverness and Brahan. That journey took him, among other roads, along the A835 between the Tore and Maryburgh roundabouts. On the date of his death it was likely that he was returning from Brahan to Inverness with a small consignment of vegetables for sale to a customer in Inverness. Dr.

Roger Humphry gave evidence that it was perfectly possible that he was the intended recipient of the vegetables found in a rucksack or pannier at the scene of the accident. I found that on the balance of probabilities it had been established that at the time of the accident Mr. Barclay had been engaged in his self-employment as a market gardener, namely by undertaking a delivery of vegetables to a customer. It therefore seemed appropriate that the holding of this inquiry had been applied for by the Procurator Fiscal under section 1(1)(a)(i) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

The circumstances of the accident were as follows. The A835 is the main trunk road between Tore and Ullapool. At the scene of the accident (the locus), it is a two lane undivided carriageway with centre line markings and subject to the national speed limit, namely 60 miles per hour for cars and 40 miles per hour for large goods vehicles ('LGVs'). The road measures 7.4 metres in width and runs in a general north/south direction. The approach to the locus for southbound traffic, which was the direction of travel of both Mr. Barclay and the LGV being driven by Mr. MacPhail, is that on exiting a roundabout at Maryburgh there is a right hand bend which has a very slight incline. The carriageway thereafter straightens with a very slight decline before levelling and thereafter the road once again inclines. Prior to that incline there is a lay-by situated on the southbound carriageway, which drivers are informed of by way of an information sign. The lay-by measures 101 metres long by 4 metres wide. Both sides of the carriageway are bordered by a narrow grass verge and then an Armo barrier.

At about 5:45pm on 1 April 2005 Mr. Barclay was cycling southwards on the A835 at the locus on a steel, hand built Dave Yates bicycle when he was struck from behind by a Leyland DAF LGV, registration number KU52 JYW, which was also being driven southwards. The exact point of collision on the road could not be detected or deduced. However, the impact point on the lorry was established by the impact damage to both vehicles and positioning of the bicycle on to the front of the lorry: that exercise by the police accident investigators matched the damage sustained by each vehicle exactly. That showed that the impact had occurred on the lorry's nearside corner, with the cracked bumper below the nearside headlight unit corresponding to the snapped metal rimmed rear wheel of the bicycle. The rear of the bicycle, particularly the rear wheel, was extensively damaged, showing that it had been pushed directly forwards.

Gouge and scratch marks on the road surface indicated that the cyclist was travelling close to the nearside of the carriageway. The position where the cyclist landed on the verge was clearly indicated by the presence of blood and the cyclist's helmet, lying close by.

The lorry was travelling at 60 miles per hour (97 kilometres per hour) prior to braking sharply to a halt. The maximum speed limit on this road for a vehicle of that type was 40 miles per hour.

The accident happened in daylight. The weather was dry as was the road surface. Visibility was very good and unrestricted. There was a light breeze and southbound drivers had a very good view of the road ahead after entering the straight just after the Maryburgh roundabout. While Mr. Barclay was not wearing brightly coloured

clothing, he must have been clearly visible to other road users keeping a proper lookout. At the time of the collision I am satisfied that he had been wearing his cycle helmet.

As a result of the collision Mr. Barclay was propelled on to the grass verge beside the road. The lorry came to a halt and the emergency services were called and attended promptly. Ambulance personnel commenced treatment on Mr. Barclay at the locus at about 6.00pm. Assisted ventilation was maintained between the locus and the Accident and Emergency Department of Raigmore Hospital, Inverness, where he arrived at 6.58pm. He was examined there and found to have sustained a head injury, multiple rib fractures on the right side, extensive soft tissue injury to the back and a possible pelvic fracture. Investigation showed that he had suffered pulmonary contusion. A CT scan of the head revealed no space occupying lesion. However a CT scan of the chest disclosed bilateral pneumothoraces which required insertion of chest drains. Notwithstanding intensive and ongoing treatment, Mr. Barclay's condition progressively deteriorated until he died at 8.31pm on 1 April 2005.

