

FATAL ACCIDENT INQUIRY INTO DEATH OF ALLAN MENZIES

Sheriffdom of South Strathclyde, Dumfries & Galloway at Hamilton

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

(hereinafter referred to as the Act)

DETERMINATION

by

Sheriff V. Smith, Esquire

Sheriff of South Strathclyde

Dumfries and Galloway at Hamilton

in

FATAL ACCIDENT INQUIRY

regarding

ALLAN MENZIES

Hamilton:

The sheriff, having considered all the evidence adduced, determines:-

(1) In terms of Section 6(1)(a) of the Act that Allan Menzies, born on 21st April 1981, died at a time not precisely established between 5 pm on Sunday 14th November 2004 and 8 am on Monday 15th November 2004 whilst alone within cell 5, segregation unit, HM Prison, Shotts where he was detained in legal custody. He was formally pronounced dead at 8.55 am on Monday 15th November 2004.

(2) In terms of Section 6(1)(b) of the Act that the cause of death was that Allan Menzies hanged himself by means of a bed sheet suspended from a metal frame on the outside of the window of cell 5, segregation unit, HM Prison, Shotts whilst he was alone there.

(3) In terms of Section 6(1)(c) of the Act that a reasonable precaution whereby the death might have been avoided was-

(a) That at the time Allan Menzies was removed to the segregation unit the ACT procedure ought to have been initiated.

(4) In terms of Section 6(1)(d) of the Act the defects in the system of working which contributed to the death were-

(a) The failure to obtain records from the General Practitioner of Allan Menzies, from St. Mary's School, Bishopbriggs, Glasgow and from The State Hospital, Carstairs.

(b) The failure to interview the parents of a young prisoner about to start a significant sentence to ascertain a full history especially where the prisoner had a history of self harm.

(c) The absence of a case manager once Allan Menzies was admitted to the segregation unit.

(d) A lack of understanding among the staff in respect of the criteria to be used when a prisoner was to be transferred from the National Induction Centre.

(e) The failure by the segregation unit staff to check that the razor provided to Allan Menzies was returned to them in accordance with normal procedure.

(5) In terms of Section 6(1)(e) of the Act other facts which were relevant to the circumstances of the death were-

(a) The period of notice given to Allan Menzies of his removal from the NIC was inadequate.

(b) Rule 80 of the Prisons and Young Offender's Institution (Scotland) 1994 was not applied properly.

(c) The staff within the segregation unit ought to have made enquiries to find out if Allan Menzies had arranged a visit prior to his transfer.

(d) The assessment of Allan Menzies upon being admitted to the segregation unit was not as thorough as it ought to have been.

NOTE

This inquiry was held in terms of Section 1(i)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 into the circumstances of the death of Allan Menzies who was pronounced dead on Monday 15th November 2004 within cell 5, segregation unit, HM Prison Shotts where he was detained in legal custody.

The inquiry began on 15th August 2005 and further evidence was heard on 16th August, 17th August, 18th August, 19th August, 29th September and 9th November with submissions being made on 7th December 2005.

The procurator fiscal was represented by Miss Gibb, procurator fiscal depute. Miss Cullen appeared on behalf of The Scottish Ministers and Scottish Prison Service. Mr Gillies appeared on behalf of the Prison Officers Association Scotland. There was no other representation at the inquiry.

Evidence was led from twenty witnesses. An affidavit was lodged in respect of the witness John Cowie who was unable to attend court. There were twelve productions lodged by the crown. A joint minute of agreement was produced which dealt with photographs, video footage, details of the conviction of Allan Menzies and

concurrence that he had appealed against his sentence, which appeal was pending at the time of his death.

The following is a list of those witnesses who gave evidence to the inquiry together with details, where appropriate, of their status at the relevant times.

Mrs Linda Menzies

Mr Thomas Menzies

James Reddington, prison officer, temporary residential manager segregation unit

David Dunn, prison officer, segregation unit

David Vivers, prison officer, segregation unit

Lawrence McManus, prison officer, segregation unit

Detective Constable Ian Grant

Craig Roy, prison officer, segregation unit

David Douglas, registered mental health nurse

Dr. S.N. Mandharan

Mary Gilfillan, registered mental health nurse

Fiona Delaney, clinical manageress

Robert Wylie, prisoner

Allan McGrain, prison officer, National Induction Centre (the NIC)

Dr. Marjorie Black, forensic pathologist

Phillip Woodlock, prison officer, unit manager C hall, formerly unit manager NIC

Michael Lawless, prison officer, unit manager segregation unit

Gordon Morrice, prison officer, unit manager NIC

Adam Lowe, prison officer, NIC (called by Miss Cullen)

Audrey Park, governess of HM Prison, Shotts

At the outset the procurator fiscal depute stated that the parents of the deceased would be called to give evidence but they would not be represented at the inquiry. However, the mother of Allan Menzies, Mrs Linda Menzies, had certain questions that she wished answered in the course of the inquiry. These questions were

contained within a document headed "Questions about my Son's Death" which she had prepared and copies of which were passed to Miss Cullen and Mr Gillies. This document formed production 13 of process. These questions were addressed in the course of the hearing principally by Miss Gibb and I hope that Mrs Menzies, who attended each day, received answers to all of her questions. Sadly, Mr Thomas Menzies, the father of Allan Menzies, died before the inquiry was concluded.

It may be helpful, particularly for the relatives, if I set out the duties and powers of the sheriff in respect of this determination. These are contained within Section 6 of the Act. This Section provides as follows:-

"(1) At the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the sheriff shall make a determination setting out the following circumstances of the death so far as they have been established to his satisfaction -

- (a) where and when the death and any accident resulting in the death took place;
- (b) the cause or causes of such death and any accident resulting in the death;
- (c) the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided;
- (d) the defects, if any, in any system of working which contributed to the death or any accident resulting in the death; and
- (e) any other facts which are relevant to the circumstances of the death."

I will deal with each of these in turn. It is clear from the evidence however that some can be dealt with much more briefly than others. There are certain preliminary matters worth mentioning and these are that -

- (a) an inquiry of this nature is not determining any question of civil fault or liability (**Black v Scott Lithgow Limited** 1990 SLT 612)
- (b) any determination cannot be founded upon in any subsequent proceedings (Section 6(3) of the Act)
- (c) despite the wording of Section 6(1)(c) therefore the sheriff does not have power to make findings of fault or to apportion blame
- (d) in terms of Section 4(7) of the Act the rules of evidence shall be as nearly as possible those applicable in an ordinary civil cause brought before the sheriff
- (e) the standard of proof is the balance of probabilities and facts and circumstances can be established without the necessity of corroboration.

At the end of the inquiry I was asked by the procurator fiscal to determine, in terms of Section 6(1)(c) of the Act, that the death of Allan Menzies might have been avoided, in terms of Section 6(1)(d) of the Act that there were defects in the system of working which contributed to the death and in terms of Section 6(1)(e) that there were facts

relevant to the circumstances of the death. Miss Cullen and Mr. Gillies submitted that no such determinations could be made. It is therefore appropriate that the evidence which was heard is rehearsed in some detail.

Summary of Events

Allan Menzies was arrested on 20th January 2003 and charged with the murder of his friend, Thomas McKendrick. He was taken to court on 22nd January and ordered to be remanded initially within HM Prison, Saughton, Edinburgh and thereafter within the State Hospital, Carstairs. He was convicted of the murder on 8th October 2003 at the High Court and sentenced to life imprisonment. The punishment period was set at 18 years. Allan Menzies was 21 years of age at the time of his conviction.

When he was originally remanded to HM Prison, Saughton on 2nd January 2003 Allan Menzies was made the subject of the ACT procedure (cf page 13) but for the moment it is sufficient to say that the staff had concerns that he might try to harm himself. On or about 1st May 2003 Allan Menzies was transferred to the State Hospital, Carstairs and he remained there until he was convicted. On the day of his conviction Allan Menzies was taken from the High Court to HM Prison, Saughton and one month later, on 7th November 2003, was transferred to HM Prison, Shotts where he was placed within the National Induction Centre ("the NIC").

Allan Menzies remained within the NIC for one year until Tuesday 9th November 2004 when he was transferred to the segregation unit at Shotts. At approximately 8.05am on Monday 15th November 2003 Allan Menzies was found hanging by the neck within cell 5 of the segregation unit. He was pronounced dead at 8.55am that day.

Pre-Conviction History

The mother of Allan Menzies, Mrs Linda Menzies, was the first witness to give evidence at the inquiry. She was 49 years of age and employed as a lollipop lady. She described her son as quiet, very withdrawn who never went out and had few friends. He was a deep boy who did not drink nor did he abuse drugs. He was a hard boy to understand and she knew that there was something wrong with him. He spent long periods in his bedroom, sometimes not emerging all day, with his curtains closed, sometimes rocking back and forth making noises. Mrs Menzies further stated that her son could not cope with change and panic would set in. At the same time she described him as a loving boy who was punctilious in cleaning, hoovering and dusting his bedroom every day.

He had harmed himself from an early age. Mrs Menzies recalled that prior to his conviction her son had overdosed on paracetamol on approximately 4 or 5 occasions sometimes resulting in hospitalisation. On 2 or 3 other occasions he had threatened to overdose but did not carry out these threats. When he was 14 Allan Menzies had stabbed another boy and had been sentenced to detention. Production 1 page 5 contained his schedule of convictions and this showed that he had been convicted at the High Court, Edinburgh on 15th January 1996 of assault to severe injury and was ordered to be detained for three years. He served his sentence within St Mary's, Bishopbriggs, Glasgow. While he was within St Mary's he tried to hang himself using

his pyjamas as a ligature. Mrs Menzies was of the opinion that his behaviour changed following upon that sentence but even before that sentence he had tried to harm himself, on one occasion leaving a suicide note and ending up in hospital. Apart from the overdoses she recounted an incident when he was about 20 when they were both in the kitchen and her son had taken a knife and made a large cut on his arm. There seemed to be no explanation for this. Between the time of the murder and his arrest Allan Menzies had once again attempted suicide which resulted in hospitalisation.

According to his mother Allan Menzies "had done that many things" and she told him that he needed help. When he was 17 or 18 she had contacted her G.P. looking for help. She expressed regret that she had not told the staff at Shotts that her son had something wrong with him.