The Leyland DAF LGV was being driven in the course of his employment by Angus MacPhail. Mr. MacPhail was employed by a company, Sharpe Express Delivery Limited ('Sharpe') as a driver. That company undertook deliveries of goods throughout the Highlands and Islands of Scotland. A substantial proportion of their business consisted of the delivery to private homes of goods ordered by members of the public from the furniture and kitchen supplier, MFI. The company's almost invariable practice was to send out a driver and an assistant with such deliveries. The unloading of the goods, including heavy items, from the vehicles into customers' homes usually required the efforts of two men. To secure the efficient operation of their vehicles, each vehicle was supplied with a business mobile telephone. It was the assistant's responsibility to use and answer the telephone, never the driver's. That had been the company's expected practice of their employees before this accident and since then had been formally brought to drivers' and assistants' attention by way of a notice.

There was no fixed point within the cab for the placing of the mobile telephone when not in use.

The business mobile telephone within the lorry being driven by Mr. MacPhail received an incoming telephone call at, according to the mobile telephone provider's clock, 5.47pm on 1 April 2005. That call was not answered. On that date Mr. MacPhail was accompanied by an assistant, Charles Cumming. When the telephone rang, Mr. Cumming tried to locate it within the cab, without success. It was perhaps telling when in the course of his evidence at the inquiry regarding the search for the ringing mobile telephone, Mr. Cumming said that

'We couldn't find it.'

The only other person present in the cab was the driver, Mr. MacPhail.

In the course of giving evidence Mr. MacPhail accepted that he had simply not seen Mr. Barclay on the road ahead of him. There was no explanation for that other than

that Mr. MacPhail's attention was, at least momentarily, diverted from the road ahead of him and on to something else. He accepted that when giving his evidence. He also accepted that at the time he was driving his lorry at 60 miles per hour on a road where he ought to have been driving at no more than 40 miles per hour. He also accepted that for a substantial proportion of his driving time on 1 April 2005 he had been driving the lorry at speeds in excess of the speed limit. Mr. MacPhail could offer no explanation for that other than a desire to get the job done quickly. He denied that there was any pressure from his employer which might encourage him to drive at excessive speed. The managing director of his employer, Sharpe, namely Mr. Brian Sharpe similarly rejected any such suggestion. At the time of the accident, Mr. MacPhail was driving the lorry back to Sharpe's depot at Dalcross by Inverness. He denied feeling under any pressure to complete that journey quickly either for work-related or personal reasons.

On the basis of that evidence I was unable to make any finding as to the reason, if any, for Mr. MacPhail to have been driving the LGV at 60 miles per hour at the time of the accident.

Certain matters highlighted during the inquiry were of concern to Mr. Barclay's family and to Miss Henderson. Those were:

- the use of mobile telephones by the drivers of LGVs;
- the enforcement of speed limits by Northern Constabulary (this issue was raised by Miss Henderson alone);
- the attitude of an employer towards its employees driving vehicles at speeds in excess of the authorised speed limit;
- whether any deterrent effect might be achieved by the erection of signage reminding LGV drivers of the speed limit to which they were subject on any particular stretch of road.

I shall deal with each of those issues in turn.

LGV drivers and the use of mobile telephones

It is important to note that there was no evidence whatsoever that Mr. MacPhail had been engaged in a call or conversation on a mobile telephone at the time of the accident. It is also worth bearing in mind that Parliament has already addressed that issue by the insertion, in 2003, of Regulation 110 into the Road Vehicles (Construction and Use) Regulations, 1986 which forbids, and criminalises, the driving of a motor vehicle by a person if he is using a hand-held mobile telephone. In the course of any journey a driver's attention might be diverted from the road ahead of or behind him by any number of distractions. It would be impossible and pointless in a determination such as this to attempt to list possible distractions. Equally, to say that a reasonable precaution is that a driver should not allow his attention to be distracted from the road is to do no more than to state the obvious. It is difficult to imagine that such a finding in this determination would have any practical or deterrent effect whatsoever.

Clearly, all drivers of motor vehicles on the road should comply with the requirements imposed on them by sections 3 and 2 of the Road Traffic Act 1988 to drive with due care and attention and reasonable consideration for other persons using the road and not to drive dangerously. Such compliance always requires the keeping of a proper lookout.

From the evidence at the inquiry, it seems likely that because of the ringing of the mobile telephone and Mr. Cumming's inability to immediately locate the telephone within the cab, the attention of the driver, Mr. MacPhail, was momentarily diverted. Even if there had been a designated place in the cab for the retention of the mobile telephone, it might not necessarily have been there when it rang. In any event, while Mr. MacPhail's attention was diverted, the nearside of the lorry he was driving struck Mr. Barclay and his bicycle. The coincidence of the diversion of the driver's attention and the presence of a cyclist on the road led directly to the collision taking place. However, in my view, all that can be said, so far as the mobile telephone is concerned, is that the driver ought not to have allowed his attention to be diverted from the road ahead of him. The cause of the diversion of attention was, in my view on the basis of the evidence led, irrelevant.

The enforcement of speed limits

Miss Henderson also raised the general question of the enforcement of speed limits. In my view, such a general concern fell outwith the purpose of this inquiry. Some limited evidence was led on the matter from Inspector Robert Derek Cronie of Northern Constabulary. This witness was currently seconded to the Northern Safety Camera Partnership. He described the work undertaken to enforce speed limits by the use of mobile camera units which can record the breaking of speed limits by vehicles. Over the previous six months he reported having identified 150 light and heavy goods vehicles as driving at excessive speeds of which two or three had been heavy goods vehicles. He said that he had never instructed his staff to disregard lorries travelling at excessive speeds. In his evidence Mr. MacPhail, as an experienced lorry driver, indicated that he was aware of the relevant speed limits to which he was subject in any particular situation.

I did not consider that there was any useful recommendation or reasonable precaution which I could suggest arising out of the issue of the enforcement of speed limits. There was no evidence led which raised any doubt that speed limits in the Northern Constabulary area were not being enforced. Nor was there any evidence of ignorance of the relevant limits on the part of LGV drivers.

The attitude of employers towards employed drivers driving at excessive speeds

The next matter which was explored at the inquiry arose in this way: It did not seem to be contested that it was possible from visual inspection of tachograph discs to ascertain the speeds at which a vehicle fitted with tachograph equipment had been driven during any particular journey. The question was then asked, in submissions, by the deceased's family's solicitor and Miss Henderson as to whether it would be appropriate or advisable for employers, particularly those engaged in the road haulage trade, to examine the tachograph records of their employed drivers to ascertain the speeds at which they had been driving LGVs while performing their

duties to ascertain whether they appeared to have been complying with the provisions of the Road Traffic Act prescribing authorised speeds.

For the family, Mr. Muir submitted that such a recommendation might be made by the court in this determination. He suggested that it was reasonable to state that employers would expect their drivers to comply with the law and that failure to do so might have consequences. He suggested that to expect employers to inspect tachograph records to ascertain that the speeding laws had been complied with was a reasonable step to recommend in this determination.

Miss Henderson made a similar submission and suggested that evidence of failure to comply with the law should properly lead to disciplinary action against the employed driver.

In contrast the Procurator Fiscal had submitted that in the circumstances of this accident, given that it had occurred following a failure by Mr. MacPhail to see Mr. Barclay on the road ahead of him, rather than as a result of a failure to react in time to an observed hazard, such a recommendation was unnecessary and indeed to go a step too far. He suggested that to impose such a requirement on employers would be expensive and time-consuming. He pointed out that different speed limits applied to LGVs, depending on the classification of the road on which they were being driven at any particular time. Thus any analysis of the tachograph record would have to be cross-checked against the itinerary before it could be stated with certainty if speed limits had been exceeded.