When Allan Menzies was approximately 19 years of age his parents separated and he elected to reside with his father, Thomas Menzies. Mr Menzies senior initially described his son as being just like any other boy - he had good days and bad days. His main interests were computers and ferrets. He too noticed a difference in his son after he was released from St Mary's. He became very quiet and never opened the blinds in his room. He was a very hard boy to understand and kept himself to himself. He was a difficult boy to read. Mr Menzies referred to occasions when his son had tried to harm himself by taking paracetamol. He also mentioned that when aged fourteen he had threatened to hang himself and was taken into care. This episode was not expanded upon.

Index Offence

The circumstances of the murder of which Allan Menzies was convicted are set out in some detail by the trial judge within his Note (production 1 page 7). It was a particularly brutal murder of his friend Thomas McKendrick. Briefly, Allan Menzies had become obsessed with a video which he watched over and over again. Evidence heard indicated that he had watched it so often that a second copy had to be purchased. The story line of the video involved a vampire. Allan Menzies, when giving evidence at his trial, stated that the vampire was in direct contact with him and when the vampire was insulted by his friend, he took it upon himself to murder him. He stabbed his friend 42 times and struck him on the head with a hammer on 10 occasions. He gave a graphic account of the murder when he gave evidence including the detail that he ate part of his friend's skull and drank his blood so that he too could become a vampire. Following upon his arrest he was seen by three psychiatrists all of whom diagnosed him as being a psychopath and that he suffered from a dissocial or anti-social personality disorder. A psychiatrist led by the defence agreed that Allan Menzies suffered from a dissocial personality disorder and, in addition, from paranoid schizophrenia. It would appear that Allan Menzies indicated that he would plead guilty to a charge of culpable homicide by reason of diminished responsibility but this was not accepted by the Crown nor by the jury who found him guilty of the crime of murder. There was media interest in the trial and evidence was heard that in prison he was the subject of name calling.

Remand

When Allan Menzies was first remanded to Saughton he was made the subject of the ACT procedure (cf page 13) since he was assessed as being at a high risk of committing suicide. He was removed from ACT on 6th March 2003 (production 2 pages 13 and 14).

Allan Menzies was transferred to the State Hospital, Carstairs during the course of his remand. He left Saughton in May and remained within Carstairs until the conclusion of his trial in October. The inquiry did not hear any evidence to explain why Allan Menzies was transferred to Carstairs. There was a clue perhaps in a psychiatric report prepared by Doctor Colin M Gray, consultant forensic psychiatrist, Carstairs dated 10th April 2003 and addressed to the solicitors acting for Allan Menzies at the time (production 2 page 99). Doctor Gray gave evidence at the trial but he did not give evidence to the inquiry and this information came to my attention upon perusing the productions. Towards the end of his report Doctor Gray recommended that Allan Menzies be committed to hospital in terms of Section 52 of the Criminal Procedure (Scotland) Act 1995. His report concluded that Allan Menzies appeared to be suffering from a mental disorder. The only other reference to this that I could find was contained within production 2 at page 21, the mental health records of Allan Menzies while in Saughton. This indicated that Allan Menzies was to go to Carstairs in terms of Section 52 but no further information was given. Surprisingly, there was no history at all among the documentation that was passed to Shotts when Allan Menzies was admitted which indicated why he was taken to Carstairs, when he was taken there, what illness, if any, was diagnosed, what treatment or medication was provided and consequently, what treatment and medication, if any, ought to have been administered to Allan Menzies once he was returned to the mainstream prison system. Mr David Douglas, a mental health nurse at Shotts indicated that he was asked to assess Allan Menzies upon his admission there yet he did not know that he had spent approximately 5 months in Carstairs shortly before his arrival at Shotts. If he had known that he would have obtained a report. There were no papers at all passed to the prison service by the State Hospital. David Douglas was of the opinion that a report should have been sent to the prison service by the State Hospital and this would have been very important to him in assessing the mental health of Allan Menzies. In his opinion this was a failing.

Post Conviction History

Following upon his conviction on 8th October 2003 Allan Menzies was returned to HM Prison, Saughton from Carstairs. Admission documentation (production 2 pages 8 and 9) shows that he was shocked at the length of his sentence, was assessed as being at a high risk of suicide and was placed on ACT. As a result he was placed under close observations initially and case conferences took place on a regular basis to review the state of his mental health. Although by 30th October 2003 Allan Menzies indicated he had no thoughts of self harm the authorities were not convinced of this (production 2 page 61). By that stage it would appear that he was removed from the high risk cell as he felt that being there on his own put him under more pressure and as a result he was removed to be out in general circulation and occupied (production 2 page 55). He was consistently described as being in a low mood, quiet, keeping himself to himself and on one occasion being described as "a very unusual character" (production 2 page 71). He

remained subject to the ACT procedure throughout his second period in Saughton.

ACT Procedure

Whenever any member of staff of the Scottish prison service, whoever that member may be, has any concerns that a prisoner is at risk from self harm or suicide then that member of staff may raise the ACT to CARE procedure. No authorisation is required. ACT, as it is known, is a suicide risk management programme. Each member of staff attends an initial course on the ACT procedure and thereafter attends an annual refresher course. Once activated various procedures follow immediately with a view to ensuring the safety of the prisoner at risk. The care to be given to the prisoner is documented and plans are put in place to monitor progress and to set out the future management of the prisoner. A daily log sheet is opened. Within 24 hours a case conference must be convened which will examine the level of risk, provide an assessment of the prisoner and discuss future planning. Within that same 24 hour period a health care assessment must be prepared following upon a mandatory interview with a doctor. While subject to the ACT procedure, the mood and behaviour of the prisoner are constantly monitored and the prisoner's ACT documentation follows him wherever he goes, even to visits. Case conferences are convened on a regular basis to discuss progress and only at a case conference can the decision be taken to close the ACT procedure although this decision would not involve input from a doctor. Apart from the obvious signs or expressions of self harm some examples were given in evidence where staff may be concerned and the ACT procedure initiated such as a prisoner behaving oddly, isolating themselves or exhibiting low mood.

Allan Menzies had been assessed as being within the high risk category of suicide when he arrived in HM Prison, Saughton in January 2003 following upon his arrest and committal to prison and the ACT procedure was commenced. He was placed in the suicide cell with observations being taken every 15 minutes. At a case conference on 27th January 2003 he was reduced to the low risk category, with observations upon him taking place every 30 minutes. He was removed from the ACT procedure on 6th March 2003.

Two months later, on or about 1st May 2003, he was transferred to the State Hospital, Carstairs. This could only have been by way of a statutory transfer (cf Renton and Brown 26-34 and 26-35). As stated earlier no explanation for this move was given but it may be relevant to note that in his report Doctor Gray indicated that Allan Menzies had expressed suicidal thoughts but denied active plans (production 2 page 100).

The inquiry heard evidence that the ACT documentation followed a prisoner wherever he went throughout the prison while the procedure was active and it also followed him as he progressed through the system from one prison to another. Unfortunately in the current case the ACT documentation was not forwarded to HM Prison, Shotts when Allan Menzies arrived there on 7th November 2003 even though he was subject to the ACT procedure at the time. This was a failing but nevertheless Allan Menzies did advise the staff at Shotts of the fact that he was subject to the ACT procedure. This information came from the witness David Douglas, mental health nurse at Shotts. As a result David Douglas started a new ACT book

(production 2 page 26) and Allan Menzies was categorised as low risk with observations being taken upon him every 60 minutes. David Douglas could not state exactly when the ACT documentation from Saughton arrived but it was sometime between 13th and 17th November 2003 the latter date being the date of the last case conference when it was decided to remove Allan Menzies from the ACT procedure. At that stage he indicated that he had no thoughts of self harm and his mood appeared appropriate.

National Induction Centre

Allan Menzies was immediately placed within the NIC upon his admission to HM Prison, Shotts on 7th November 2003. The NIC was where long term prisoners were located when they first entered the prison system. It was described by various witnesses as being a unit which was opened to allow long term prisoners to settle in, to address their behaviour, to plan their future management, to come to terms with their sentence prior to moving on to mainstream prison. The prisoners in the unit were cosseted to a certain extent and separated from other prisoners. It was promoted by the staff as a non threatening environment and was more attractive to prisoners, having better facilities with greater freedom. It was more accommodating, flexible, individualised with a good quality of life. If it were an option most prisoners would have wished to remain there to serve their sentence.

Allan Menzies remained there for a year exactly. There appeared to be some discrepancies among the witnesses as to how long a prisoner normally remained within this unit. The inquiry heard from an actual prisoner, Robert Wylie who stated that he remained within the centre for 13 months. Thereafter we heard from a number of prison officers who indicated that the average period was 3 to 6 months or 9 to 11 months, although 12 months seemed to be the norm.

The witness Phillip Woodlock was the unit manager of the NIC when Allan Menzies was admitted. I found the evidence of Phillip Woodlock throughout to be very helpful and I preferred his evidence whenever there were any discrepancies in the evidence. He was frank and forthright and I was impressed by the way he gave his evidence. I found him to be both credible and reliable. He indicated that a prisoner remained within the NIC for approximately one year but that was not set in stone. Each prisoner was assessed on an individual basis looking at the index offence, the issues behind it, his home circumstances, his personal preferences and his period within the NIC. These were all criteria which dictated the length of stay within the NIC.

Phillip Woodlock remained the unit manager of the NIC for approximately six months after Allan Menzies was admitted. He had a lot of contact with him and described him as quiet and introverted. Others reported that he kept himself to himself and did not mix readily with other prisoners. Allan Menzies complained to him that there was an element of name calling due to the circumstances of his crime but he had not witnessed this himself. He was not a violent prisoner nor was he disruptive. He did not cause any discipline problems other than sometimes refusing to leave his cell and go to work when he first entered the centre. Allan McGrain who worked within the centre and who was the personal manager of Allan Menzies for a short time did not see anything unusual in this kind of behaviour because he had been given such a long sentence and the witness described this as "mind numbing". He eventually

settled down. This was reflected at the six monthly review which took place on 25th April 2004 where he was assessed as requiring a low level of supervision although this was raised to the medium level by the unit manager at the time (production 3 pages 71 to 76). It was also reflected in the prison behaviour rating scale (production 3 pages 39 to 41) which was completed at about the same time.

The next occasion when a discipline problem arose was when Allan Menzies was advised that he was to move out of the National Induction Centre.

Transfer from the NIC

The witness Allan McGrain told the inquiry that on 8th November 2004 he called Allan Menzies into his office and there he advised him that the following day, that is Tuesday 9th November 2004, he was to be transferred to B hall, which Allan McGrain referred to as "The Bronx" (another officer referred to it as "Vietnam"). Allan McGrain later expanded upon this term stating that there was a myth about this hall in that it was not conducive to serving your sentence. There had been assaults within this hall in the past and it contained a number of the prisoners who were referred to as downgrade prisoners, that is those who had progressed through the system but had been downgraded for some reason or another and were starting all over again. This was echoed by the prisoner Robert Wylie who gave evidence that B hall was perceived as being a violent place with a bad reputation. It was seen as a punishment hall for those prisoners who had been downgraded.

The instruction to advise Allan Menzies of the move came from Martin Welsh, the NIC supervisor. Allan Menzies was not receptive to this news and became flustered. He advised the witness Allan McGrain that he had been threatened while within the NIC by persons who were now within B hall. He identified those prisoners. Allan Menzies kept repeating "I cannae go over". Allan McGrain asked him to calm down and informed him that he would speak to the managerial staff about his position.

Allan Menzies was being asked to move out less than 24 hours later having spent 12 months in the NIC. The inquiry was advised by the witness Phillip Woodlock that in his experience at least 2 to 3 days notice was given of a move out of the NIC and it was reasonable to expect more than 24 hours notice. It was accepted by the governess, Audrey Park, that the NIC could be described as a comfortable environment, that the prisoners to an extent were cosseted and that being told to move on could be a shock to the system. She accepted that it was not ideal that less than 24 hours notice was given but at that time the system was creaking at the seams due to accommodation problems, since alleviated.

There were different reasons given in evidence why Allan Menzies was told he had to move on. Allan McGrain advised the inquiry that there was a list and when you moved up the list and reached the top you moved out. It depended upon the length of time that you were in the NIC but it also depended upon other spaces becoming available in one of the halls. In his experience a prisoner was assessed to see if he had adjusted to his sentence and if there were no indications of any problems then he moved out when he reached the top of the list. Some prisoners left the NIC before they reached the top. Allan McGrain, who was his personal manager at the time,

conceded that no one had spoken to Allan Menzies about the move before he told him on 8th November that he was to move out the following day.

Phillip Woodlock agreed that each prisoner was assessed on an individual basis prior to removal from the NIC

Gordon Morrice, the unit manager of the NIC, stated that he together with other managers formed a board to decide when a prisoner left the NIC and where he went. Normally it was the prisoner who was there the longest once a space became available elsewhere and also it depended upon whether another prisoner was coming into the NIC. Nobody could come in unless somebody moved out. Gordon Morrice had been advised by Mr Welsh that a space had become available in B hall, that Allan Menzies was at the top of the list and therefore he was moving to B hall the following day. Gordon Morrice did not know if Allan Menzies knew that he was at the top of the list as the list was not published although prisoners had an idea of their position. No assessment was made to see if the prisoner had adjusted to his sentence. He was of the opinion that at the end of the day a practical decision had to be made. Gordon Morrice was of the opinion that at that time there was no reason why Allan Menzies could not move out as in his opinion the NIC could not offer him any more.

The governess, Audrey Park stated that her staff could exercise their discretion as to who would move out of the NIC but factors changed. For example if there was pressure on numbers then that may take precedence and this would require someone to leave the centre. She said that it was a "judgement call" on the part of the NIC unit manager and staff as to who was to move out. She was not aware of the basis of their assessment other than employing their experience. She found it difficult to believe that there was no discussion about moving Allan Menzies out other than the fact that he was top of the list. An individualised approach was preferable to decide who should move on. She believed that would not happen today because now there was no pressure on numbers due to accommodation becoming available throughout the prison system but at the time she referred to the system as creaking at the seams.

However on the evidence led Allan Menzies knew that he would not be able to serve his entire sentence within the NIC and had advised his parents of the fact that he would be moving on at some stage.

Reaction to Proposed Removal to B hall

Having been advised of the proposed move Allan Menzies returned to his cell. Later the witness Adam Lowe, a prison officer working within the NIC, heard glass breaking from within the cell of Allan Menzies and immediately attended there. He noted that a coffee jar had been smashed against the wall by Allan Menzies with the broken pieces of glass lying on the ground. He described Allan Menzies as irate, agitated and threatening. He asked the prisoner why he had acted in this fashion. He replied that he did so because he was being moved to B hall and he did not want to go there. He said to Adam Lowe that he would rather go to the segregation unit and that he would stab anybody who came to his cell to take him to B hall. Adam Lowe was able to calm him down and left the cell, leaving the glass where it lay. He had

seen Allan Menzies irate before over decisions which he did not like. He had daily contact with Allan Menzies and in general terms described him as a deep character, a loner and quite strange compared to the other prisoners.

Gordon Morrice, the unit manager of the NIC, was advised mid afternoon of the reaction of Allan Menzies to the news he was moving out. He was concerned so he arranged to speak to Allan Menzies in the company of Allan McGrain. It should be noted that Allan McGrain did not mention this meeting in the course of his evidence. Gordon Morrice stated that he called Allan Menzies to the staff office and there discussed the move. Allan Menzies repeated that he did not want to move out but did not give a reason. Later in the meeting he said that he had problems with some people in B hall. He was offered a place in the protection unit i.e. D hall or alternatively Gordon Morrice stated he would look into C hall and see when a space was available there. Allan Menzies refused to go to D hall which was the protection unit and evidence was heard that there was a stigma attached to those who sought refuge there and it was left that Gordon Morrice would see if there was space available in C hall. In the meantime he advised Allan Menzies to think about what he wanted to do overnight. He could not recall speaking to Allan Menzies about the apparent threat that had been made.

That same night Gordon Morrice stated that he spoke with Phillip Woodlock, the unit manager of C hall, and the following morning, that is Tuesday 9th November 2006, Gordon Morrice met again with Allan Menzies in the company of Phillip Woodlock and Allan McGrain. According to Phillip Woodlock Allan Menzies was quite agitated when he was brought to the meeting. Phillip Woodlock asked him why he was refusing to move out of the NIC. On the basis that he had a problem with B hall Phillip Woodlock suggested that he could be transferred to his own hall, that is C hall (cf page 26). Allan Menzies replied that he was not ready. However, the NIC were committed to his cell space becoming available as another prisoner was coming in. In the event Phillip Woodlock had no space available for him in C hall on that day. Allan Menzies then indicated that he would consider a move to C hall in a few weeks when a friend was to be moved there.

The conversation deteriorated according to Phillip Woodlock to the extent that Allan Menzies indicated that if he was not allowed to stay in the NIC then he would go to the segregation unit. Prisoner officers in general tried to prevent such a move as the segregation unit could be detrimental to a prisoner coping with his sentence. It was Allan Menzies who raised the subject of the segregation unit according to Phillip Woodlock. At the meeting it was quite clear that Allan Menzies was not for moving on and therefore a decision was taken to remove him to the segregation unit. The meeting ended with Allan Menzies saying, "Take me to the segregation ward".

The witness Allan McGrain's recollection of the meeting was that Allan Menzies indicated he would prefer to go to C hall because he knew persons there. The problem was that there were no spaces available in C hall until the following week. It was one of the managers who suggested the segregation unit as an option until a space became available in C hall and Allan Menzies was receptive to this suggestion. Allan McGrain had never known a prisoner being placed in the segregation unit in similar circumstances. In the past if a prisoner in the NIC had a problem about moving then sometimes another prisoner was chosen who was

prepared to move on. Allan McGrain was not aware if any enquiries had been made to see if another prisoner could take the place of Allan Menzies.

Gordon Morrice remembered the meeting of Tuesday, 9th November 2004. He had spoken with Phillip Woodlock the evening before about spaces becoming available in C hall and understood that there would be a place in C hall that coming Friday i.e. 12th November 2003. He believed that Phillip Woodlock had met with Allan Menzies the night before. (Two things ought to be noted here. Phillip Woodlock did not mention this meeting in his evidence but more importantly there was no space available in C hall that Friday). At the meeting, according to Gordon Morrice, Allan Menzies said that he was not moving out of the NIC and he was not going anywhere. He could not stay within the NIC because there was another prisoner on his way from Barlinnie to take his place. He was told that there would be a space available for him in C hall that Friday. Allan Menzies suggested that he wanted to go to the segregation unit.

Gordon Morrice as the NIC unit manager took the decision to remove him to the segregation unit because he refused to move out of the NIC and there was no other option available. He thought that this would be the best move for him. At this same meeting the threats of the previous day were raised for the first time and this was another reason for putting him into the segregation unit. Allan Menzies, when questioned about these threats made no reply. He stared back at Gordon Morrice. He was asked if he intended to do anything similar but he did not respond and in the opinion of Gordon Morrice this lack of a response amounted to an implicit threat. On the basis that he would not allow himself to be transferred to B hall coupled with the implicit threat, he was to be removed to the segregation unit. Gordon Morrice later stated in his evidence that if there had been no spaces within the segregation unit then in all probability a prisoner currently within the segregation unit would have been moved out to make room for Allan Menzies. Gordon Morrice repeated his position to Miss Cullen that Allan Menzies was placed within the segregation unit because he did not reply to him when the issue of the threats was put to him at that meeting.

With the decision taken that Allan Menzies was to be removed to the segregation unit a relatively unique incident took place. When a prisoner was removed to the segregation unit he was normally taken by a "three man team". This means that three prison officers were involved in forcibly and physically removing a prisoner to the segregation unit. In the case of Allan Menzies this did not happen. He walked by himself from the meeting to the segregation unit accompanied by Phillip Woodlock and Gordon Morrice arriving there at about 9am on Tuesday 10th November 2003.

Robert Wylie, a fellow prisoner, gave evidence that he was a listener trained by the Samaritans. Listeners spoke with other prisoners who had problems, listening in confidence to their concerns with a view to helping them cope with their troubles. He knew Allan Menzies as they were both in the NIC together at one time. He was asked to meet with him in the segregation unit when Allan Menzies told him that he was not ready to go to B hall and had been put into the segregation unit. In Robert Wylie's opinion that should not have happened since the segregation unit was for violent prisoners, for those who disobeyed orders.

The incident on 8th November 2004 involving the coffee jar and the subsequent threat did not result in disciplinary proceedings by way of placing Allan Menzies on report. However, it was quite clear from the evidence that threatening staff could have resulted in Allan Menzies being placed on report. Phillip Woodlock was of the opinion that the threats alone would not have been sufficient to merit Allan Menzies being taken to the segregation unit but the combination of the threats linked to the refusal to move on to another hall were sufficient grounds. It was not necessary that he be placed on report for that to take place. The governess, Audrey Park said that a refusal to move from one location to another within the system would have been sufficient reason for being placed within the segregation unit. On the other hand a prisoner could volunteer to go there if he refused to be transferred but it was a serious matter to move a prisoner into this unit and was a decision that should not be taken lightly. Protections were put in place to prevent anyone remaining there any longer than was necessary.