In considering these submissions, it is worth noting the reason that tachographs are installed in LGVs and other vehicles. They are installed in order to achieve compliance with Part VI of the Transport Act 1968, which is headed, 'DRIVERS HOURS'. The purpose of that of that part of the 1968 Act is declared in section 95(1) to be

'to [secure] the observance of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road and thereby [protect] the public against the risks which arise in cases where the drivers of motor vehicles are suffering from fatigue.'

In pursuance of that purpose Parliament has enacted a substantial volume of legislation, much of which applies European Community regulations and directives to the United Kingdom. Within that body of law are provisions imposing criminal liability on employers of drivers as well as drivers themselves. Against that background, it is hardly surprising that a practice existed within Sharpe of examining the tachograph discs of its drivers to ensure that there had been no contravention of the drivers' hours regulations by its drivers.

In contrast, if an employed driver is detected driving a motor vehicle in excess of the authorised speed limit, then that driver as an individual faces the risk of enforcement of the provisions of Road Traffic Law governing such conduct. That, as heard at this inquiry, might include the conditional offer of a fixed penalty or prosecution in the District or Sheriff Court under Part VI of the Road Traffic Regulation Act 1984. Any of those options would lead to the endorsement of the driving licence with penalty points.

Prosecution in the sheriff court might lead to immediate disqualification or disqualification under the totting up provisions of section 35 of the Road Traffic Offenders Act 1988 from holding or applying for a driving licence and in the District Court disqualification under those totting up provisions. The risk of prosecution and loss of entitlement to drive is faced by the driver, not the employer.

However, the carriage of goods on a road for hire or reward is a licensed activity governed by the Goods Vehicles (Licensing of Operators) Act 1995. The licensing authority is the traffic commissioner. In deciding whether to grant or renew an operator's licence, the traffic commissioner has regard to a number of factors, all as provided for in section 13 of the 1995 Act, including whether the applicant is of good repute. 'Good repute' is defined in Schedule 3 of that Act. Paragraph 1(2) of Schedule 3 reads:

'(2) In determining whether a company is of good repute, a traffic commissioner shall have regard to all the material evidence including, in particular-

(a) any relevant convictions of the company or of any of its officers, servants or agents; and

(b) any other information in his possession as to the previous conduct of-

(i) any of the company's officers, servants or agents, or

(ii) any of its directors, in whatever capacity,

if that conduct appears to him to relate to the company's fitness to hold a licence.'

Thus it can be seen that a legal framework already exists within which the conduct of an employed driver can have a direct impact on the ability of his employer to carry out the licensed activity of carrying goods for reward or hire. I cannot see that the conduct of the employed driver while driving his employer's vehicle in the course of his employment can be anything other than conduct relevant to the question of the company's good repute. In my view, in that situation, the holder of an operator's licence might well consider it worth his while to consider his employees' conduct. The examination of tachograph discs by the employer or a responsible officer, such as transport manager, would appear to be a straightforward matter. If employers are in the habit of inspecting such discs to check that the provisions regarding driving hours contained in Part VI of the Transport Act 1968 are being complied with, it does not seem to me to be unduly onerous for them to check that the highest possible lawful speed for the vehicle in question has not been exceeded during any particular journey.

The contravention of speeding restrictions enacted in the Road Traffic Regulation Act 1984 is a criminal offence, albeit one which attracts as penalties only a fine and driving disqualification or endorsement of driving licence. However speed can, and frequently does, form a component of the driving leading to more serious charges under the Road Traffic Act 1988, such as contraventions of section 3 (Careless, and inconsiderate, driving'), section 2 (Dangerous driving) and section 1 (Causing death by dangerous driving). The latter two offences attract the full range of penalties

available to the court, including imprisonment. They are regularly treated by the courts as serious offences.