Transfer to C hall

In an effort to resolve the problem of the destination of Allan Menzies once he left the NIC, Phillip Woodlock, the unit manager of C hall and who knew Allan Menzies, attended the NIC on Tuesday, 9th November 2004. He met with Allan Menzies in the company of Gordon Morrice and Alan McGrain. As unit manager of C hall Phillip Woodlock indicated that Allan Menzies could come to that hall although there were no spaces available at that particular time. Allan Menzies replied that he would consider a move to C hall in a couple of weeks when a friend would be going there. Phillip Woodlock indicated that it may be a week before there could be a space available for him in C hall, perhaps the following Monday or Tuesday but was not entirely certain. In his opinion it was the responsibility of his hall, the NIC and the segregation unit to resolve the situation and he expected to receive a query that week to find out when a space would become available in C hall but he heard nothing. He had no further dealings with the case of Allan Menzies after 9th November 2004.

This evidence was contrary to what others thought to be the case. In the course of his evidence David Dunn referred to the Rule 80 (cf page 33) case conference held on 12th November 2004 (production 4 page 7). This gave the impression that there were ongoing discussions with Phillip Woodlock regarding a move to C hall but that was not the case. At its highest Phillip Woodlock had indicated that there may be a space available in the week beginning 15th November 2004 but since there was no contact with him that had not been confirmed. John Cowie and Allan Menzies himself thought that there was a space available on Monday 15th November 2004 while Lawrence McManus and Michael Lawless were of the opinion that there was a place available for Allan Menzies within C hall the very day of the case conference that is Friday, 12th November 2004 but that he did not want to move until the following Monday and wanted to stay within the segregation unit over the weekend. After the conference they spoke with Allan Menzies about the move and he seemed happy and at ease. Michael Lawless in evidence stated that he had been told that Allan Menzies had spoken with Gordon Morrice and Phillip Woodlock and this decision had been made. He was also told by John Cowie that he had checked with C hall and there was a space available that day. As stated before Phillip Woodlock said in

evidence that he had no dealings at all with the case of Allan Menzies after 9th November 2004.

The alleged transfer to C hall on Friday, 12th November 2004 seems to have originated from Gordon Morrice. He gave evidence that at the meeting within the NIC on Tuesday, 9th November 2004 Phillip Woodlock had said to Allan Menzies that he would be happy to take him into C hall on Friday, 12 November 2004 when a space would become available. This evidence I found to be unreliable and I accepted the evidence of Phillip Woodlock that at the very most a space may have become available during the course of the week beginning Monday, 15th November 2004 but that he had not been contacted at all by anyone and consequently there were no definite arrangements for a transfer in place.

The governess, Mrs Audrey Park stated that she would have expected ongoing enquiries would have taken place to accommodate Allan Menzies and these enquiries would have been made while he was within the segregation unit.

Segregation Unit

In terms of Rule 80(1) of the Prisons and Young Offender's Institutions (Scotland) Rules 1994 a governor can order the removal from association of any prisoner. This involves a prisoner being removed to the segregation unit or, as it is known within the system, "the digger". The initial period is one of 72 hours. Thereafter an application may be made to extend this period but such application can only be granted by the Scottish Ministers.

The segregation unit was seen by staff and prisoners as a punishment unit for those who had contravened the prison rules or regulations. It was suggested by the governess, Mrs Audrey Park that it was a serious matter to move a prisoner into the segregation unit because it required the prisoner to be on his own for 23 hours each day. Some prisoners could not cope with this while others actually preferred it. There was no contact or communication between prisoners. Concern was expressed by the medical health nurse, the witness David Douglas, about the isolation element of the segregation unit because there was no extra mental health support given to a prisoner there unless the staff themselves raised a concern. In his opinion being placed in an isolation cell could trigger low mood and this in certain circumstances could trigger self harm. There was nothing in place to help, counsel or advise those within the unit to cope with it. Not much opportunity was given to talk about a prisoner's problems. Every time a cell door was opened three prison officers had to be present and this was not conducive to a confidential conversation taking place according to David Douglas. Phillip Woodlock was of the opinion that being within the segregation unit could be detrimental to a prisoner coping with their sentence. This view was echoed to an extent by the governess Mrs Audrey Park who stated that being in solitary confinement for a long time could have a psychological impact and indeed solitary confinement even for a day could affect a prisoner psychologically. However solitary confinement by itself was not a reason for self harm according to Mrs Park. Usually prisoners had a host of other problems.

Apart from being enclosed in their cells for 23 hours each day an inmate was denied access to their own electronic equipment such as their TV and computer. Robert Wylie indicated that having known Allan Menzies for some time he certainly enjoyed TV and his computer.
Silent cell

Upon arrival at the segregation unit Allan Menzies was taken to the area known as the silent cell which was sound proofed, without windows and contained only a mattress and a toilet pot. Prisoners were normally placed there until they calmed down. There was no suggestion that Allan Menzies was anything other than calm when he arrived there. David Dunn advised the inquiry that not every prisoner was put in the silent cell, normally only those who arrived with a three man team. In his opinion Allan Menzies would not normally have been placed in this cell if he had only refused to move to another hall and had been brought without a three man team. As indicated before a three man team was not required to remove Allan Menzies to the segregation unit. No explanation was given to the inquiry why he was placed there.

Body Marks

Mrs Linda Menzies informed the inquiry that she last saw her son on or about 5th November 2004. She described her son as being quite cheery and perky and there was nothing to indicate that he was feeling low. However, a few weeks before that she had noticed quite a lot of scratch marks on his arms. She asked him about these but her son became abusive, swearing at her and telling her not to ask what happened within the prison. She thought that he had made these marks himself.

Gordon Morrice told the inquiry that at the meeting he had with Allan Menzies on Tuesday 9th November 2004, prior to his transfer to the segregation unit, he too had noted marks on his arm. He asked him if he felt suicidal. He replied that he did not. These marks were also noted upon his admission to the segregation unit that same day.

Once in the unit Allan Menzies was placed in the silent cell where he was stripped and searched. According to John Cowie the segregation unit first line manager who was present at the search along with officer David Dunn he was perfectly compliant. It was noticed that there were marks on his body and John Cowie was sufficiently concerned about these marks that he sought medical assistance. Mary Gilfillan, who was a registered mental health nurse, attended. She recalled examining Allan Menzies when she noticed a few marks on his arm and scratch marks on his abdomen. To Mrs Gilfillan these marks looked a few days old because they were scabbed over. When questioned Allan Menzies said that he had scratched himself a couple of days before. He said it was an accident and did not elaborate upon this. She did not think that he had self harmed because the scratches were so superficial. Mrs Gilfillan also noted older scars on his left arm which were not from superficial cuts. Allan Menzies appeared to her to be very calm and relaxed. There was good eye contact, good communication and he appeared comfortable. Following upon this examination Mrs Gilfillan completed the document "SPS Health Care Records" (production 2 page 17). The entry reads, "..... Attended segs, prisoner already in silent cell, top removed 2 scratches (4 inches, 3 inches approx) on left side of torso. (There was then a sketch of what she found there). Another long scratch on upper left arm plus approx 3 or 4 old scars. Prisoner claims to have scratched himself 2 days ago. All look clean. No treatment recommended unless any signs of infection."

She was then referred to production 6 which was a book of photographs. These photographs were taken by a police photographer on the day that Allan Menzies was found dead. The witness became very upset upon looking at these photographs and

an adjournment was required. Later in looking at photograph Y which was a photograph of Allan Menzies after he had died she noted a scratch above his jeans but that scratch could not be reconciled with what was in her note at page 17 of production 2. The cuts she now saw on his arm she confirmed to be new (i.e. not present at her examination) and superficial. The old scarring she had made reference to was on the lower arm of Allan Menzies, not his wrists. She presumed that he did this to himself or else had been in a fight.

When talking to Allan Menzies on 9th November 2004 he did not talk of self harm although Mrs Gilfillan did not have the opportunity to ascertain the mood of Allan Menzies because of the various administrative procedures that were being followed upon his admission. Mrs Gilfillan and John Cowie were satisfied from what they had witnessed and the responses of Allan Menzies that it was not necessary to raise the ACT procedure. They reached the conclusion that he was not considered likely to commit self harm. Although she had been called specifically to look at these marks it should be noted that normally Mrs Gilfillan would have attended the segregation unit to examine any prisoner who had arrived with a three man team. This was for the benefit of both the prisoner and the prisoner officers and she would look for marks to see if the prisoner had been manhandled.

The witness David Dunn who remained present during this examination indicated that there were neither steps nor protocols in place to re-examine a prisoner to see if wounds such as these scratch marks had healed or to see if there had been repetition.

Rule 80 Detention

As stated earlier, whenever a prisoner was brought to the segregation unit he could only remain there initially for a period of 3 days in terms of Rule 80(1) of the Prisons and Young Offender's Institutions (Scotland) Rules 1994. Production 4 contained the documentation that was prepared upon the admission of Allan Menzies to the segregation unit. The initial documentation was completed by officer David Dunn, who was working within the segregation unit at the time, on the basis of information he said he received from the NIC manager Gordon Morrice. It was signed by Michael Lawless the unit manager of the segregation unit at 11am on 9th November 2004. This document showed that Allan Menzies was to be removed from association in general and that the purpose of removal was to maintain good order and discipline. The document gave the reason why the order was made and was in the following terms,

"Mr Mezies (sic) was transferred to HMP Shotts Segregation Unit form (sic) the NIC on 09/11/04 following his steadfast refusal to move from the NIC to either Shotts Bravo or Charlie Halls following the completion of his allotted time in the former.

Management decided the most prudent course of action was to hold Mr Menzies in the Segregation Unit under Rule 80 conditions for an initial 72 hour period to allow time to fully assess the situation, plan Mr Menzies' future case management and allow Mr Menzies time and space to focus on his future."

Having completed this form and removed Allan Menzies from the silent cell to cell 5 David Dunn was then absent on leave until his return on Saturday on 13th November 2004.

Production 4 page 3 confirmed that the initial 72 hour period allowed by way of Rule 80 expired on Friday, 12th November 2004 at 11 am. To detain him any longer within the segregation unit required an extension application to be prepared and authority given by the Scottish Ministers. Although Michael Lawless signed the initial Rule 80 form he stated in evidence that this ought to have been signed by Gordon Morrice the NIC unit manager since he had transferred him to the unit. Michael Lawless was the unit manager of the segregation unit at the time. He was not present when Allan Menzies was admitted but was advised of the situation by his first line manager, John Cowie. In his opinion the refusal to move on to another hall was itself a good reason for being admitted to the segregation unit and, married with the threats, the move was necessary to maintain good order and discipline. He had experience of similar cases in the past. Yet the threats were not mentioned in this document as a reason for moving Allan Menzies to the segregation unit even though it was said that Gordon Morrice had dictated this entry to David Dunn and that it was Gordon Morrice in his evidence who had placed some emphasis on the threats or implicit threats as being grounds for the transfer. Mr Lawless could not explain this and suggested that it was an oversight.

Mr Lawless pointed out that Allan Menzies had been given the ultimate sanction of a total removal from association in general. Sometimes prisoners placed in the unit could take part in certain prison activities but not Allan Menzies. He had been placed in the most severe category for refusing to comply with instructions. Upon examining production 2 Michael Lawless could not understand why there was a mention of C hall in the reason for his removal because in his opinion that had never been mentioned at any time. It was his refusal to go to B hall that warranted his admission together with the threats that were made.

The evidence of Gordon Morrice the NIC unit manager confused the issue even further because he said that he had no contact at all with either Michael Lawless or John Cowie on 9th November 2004 the day of the transfer. It was the following day before he spoke to Michael Lawless who asked him why Allan Menzies had been placed in the unit.

Case Manager

All prisoners placed within the segregation unit were assigned a case manager whose duty it was to liaise closely with the prisoner and other staff and to arrange case conferences all with a view to resolving the prisoner's problems and transferring the prisoner back into the mainstream prison system as quickly as possible. Witnesses said that this was an important role. Production 4 page 3 showed that the first case conference to be held in respect of Allan Menzies was due to take place on Friday, 12th November 2004, the date any extension would require to be prepared. The inquiry was told that it was very important that the case conference had all relevant material before it and his case manager would have had a significant part to play at this meeting. However, there appears to have been a great deal of confusion as to who exactly was responsible for the case management of Allan Menzies while he was with in the segregation unit. Production 4 page 3 indicated that the

segregation unit liaison officer assigned to Allan Menzies was Mr J J Rooney who was not called to give evidence. The inquiry was told by officer David Dunn that Mr Rooney would have been responsible for dealing with the prisoner's problems while within the segregation unit. The inquiry had already been advised that prior to arriving in the unit his personal officer had been officer Allan McGrain but he did not know if a personal officer or case manager had been assigned to Allan Menzies once he was transferred to the segregation unit and he had not been contacted to discuss his case.

In his evidence Phillip Woodlock, who had formerly been the unit manager of both the segregation unit and the NIC but was now the unit manager of C hall, stated that if a prisoner from his own hall had been transferred to the segregation unit then he would make it his responsibility to find out what could be done to get the prisoner out of the unit. He would visit such a prisoner 2 or 3 times each day. In his experience it was the unit manager from whence he came who was the case manager of the prisoner while within the segregation unit and it was his responsibility to make the appropriate arrangements for that prisoner to move to another hall. Accordingly, in his opinion, Gordon Morrice, the unit manager of the NIC, should have been the case manager for Allan Menzies while he was within the segregation unit. Everybody knew that this should be so because there were protocols set down. These protocols stated that somebody ought to have gone down to the segregation unit straight away in an effort to resolve the issue. Phillip Woodlock stated that he himself had no further involvement with Allan Menzies after he escorted him to the segregation unit on 9th November 2004.

Michael Lawless said in the course of his evidence that he was the manager of Allan Menzies but only in so far as ensuring that all the relevant documentation, including production 4, was completed properly once the transfer had taken place. He said the initial paperwork was completed on the basis of what he had been told. The initial documentation giving the reasons why the transfer had taken place ought to have been signed by Gordon Morrice but sometimes that was not possible because of other commitments and Michael Lawless had authority to do so in such a situation. Allan Menzies' case manager i.e. the person responsible for the day to day management of his case, according to Michael Lawless, was Gordon Morrice as he was the unit manager of the NIC from whence he had come.

For his part Gordon Morrice was of the opinion that the Phillip Woodlock was the case manager of Allan Menzies. He referred to production 4 page 5 and the last entry there where reference was made to "local management". He understood "local management" to mean that Phillip Woodlock had agreed to case manage Allan Menzies with a view to taking him into C hall on Friday, 12th November 2004. He also said that at the time Allan Menzies was admitted to the segregation unit Phillip Woodlock had agreed to be his case manager. Gordon Morrice was of the opinion that he would only have been his case manager if Allan Menzies had been returning to the NIC. He was satisfied in his own mind that Phillip Woodlock was the case manager while Allan Menzies remained within the segregation unit. He agreed that the case manager played a very important role in arranging case conferences to discuss the various issues involved, to sign the minutes of these meetings and to assist in moving the prisoner on. The witness was referred to production 4 page 7 which was a report of a case conference held on 12th January 2004. Gordon Morrice

conceded that from this document it appeared that Michael Lawless fulfilled the role of case manager to Allan Menzies but he was still of the opinion that Phillip Woodlock was the case manager of Allan Menzies.

In her evidence Mrs Audrey Park stated that each prisoner had his own personal officer who was responsible for their management and paperwork. It was the unit manager of the segregation unit who would deal with the case management of an inmate there implying that Michael Lawless ought to have been the case manager.

The evidence led did not establish who was or considered himself to be the case manager of Allan Menzies.

To sum up, the case manager of Allan Menzies was, according to these witnesses, either JJ Rooney, Gordon Morrice, Phillip Woodlock or Michael Lawless. Not one witness accepted that he was the case manager of Allan Menzies but said that it was somebody else.

Rule 80 Extension

On the basis that Allan Menzies wished to remain within the segregation unit until Monday, 15th November 2004 it was necessary to apply for an extension of the Rule 80 detention. Officer David Dunn indicated that a request for an extension was made on 12th November 2004 following upon the case conference with Allan Menzies (production 4 page 5). The extension application form was completed by Michael Lawless. This form gave a different reason for his detention from the original Rule 80(1) Order documentation completed on 9th November 2004. In the latter document it was indicated that the purpose of removal to the segregation unit was to "maintain good order and discipline". This had now been changed to "protecting the interest of any prisoner". No explanation was given for this change in circumstance.

At the foot of the extension application background information was requested relating to the incident which led to the original Rule 80 order and here it was stated,

"Mr Menzies was located within the Seg Unit for his refusal to go mainstream within HMP Shotts, at this time his stance has not changed. Mr Menzies has not given any reason for his refusal to progress and local management are continuing to work with him to attempt to find out his issues and work towards resolving them."

Mr Lawless signed this application and indicated that he agreed with what was written as Allan Menzies continued in his refusal to move to B hall although he was now prepared to move to C hall.

Evidence had been led that the removal of Allan Menzies to B hall was not considered as an option after Tuesday, 9th November 2004. Mr Lawless was frank in stating that if he had written on the application that Allan Menzies himself just wanted to stay in the segregation unit then the extension would not have been granted. In making the application he said that he had "bent the rules" in the interests of Allan Menzies. On page 6 the reason why an extension was considered necessary was stated in the following terms,

"Local management are continuing discussions with Mr Menzies and are hopeful of being able to resolve his issues he has with progressing. With this in mind it is requested to hold Mr Menzies on Rule 80 Conditions for a further period not exceeding one month with an anticipated move to Charlie hall in the week beginning 15th November."

The "bending of the rules" and the discrepancy in the purpose of his removal from association (production 4 pages 2 and 5) were not the only matters which raised some

concern. Production 4 page 4 was the Rule 80 history sheet. It was stated clearly on this

document that it should be updated daily. There were only two entries, one dated 9th

November 2004 and the other 13th November 2004 /14th November 2004. Both entries

were completed by David Dunn. It was not updated daily. It was a document that would

have been of some importance for any case manager and would have been referred to at

any case conference. David Dunn was on leave on 10th, 11th and 12th November yet no

officer appears to have completed the necessary documentation in his absence. This was

another indicator of a lack of management.

Behaviour in Segregation Unit

The Rule 80 history sheet ought to have given some assistance in detailing the behaviour

of Allan Menzies while within the unit. The two entries made described Allan Menzies

as being very quiet with nothing to say for himself. There was little contact and by this

David Dunn stated he meant that he did not ask for a shower nor did he respond to the

offer to take exercise. Very often he appeared to be brooding and by this he meant that

he was withdrawn which was not unusual. David Dunn recalled handing his meals into

his cell but when he did so he did not wish to engage in conversation. As all the other

cells were full Allan Menzies was placed in cell 5 which was different to the extent that

there were no toilet facilities, the prisoner being supplied with a chamber pot.

Although he appeared fine to Lawrence McManus he did state in evidence that Allan Menzies was quiet with little contact with staff or other prisoners.

John Cowie was aware of the concerns of Allan Menzies in moving to another hall and as

a result he asked Robert Wylie, another prisoner and a trained listener to speak with him.

Robert Wylie stated in evidence that he and Allan Menzies had been together in the NIC,

that they had chatted with each other, helped each other and they both shared a love of

the same football club.

He went to see him and tried to put his mind at ease in respect of moving on to another

hall. He asked Allan Menzies if he felt suicidal and he replied that he did not. He said he

felt all right. He considered Allan Menzies to be a friend and if Allan Menzies had any concerns about being in the segregation unit he felt that he would have told him. Allan

Menzies had not expressed any fears, anxiety or concerns about being detained there. In

the opinion of Robert Wylie he was coping.

Visits

Prior to leaving the NIC the inquiry was told that Allan Menzies had arranged for his father to visit him on the evening of Friday, 12th November 2004. When he arrived Mr Thomas Menzies told the inquiry that he was informed that the visit could not take place because his son had been transferred to the segregation unit. This information

had not been passed on to Mr Thomas Menzies. The witness David Dunn advised the inquiry that the visiting times within the segregation unit differed from the rest of the prison. A copy of the visiting times was placed in every cell within the segregation unit and as far as he was concerned it was up to the prisoner to read this notice and to advise his visitors. While within the segregation unit Allan Menzies had access to a telephone so long as he had credits to use it but in an emergency the staff would grant access even if the prisoner had no credits. He could not recall Allan Menzies mentioning that he had a prearranged visit for Friday, 12th November 2004.