Reasonable belief that an employee is guilty of a criminal offence is a potentially valid reason for the most serious disciplinary sanction open to an employer, namely dismissal. If an employer came to the view that his employees were breaking the road traffic laws and that conduct was placing his goods vehicle operator's licence in jeopardy, then he might consider it prudent to have in place a system of inspection of tachograph records and disciplinary procedure to deal with any unacceptable conduct disclosed by such inspection.

If the employee were aware of the possibility of disciplinary action, then he might find encouragement to refrain from driving at such a speed as to attract discipline by his employer. The obvious benefits to road safety would then ensue.

This subject was explored during submissions. However, there was very little evidence led on this matter at the inquiry and no direct evidence led from any employer or employee operating or subject to such a regime. In the context of the present inquiry, I do not find myself able to say that to have had such a regime in place would have prevented the accident from occurring. I cannot even find that such a regime might have achieved that aim. Accordingly, I do not consider it appropriate to make reference to this matter as a reasonable precaution whereby the death or the accident might have been avoided.

Further, although the operation of such a regime might very well amount to good practice, and indeed would seem to do so, it is by no means certain that its absence in the present case was a fact relevant to the circumstances of the accident. In the final analysis, the speed at which a vehicle is driven depends on the decision made by the driver at the time. Accordingly, while, as a matter of practice I can see no good reason for employers in the road haulage business not to operate such a system of examination of tachograph discs, I do not feel able to find that the absence of such a system was a fact relevant to the circumstances of this accident. That is because it cannot be known whether the operation of such a system by his employers would have deterred Mr. MacPhail from driving at excessive speed in actual fact on 1 April 2005. It must also be borne in mind that an equally important contributing factor to the collision was the lorry driver's failure to keep a proper lookout.

Signage of speed limits

The next issue which arose was that of signage of speed limits for particular classes of vehicles on public roads. Evidence on this matter was led by the Procurator Fiscal from Mrs. Joanne Seath, a civil engineer. Mrs. Seath's current post was as an accident investigation and prevention officer with BEAR Scotland, a company which at the time of the accident had the responsibility to maintain the fabric of trunk roads in the Highland area of Scotland and to maintain, repair and replace signage on such roads, including the A835. This witness confirmed that on another road, namely the A82, there were in place signs reminding the drivers of vehicles weighing over 7.5 tonnes of the speed limit to which they were subject. However, she said that there was no evidence available to indicate that such signs served to reduce the speed at

which drivers of such vehicles in fact drove. She did not consider that any educational purpose for other drivers would be served by the installation of such signs. Further she was aware of a view that too much signage on a road might lead to loss of effectiveness.

In light of that evidence, I was not persuaded that there was any finding or identification of a reasonable precaution which I could make arising out of the absence of such signage from the A835 on 1 April 2005.

Conclusion

It was clear from the examination of the tachograph disc from Mr. MacPhail's vehicle that at the time of the accident he had been driving at 60 miles per hour, considerably exceeding the relevant authorised speed, namely 40 miles per hour.

What was not known, and could only be the subject of speculation, was the speed at which Mr. Barclay had been travelling on his bicycle at the time of the accident. Miss Henderson had expressed the view that he could have been travelling at 20 miles per hour. However, that was no more than an assessment of what might have been the case, rather than evidence on which a finding that he had been travelling at such a speed could be made. Miss Henderson and, I was informed during submissions, Mr. Barclay's family were firmly of the view that the speed of the vehicle being driven by Mr. MacPhail was a contributory factor to the accident. It is apparent that the difference of the speeds of the two vehicles involved, the lorry and the bicycle, contributed to the severity of the injuries suffered by Mr. Barclay as a result of the collision. What I cannot determine as a matter of fact, however, is what that difference was. That is because of the absence of information about the speed of the bicycle at the time of the accident.