Lawrence McManus in his evidence stated that if a prisoner told the staff in the segregation unit that an evening visit had been booked then the staff would try to rearrange this for the afternoon. They would always honour a visit that had been arranged prior to the prisoner entering the unit if possible. A prisoner would tell you about prearranged visits or else the visit room would probably let the staff know.

The governess, Mrs Audrey Park told the inquiry that prison staff were not permitted to advise the family whenever a prisoner was transferred to the segregation unit unless the prisoner authorised them to do so. She further stated that if the prisoner was not aware of the change of visiting times and a visit was missed then this could have an affect upon the prisoner when taken into consideration with the fact that he was also subjected to solitary confinement. David Douglas, the registered mental health nurse, said in evidence that problems with visits were very high on his list of matters that could trigger self harm

The inquiry was not told of any communication at all between the segregation unit and the visit room staff that a visit had been arranged for Friday, 12th November 2004 or that Allan Menzies was asked. Thomas Menzies arrived in the evening. He was sent home because there were no evening visits while a prisoner remained within the segregation unit. No alternative arrangements were put in place.

14th November 2004 to 15th November 2005

It was raining on Sunday, 14th November 2004 and as result Allan Menzies did not accept the opportunity to take an hour's exercise and remained within his cell (production 4 page 4). Officer David Viners said that not many did that day because of the weather. He recalled that another prisoner within the segregation unit, Owen Anderson, tried to encourage Allan Menzies in this regard but he declined and when asked he said that he was "OK". There would have been no direct contact between Allan Menzies and Owen Anderson and any communication between prisoners in the segregation unit took place by shouting to one another.

The witness David Dunn indicated that in the course of that day he was on duty and recalled attending cell 5 to hand in the evening meal to Allan Menzies. This would have taken place at approximately 4.55 p.m. and was confirmed by viewing label 1 which was a video recording of the segregation unit taken on 14th November 2004. This showed the evening meal trolley going round each of the cells. The time on the video showed 15.55 but the inquiry was told that the clock was an hour behind. At the true time of 16:58:42 the door to cell 5 was opened and Allan Menzies was viewed coming to the door and taking his meal from the three prison officers there.

We had heard evidence that a cell door could not be opened unless there were three officers present. David Dunn recalled asking Allan Menzies if he wished to empty his chamber pot. The door was closed at 16:59:20. That was the last contact with Allan Menzies.

After the day shift came to an end one prison officer only, known as the patrol officer, was on duty within the segregation unit. The witness Andrew Cutler started his shift as patrol officer at 9 pm on Sunday, 14th November 2004. His shift came to an end at 7.30 am on Monday 15th November 2004. During his shift he could be alerted by a prisoner if there was a problem by use of a buzzer which was within each cell. The patrol officer was not allowed to open a cell door otherwise. Allan Menzies did not sound his buzzer that night and consequently Andrew Cutler had no need to look through the spy hole on the door which was placed in the centre of cell 5.

On Monday, 15th November 2004 James Reddington, the residential manager of Kerr House within Shotts Prison covered for John Cowie who was on a training course that day. He started at 8 am. The first duty to be carried out was to check on each cell and he began to this task in the company of officers David Dunn and Graeme Paterson. Every cell was to be opened to ensure that everything was in order. The three officers came to cell 5 at approximately 8.05/8.10 am. They opened the door of cell 5 and there they found Allan Menzies hanging by the neck. There was a ligature around his neck, part of his bed clothing, which had been attached to the top of a metal frame that was situated on the outside of the cell window. There were fresh cuts to the upper left arm and there was blood smeared on his arms and upper body. On a wall beside the window the word "justice" was written in blood.

Immediately James Reddington shouted on Lawrence McManus who was also within the unit, to get the crash pack. The officers checked for a pulse but there was none. The body was cold and rigid. James Reddington called for medical assistance while Lawrence McManus cut the ligature. Nurse Mary Gilfillan arrived within minutes. She confirmed that there was no pulse and noted that the body was cold and the extremities had turned purple. Doctor Mandhrana who was performing the function of locum in the prison was contacted and he arrived at approximately 8.30 am. He examined the body but he could not find a pulse nor sign of life. He pronounced life extinct at 8.55 am. He noted lividity, that is the pooling of blood, which meant that Allan Menzies had been dead for some hours although it was difficult to say exactly when he died.

A post mortem was carried out on Thursday, 18th November 2004 by Doctor Marjorie Black, forensic pathologist at the University of Glasgow. She noted hypostasis that is the pooling of blood over the lower half of the body and some over the back of the body. From this she concluded that Allan Menzies had been dead for some hours before he was found. However it was not possible to give an exact time of death and it could have occurred at any time from when he was last seen alive on the Sunday evening. Around the neck there was a ligature mark and this was the most significant injury that she found. There were, in addition, five superficial wounds on his upper left arm which she noted could be seen in production 6 photograph Y. These wounds were consistent with self harm in that they were of uniform depth, superficial, set out in a regular manner and in an accessible site. A sharp weapon would have caused these wounds for example the tip of a knife. She also noted old scars which were

consistent with self harm some time ago. She stated that quite frequently the bodies of those who have committed suicide show evidence of previous self harm. From the history she had been given together with her own findings, Doctor Black concluded that death was due to hanging. If it was any comfort death could have occurred very quickly, perhaps as quickly as eleven seconds after the ligature was applied.

Police Involvement

Detective Constable Ian Grant, stationed at Wishaw Police Office, received a call at approximately 8.15 am advising him of the death of Allan Menzies. He attended Shotts Prison arriving at approximately 9.30 am. He was briefed and taken to the segregation unit. He examined the cell and it appeared to him that Allan Menzies had taken his own life. He took possession of a number items from the cell including part of a blade from a safety razor. In his opinion this blade had been used by Allan Menzies to make the cuts that were evident on the upper left arm. He was also of the opinion that the blade was perhaps used to cut the bed sheet that was used as the ligature.

Evidence was heard that prisoners within the segregation unit were not permitted razors or parts of razors. They were provided with a razor to shave and then these ought to have been returned. Michael Lawless stated in his evidence that the staff ought to have checked that the blade had been returned and that no blade ought to have been found within cell 5.

The metal bar to which the ligature was tied formed part of a metal frame which was designed to be a restriction to prevent prisoners from throwing refuse out of the cell. It could be seen in photograph AF of production 6. A prisoner had easy access to this frame by opening his window and there was nothing to prevent Allan Menzies from tying the ligature to the top of the metal frame.

Submissions

I was grateful to all the parties for their very full and thorough submissions in respect of this case.

I was asked by Miss Gibb, procurator fiscal depute, to determine that in terms of Section 6(1)(c) of the Act the death of Allan Menzies might have been avoided if reasonable precautions had been taken, in terms of Section 6(1)(d) to determine that there were defects in the system of working which contributed to the death and in terms of Section 6(1)(c) to determine that there were facts relevant to the circumstances of the death. Such determinations were opposed by Miss Cullen and Mr Gillies.

Section 6(1)(c) submission

Miss Gibb submitted that if Allan Menzies had been made the subject of the ACT procedure at the time of his removal to the segregation unit or shortly thereafter then his death might have been avoided. This was a reasonable precaution to take given all the circumstances.

To support this submission Miss Gibb rehearsed parts of the evidence and made reference to certain productions. Her submission can be summarised in the following way.

- 1) Allan Menzies could only be described as a vulnerable prisoner.
- 2) The prison authorities failed to take into account the frequency with which Allan Menzies had harmed himself throughout his life. Saughton Prison was sufficiently concerned that they placed him on the ACT procedure throughout his period of remand there.
- 3) He had been transferred to the State Hospital, Carstairs during the course of his remand.
- 4) Within a very short period of being transferred to Shotts he was removed from the ACT procedure.
- 5) That decision was never reviewed.
- 6) Although Allan Menzies seemed to have settled down to life within the NIC he was later ordered to move to B hall with less than 24 hours notice being given of this move.
- 7) He was clearly distressed and informed the staff that he would be attacked if he went to B hall.
- 8) He reacted in a relatively violent manner by smashing a glass jar against the wall of his cell and later making threats to prison officers as to what he would do if he was removed.
- 9) He had stated that he would rather go to the segregation unit than go to B hall which was strange considering that being admitted to the segregation unit was seen as a punishment by prisoners.
- 10) Being in the segregation unit involved removal from association and the removal of certain privileges and possessions.
- 11) Marks were noted on his body.
- 12) He appeared to be brooding.
- 13) He was isolated in his cell in solitary confinement.
- 14) His arranged visit did not take place.
- 15) He could not cope with change and reacted to that in certain ways.

Taking all these factors together it was submitted by Miss Gibb that they were sufficient to trigger an episode of self harm and the prison authority ought to have been aware of this. In all these circumstances it was reasonable to suggest that

Allan Menzies ought to have made subject to the ACT procedure when he was admitted to the segregation unit and consequently his death might have been avoided.

The suggestion that such a finding should be made was opposed by Mr Gillies and Miss Cullen. The ACT procedure was never initiated because it was not necessary and there were no signs that it ought to have been initiated. Previous attempts at self harm and the state of his mental health were known to the staff. It was sufficient to allow the staff to make the necessary decisions regarding his care. No evidence was led to suggest that Allan Menzies ought to have been treated differently nor was there any evidence to suggest that when he was removed from the ACT procedure after his admission to Shotts that this was premature. Thereafter every member of staff, all of whom were trained in the ACT procedure, knew their responsibilities and continued to act in the best interests of Allan Menzies. If they had any concerns ACT would have been initiated. There was no evidence to suggest that he intended to commit self harm. No evidence was led to suggest that anything was ignored by the staff. The evidence that was heard by the inquiry showed that at the relevant time Allan Menzies was speaking about his future, he exhibited the appropriate mood, he made good eye contact and interacted appropriately with the various individuals concerned with his care. The ACT procedure could not be foolproof. David Douglas, the mental health nurse had indicated that those persons who committed suicide sometimes did so "without leaving any cues or clues" and if an individual was determined enough they would succeed. No evidence had been led to suggest that Allan Menzies was not ready to move on or that he had not adjusted to his sentence. At the time of his death he was no more at risk than any other prisoner. In accepting that Allan Menzies had in the past committed self harm there was no evidence before the inquiry that such behaviour would be repeated or was likely to be repeated even though common sense may suggest that such a conclusion could be drawn. All in all, in their submission, the death of Allan Menzies could not have been prevented.

In addition Miss Cullen suggested that I ought to take into account the fact that the last suicide in Shotts had occurred 5 years previously, that suicides in the segregation unit were uncommon and accordingly it was quite clear that the ACT procedure had been a success within Shotts prison. I was also referred to the opinion of the governess, Mrs Audrey Park where in her experience if a prisoner wanted to commit suicide then they would find a way. This was supplemented by the evidence of David Douglas, the registered mental health nurse who stated that a person's suicidal ideation could change within a matter of minutes and the fact that Allan Menzies was subject to the ACT procedure in 2003 was not relevant to his suicidal ideation in 2004.

I was also asked to consider the evidence of Gordon Morrice who had noted marks on the arm of Allan Menzies but upon questioning him received the reply that he did not feel suicidal. There was nothing in the behaviour of Allan Menzies that suggested to Gordon Morrice, Adam Lowe, Michael Lawless, Craig Roy or any of the witnesses that he ought to be placed under the ACT procedure.

In addition to this there was no evidence before the enquiry which suggested that any of the prison staff who had been involved with Allan Menzies were unaware of

the fact that he had a history of self harm, previous suicide attempts and mental health issues. There was no evidence to suggest that Allan Menzies was more or less vulnerable than any other member of the prison population or that he ought to be treated differently. Miss Cullen disputed the suggestion by Miss Gibb that Allan Menzies had been placed under the ACT procedure throughout his entire period spent in Saughton. Production 2 page 14 showed that he was removed from ACT on 6th March 2003 some six weeks after its introduction. After his arrival in HMP, Shotts Allan Menzies was made subject to the ACT procedure but was removed on 17th November 2003 after three separate case conferences all of which considered the risk of suicide and self harm. By that stage his mood appeared appropriate. The removal from the ACT procedure required a unanimous decision by all present at the case conference and no evidence was led that this removal was inappropriate. There was no evidence to suggest that Allan Menzies intended to harm himself at any time whether in the NIC or the segregation unit. Various witnesses had asked this question of him and he had denied that he felt suicidal.

For his part Mr Gillies emphasised that the authorities knew of previous self harm including the incident in his mother's kitchen when he cut his arm and they also knew of his psychiatric background and that he had been in Carstairs. (I could not find any evidence to confirm all of this to be the case. I could not find anything to support the suggestion that the authorities were aware of him using a knife upon himself. The authorities knew only that he had a history of mental illness and that he had been in Carstairs. They had no information as to why he was taken there, what diagnosis was made and what treatment was given or how long he remained there.) I was reminded that ACT was potentially operational at all times, all staff were trained in the procedure and they knew their own responsibilities which involved acting in the best interests of the prisoners at all times. Mr Gillies accepted that ACT could not be foolproof but against that no evidence was heard that Allan Menzies intended to harm himself.

Having listened carefully to the evidence and the submissions I have come to the conclusion that taking all the circumstances into consideration Allan Menzies ought to have been made subject to the ACT procedure upon his removal to the segregation unit. It could not be said that Allan Menzies was a normal youth or adult. Evidence was heard of his behaviour at home which could not be attached to a normal youth or young adult. There was a history of self harm and suicide attempts. At the age of 14 he had committed a serious crime of violence against another boy which resulted in a significant term of detention for a person so young. Yet it would appear that this background was not made known to the prison authorities other than what Allan Menzies was prepared to tell them. There was no communication by the authorities with the parents of Allan Menzies to discuss his background when he was admitted to prison. The records of St Mary's School where he attempted suicide while in custody were not retrieved when he received his life sentence. The governess, Mrs Audrey Park stated that normally prison records would follow a prisoner throughout his prison career but not records from an institution such as St Mary's. No explanation was given why this was so. Moreover the inquiry was told that his GP Records were not passed to the authorities which would have shown, at the very least, his admissions to hospital following previous attempts at self harm. In addition to this the inquiry heard that for approximately five months Allan Menzies was remanded to the State Hospital, Carstairs yet not a single document was sought

by the prison authorities seeking details of his time there, any illnesses that were diagnosed, treatment that was given or treatment that ought to have been continued in Shotts.

There may be an argument for saying that in the absence of such detail and documentation regarding his entire background, the prison authorities were excused in not recognising the potentially fragile state of Allan Menzies. That suggestion, in my opinion, must be repelled. It was the duty of the prison authority to find out everything that they possibly could about a prisoner if they wished to have all relevant information before them in order to deal with any situations that may arise and to manage his case appropriately. It was said by the governess herself that the more information the authorities had the better. The prison relied upon Allan Menzies to tell them about his past history which was noted at the time that he was received into Shotts. He told them of a previous psychiatric history yet no enquiries were made to confirm this or to find out what that history might reveal. It would not have been excessive for the authorities to arrange a meeting with the parents of a young man who was just about to start a very lengthy prison sentence and to find out the background of the prisoner, anything they should look out for and any concerns they had. If such information had been before them and if somebody had stopped to consider his previous history, his reaction to change, his behaviour at the time of his removal, the relatively unusual circumstances surrounding his removal from the NIC, the marks on his body at the time and the rigours of the segregation unit regime then it would have been appropriate to initiate the ACT procedure even if this was thought to be erring on the side of caution. In the course of the inquiry examples had been given of situations where the ACT procedure may be initiated and this included prisoners behaving oddly or isolating themselves. Allan Menzies behaved oddly at the time he was told of his transfer and evidence was heard that he voluntarily wanted to isolate himself by seeking a removal to the segregation unit and moreover to extending his stay there. Cumulatively these factors ought to have alerted the staff to the risk of self harm. The added problems of the complete lack of case management and his loss of a visit only aggravated the situation. The ACT documentation ought to have been activated as a precautionary measure to prevent the possibility of Allan Menzies committing self harm.

Section 6(1)(d) submission

Miss Gibb submitted that there were a number of defects in the system of working within the prison which contributed to the death of Allan Menzies. These defects were as follows.

1) Records.

There was a general lack of information provided to the prison authorities which ought to have been before them and which would have assisted them in managing the case of Allan Menzies and in recognising matters that may have triggered self harm. These were the records from St Mary's, Bishopbriggs where Allan Menzies served his first prison sentence, his GP records and the records from the State Hospital, Carstairs. The records from St Mary's and his GP may have been useful because they could have confirmed and expanded upon incidents of self harm in the

past such as the causes and if there were any common elements among them. The absence of any records from Carstairs was an obvious failing.

Such findings were opposed and Miss Cullen concentrated primarily on the suggestion that GP records ought to have been available to the prison. She stated that there was no evidence before the inquiry to suggest that the staff were unaware of the fact that Allan Menzies had a history of self harm, previous suicide attempts and mental health issues. The information from the police that he was suicidal resulted in him being placed on the high risk register following upon his committal to prison. Thereafter, Miss Cullen referred to production number 2 which showed that at various stages the authorities were aware of psychiatric problems and his previous history. Even if the GP records had been available these would not have been available to all the staff as not all officers had access to a prisoner's health records. There would also be problems in obtaining these records.

I noted that the history of self harm referred to in production number 2 came from either the police or from Allan Menzies himself. As stated before there was no confirmation contained within any document originating from anywhere other than the prison which showed that he had attempted self harm in the past. This would have been very relevant to those who carried out an assessment of Allan Menzies. The more information the better and this was confirmed by the mental health nurse David Douglas and the governess Mrs Audrey Park when they gave evidence.

It had been said in evidence that an individual's prison records were resurrected each time the individual entered the adult prison system and accompanied the prisoner if he moved on to another prison. No explanation was given why the records from a centre where a young person had served a sentence were excluded from this and not passed on and clearly these were relevant if Allan Menzies had attempted suicide while serving a sentence in St. Mary's. Such documentation may have been helpful in determining at what stage this act was committed and what, if anything, brought it about and in general terms the circumstances surrounding the act. The prison ought to have checked to see if Allan Menzies had been detained before and no evidence was heard that this had been carried out. If it is the case that the prison computer system database does not include establishments such as St. Mary's then this ought to be rectified.

I did not agree with the opposition to the retrieval of a prisoner's GP records. Evidence was heard from the governess that when a prisoner entered Shotts he was registered with the prison doctor. When an individual changed doctors normally that person's records would be transferred. Yet no request was made to obtain the prisoner's past medical history which was unacceptable particularly since this prisoner had been sentenced to such a long sentence. Prisons were different but no explanation was given why this should be so and the governess herself accepted that it was not helpful that prisoners' GP records were not transferred to the prison. She also stated that the fact that there was no system in place to allow GP records to be transferred had been criticised in the past yet nothing had been done to rectify what I considered to be an obvious failing.

There is no need to rehearse the lack of any information from the State Hospital, Carstairs. It was self evident that it was most relevant that Allan Menzies had spent a

period of five months within the State Hospital Carstairs. The fact that no information was forwarded or was sought about the 5 months Allan Menzies spent there was never explained to my satisfaction. Nurse David Douglas indicated that this would have been important to him in preparing an assessment of Allan Menzies and he ought to have had a report. This was a failing in his opinion. I agreed with David Douglas on that point. This, coupled with the absence of the records from St.Mary's and his GP, required me to determine that there was a defect in the system of working.

I determined that the necessary authority ought to be given to the Scottish prison service to retrieve all previous medical and custodial records to assist the prison authorities in managing all long term prisoners.

In addition I determined that it would not be excessive to arrange a meeting with the parents of a young man about to start a significant prison term to complete a full history and to ascertain if there were matters that the prison authority should know which caused the family any concern. In her evidence Mrs Menzies said that she wished that she had spoken to the prison staff to tell them about her concerns regarding her son. A meeting would have afforded her the opportunity to express those concerns and would have provided the authority with relevant information.

2) ACT

Miss Gibb further submitted that there were a number of defects within the ACT system itself which in her opinion were closely related and contributed to the death of Allan Menzies. She concentrated on the fact that the input of a doctor was necessary once a prisoner had been placed on ACT yet there was no doctor's involvement when removing a prisoner from the ACT procedure. She considered that ought to happen. Secondly, there was no review of the decision to remove a prisoner from the ACT procedure.

I agreed with the opposition from Mr Gillies and Miss Cullen to this submission. In highlighting the case of Allan Menzies it was quite clear from the evidence given to the inquiry that when he was removed from the ACT procedure he had settled into prison life and appeared to be relatively comfortable within the NIC. Protocol may have required that a doctor reviewed the position to place a prisoner on ACT and to assess the prisoner initially but after a period of time I concluded that prison officers ought to be able to remove the prisoner from the ACT procedure without a further review from a doctor. There was no evidence to suggest that the removal of Allan Menzies had failed at that time nor was there evidence to suggest that it had failed any other prisoner. In these circumstances I was not prepared to make a determination in respect of this submission.