Further I did not hear any expert evidence as to what difference in severity of injury would occur in the event of greater or lesser differences of speed between the two vehicles involved in a collision. Clearly the consequence of the actual difference between the speeds of the two vehicles, whatever that was, in this case was multiple injuries which were not survivable. Whether that would have been any different if Mr. MacPhail had been complying with the speed limit can, in my view, only be speculated upon. There is no doubt that the severity of the injuries sustained would have been less: in my view that is an inescapable inference. However I do not feel able to conclude that, even if Mr. MacPhail had been driving at the permitted speed, 40 miles per hour, or slower, the injuries sustained by Mr. Barclay would have been survivable.

Clearly, however, had Mr. MacPhail been driving his vehicle within the authorised speed limit, then there would have been a higher likelihood of his observing Mr. Barclay ahead of him on the road. However, given that his attention was distracted and given the understandable absence of evidence as to how long his attention was distracted, it is impossible to conclude that, had Mr. MacPhail been driving at no more than the authorised speed, he would have observed Mr. Barclay ahead of him and been able to avoid colliding with him.

That is not of course to say that Mr. MacPhail's conduct was in any way excusable or justifiable. He has already recognised his responsibility for his failure by pleading guilty to a contravention of section 3 of the Road Traffic Act 1988 in respect of his conduct which led to the accident which caused Mr. Barclay's death. That charge was contained in a summary complaint in the following terms:

'On 1 April 2005 on a road, namely the A835 Ullapool to Tore Road on the Leanaig Brae about half a mile south of the Maryburgh roundabout you...did drive a mechanically propelled vehicle, namely motor lorry registered number KU52 JWW without due care and attention and without reasonable consideration for other persons using the road or public place and on said road where the maximum permissible speed for said lorry was 40 miles per hour, did drive at 60 miles per hour, fail to keep a proper lookout and fail to give a pedal cyclist, namely Stephen William Barclay (now deceased), 8 Harrowden Road, Inverness adequate room and did cause said lorry to collide with said Stephen William Barclay and his pedal cycle whereby said pedal cycle and lorry was damaged and said Stephen William Barclay was injured; CONTRARY to the Road Traffic Act 1988, section 3 as amended.'

Mr. MacPhail was fined £1,000 and disqualified from holding or obtaining a driving licence for twelve months.

It is not the function of this determination to apportion blame. However, it is an inescapable conclusion that had Mr. MacPhail driven at a more moderate speed, kept a proper lookout and given Mr. Barclay and his bicycle adequate room, then the collision would not have occurred. It was the combination of all three of those factors which led to this accident. In those circumstances, I agreed with the Procurator Fiscal, Mr. Goodbrand and Mr. Ferguson as to the extent of the determination which should be issued, in particular regarding any findings under sections 6(1)(c) or (d) of the 1976 Act.

In all the circumstances it seemed that Mr. Barclay's death occurred as a result of an avoidable road traffic accident. Excessive speed and inattention were the causes of that accident. Clearly drivers of all vehicles, and particularly large, heavy vehicles, should take account of the presence or likely presence on the public road of other road users, including cyclists. The law and practice governing the conduct of drivers in such situations is already settled. Mechanisms already exist for the enforcement of best practice and conduct both by the police and employers. Accordingly, having carefully considered the evidence and the submissions made on behalf of all parties, including Mr. Barclay's family and Miss Henderson's submission, I am of the view that there are no useful recommendations which I can make. That is because had the existing law been complied with and existing good practice followed, the likelihood of Mr. Barclay's death occurring would have been greatly reduced if not eliminated. That conclusion is reflected in the terms of the reasonable precautions which I have set out in the determination.

The inquiry was conducted ably and professionally by the Procurator Fiscal and the solicitors present. Miss Henderson acquitted herself well in the unenviable and unwanted task of representing herself by exploring issues of concern at this inquiry.

Finally, I would wish to express my condolences to the family and friends of Mr. Barclay on their sad loss.