3) List System

The next defect identified by Miss Gibb was the apparent inconsistency in the system used to decide who was to move out of the NIC. She recalled there were two schools of thought namely the list system, that is those who had reached the top of the list moved out regardless, and the individualised approach where each prisoner was assessed as to when they moved out. Miss Gibb stated that there was an

inconsistency between the officers which displayed a lack of a proper system being in place which was used by all. She cited the evidence of Phillip Woodlock who, she said, spoke only to the list system and made no mention of any other criteria, the evidence of Gordon Morrice who suggested that the list system was an arbitrary system where there was no analysis of a prisoner's individual situation, the evidence of Allan McGrain who spoke to the list system but who also said that there could be some discussion if it was thought that a prisoner needed to stay in the NIC a bit longer and finally the evidence of the governess, Mrs Audrey Park who suggested that the list system not the primary way of determining when a prisoner ought to be moved on. However, this was qualified to the extent that, at that time, there was overcrowding in the prison system and the list system may have been used because of that situation. The officers spoke primarily of the list system without much reference to the individualised approach as if it did not exist or had not been explained to them. There was, in the view of Miss Gibb, inconsistency. The list system was defective in itself and its only benefit was that it contained an element of transparency. Additionally, the list system did not sit easily with the purpose of the NIC where prisoners were being continually assessed to assist them in adjusting to prison life and to their sentence. Some required longer than others and prisoners ought not to be moved out simply because they were at the top of the list.

In considering this submission it was not my recollection that Phillip Woodlock indicated that the list system was the only system in place. He indicated in his evidence that there was some assessment which took into account various factors although in the case of Allan Menzies he got the impression that his place within the NIC was needed because another prisoner was arriving and since Allan Menzies was at the top of the list he was to be moved on.

I also recalled the evidence of Gordon Morrice, as rehearsed by Miss Cullen, who was of the opinion that the NIC could offer no more to Allan Menzies which would suggest an element of assessment. Nevertheless the evidence heard at the inquiry suggested that there was some confusion among the staff as to the exact criteria to be used when deciding when a prisoner was to move out of the NIC.

It may very well be the case, according to Mrs Audrey Park, that matters have changed somewhat since that time in that today there is no longer the same pressure on the system. However, the criteria to be used should, in my opinion, be known to both the staff and the prisoners and ought to include *inter alia* the index offence, the issues behind it, his home circumstances, his personal preferences within reason, any outstanding appeal and the length of time spent within the NIC, any health issues and with the prisoners being advised when it was intended they moved out and their proposed destination. The only officer who recognised these was Phillip Woodlock. A recognised plan ought to be put in place. If a prisoner was not ready to move out then he should remain. Such an assessment ought to be used in conjunction with the list system but neither should be used alone. It is important that the list is transparent to the extent that it is published or at the very least the prisoner is advised on a regular basis where they stand on the list and when it is anticipated that they will move on. Giving a prisoner less than 24 hours notice of a move was unacceptable.

Taking all these matters into account I have determined that there was a lack of knowledge among the staff resulting in inconsistency in identifying the criteria to be used in deciding when a prisoner was to be moved out of the NIC.

4) Case Management

The final part of Miss Gibb's submission in terms of this Section concerned the lack of management of Allan Menzies after he was placed into the segregation unit. If he had been monitored properly then this may have resulted in him being moved out of the segregation unit before he died and secondly, the low mood exhibited during his period within the segregation unit may have been recognised and alleviated by better management input.

In opposition to this suggestion it was stated that while there may have been some confusion it was undoubtedly the case that the staff were managing his case properly and indeed Allan Menzies was scheduled to move out of the segregation unit on Monday, 15th November 2004. This was incorrect. Some people, including Allan Menzies, thought that he was to move out of the segregation unit on 15th November 2004 but in reality there was no place for him to go. In fact some people thought that he could move out on the 12th November but nobody had made contact with Phillip Woodlock to confirm that there was a place available for Allan Menzies on either of these dates.

Undoubtedly there was confusion as to who was managing the case of Allan Menzies. Certain paper work was completed but most importantly the daily sheet which ought to have been completed was without entry for some of the days and no one appears to have taken charge of that duty. Nor did anyone take on the responsibility of speaking with Allan Menzies and other staff two or three times each day with a view to resolving his problems which Phillip Woodlock said ought to have happened. From the evidence led I came to the conclusion that certain officers were trying to pass the buck in respect of this matter. Earlier in this determination I summarised the level of confusion among the staff (cf page 36). The person who suffered as a result of this state of confusion was Allan Menzies. I found merit in the submission of Miss Gibb in this regard. Somebody ought to have taken hold of this case and spent time trying to resolve the situation and trying to ensure that Allan Menzies was taken out of the segregation unit as quickly as possible. On the basis that I accepted the evidence of Phillip Woodlock the person responsible for managing the case of Allan Menzies was Gordon Morrice. He failed to carry out this important role and as a result meetings with Allan Menzies and contact with Phillip Woodlock to arrange a definite transfer did not take place. I came to the conclusion that the officers from the NIC and the segregation unit were unaware of the protocols referred to by Phillip Woodlock in his evidence (whose evidence I preferred) and consequently the case of Allan Menzies was not only managed improperly but was not managed at all.

There was another matter which I considered ought to be included within the Section 6(1)(d) determinations. This was in relation to the razor that was found within cell 5. The inquiry was told that prisoners in the segregation unit were not permitted to have razor blades within their cells. Evidence was heard that when a prisoner wished to shave he was provided with a razor by the staff which had to be returned once the

prisoner had shaved. Alan Menzies had been provided with a razor but the check to ensure that it was returned was not implemented. The result of this was that, in the opinion of D.C. Ian Grant, the razor blade had been used by Alan Menzies to make the most recent cuts upon his left arm which were evident in the photographs that were placed before the inquiry. In addition the officer opined that perhaps the razor was used to cut the bed sheet that was used as the ligature whereby Allan Menzies hung himself. The inquiry was not told what precise checks were in place to ensure that blades were returned but clearly they failed.

I have therefore found that, for the reasons given above, the following defects in the system of working contributed to the death of Allan Menzies-

(a) The failure to obtain the records of Allan Menzies from his General Practitioner, from St. Mary's School, Bishopbriggs, Glasgow and from the State Hospital, Carstairs.

(b) The failure to interview the parents of a young prisoner about to start a significant sentence to ascertain a full history especially where the prisoner has a history of self harm.

(c) A lack of understanding among the staff in respect of the criteria to be used when a prisoner was to be transferred from the National Induction Centre.

(d) The absence of a case manager once Allan Menzies was admitted to the segregation unit.

(e) The failure to check that the razor blade provided to Allan Menzies by the staff of the segregation unit was returned to them in accordance with procedure.

Section 6(1)(e) submission

Under this heading Miss Gibb invited me to consider the evidence and make the following determinations :-

(a) The period of notice given to Allan Menzies of his removal from the NIC was insufficient.

(b) Rule 80 was not applied properly and there was no justification in removing Allan Menzies to the segregation unit.

(c) A prisoner could not speak to a doctor in confidence while within the segregation unit.

(d) Pre-arranged visits to prisoners within the segregation unit ought to be dealt with differently.

(e) Allan Menzies ought not to have been taken to the silent cell within the segregation unit.

(f) The officers within the segregation unit relaxed once Allan Menzies had been examined by nurse Mary Gilfillan and failed to act appropriately with regard to the marks on Allan Menzies on the basis that nurse Gilfillan was not concerned by them.

(g) The personal officer of Allan Menzies was not asked for his input in respect of the behaviour of Allan Menzies on 8th/9th November 2004.

(h) Allan Menzies had an appeal pending at the time of his transfer and this was not taken into consideration when moving him out.

(a) Period of Notice

Miss Gibb maintained that the period of notice given to Allan Menzies that he was to be removed from the NIC was too short. Evidence had been heard that Allan Menzies found it difficult to cope with change and clearly did not mix well with other prisoners. Evidence had been led that a number of staff agreed that the notice given to Allan Menzies was too short and not ideal and that being advised that he was to move out could place a prisoner in a state of shock. Allan Menzies himself said that he did not want to move out which perhaps was an expression that he could not cope with such short notice.

Against this it was stated by the other parties that, at that stage, the NIC could offer him no more and there was no evidence to suggest that he would have reacted any differently had he been given longer than 24 hours notice. He knew that he was due to move out. Miss Cullen suggested that it was worthy of note that Allan Menzies took his own life immediately prior to when he thought he was to move out of segregation into the mainstream prison system. She suggested that this action showed that he did not wish to progress to mainstream although he had a number of days in the segregation unit to come to term with the change. Perhaps it was this that caused him to take his own life rather than being kept within the segregation unit for an extended period.

I did not note any witness saying in evidence that the notice given to Allan Menzies was sufficient in all the circumstances. In so far as I understood the latter part of the submission made by Miss Cullen it seemed to suggest that Allan Menzies, while within the segregation unit, had plenty of time to prepare himself for his move to the mainstream prison system. I did not agree with this submission as it could equally be said that being within the segregation unit added to his problems as opposed to being a time for contemplation and preparation.

I concluded that while it may not be possible in every circumstance it would be preferable if a prisoner was given at least 1 week's notice of his removal from the NIC which would follow upon a departure plan being put in place, discussions with the prisoner, proper assessments being made, in addition to the prisoner being kept up to date at all times where he stood on the list. From the evidence that was heard it was clear that the brief period of notice given was quite contrary to the ethos of the NIC which, as I understood it, was all about preparing long term prisoners for life within the mainstream prison system and easing them into it.

(b) Misapplication of Rule 80

Miss Gibb submitted that the oral and documentary evidence disclosed that his purported refusal to move out of the NIC was the reason why Allan Menzies was taken to the segregation unit and this was an abuse of the rule. At that stage the documentation did not contain any reference to threats being made. There would have been other options open to the prison staff to remove him to a place other than the segregation unit. No one, according to Miss Gibb, properly justified this removal. Some evidence was led that it had never been known in the past for a prisoner to be removed to the segregation unit in similar circumstances. There was no agreement between all the members of staff in relation to the removal to the unit. Michael Lawless admitted in evidence that he had bent the rules when preparing the Rule 80 extension application to coincide with the wishes of Allan Menzies.

In opposition to this submission it was stated that the refusal to move out of the NIC was itself justification for placing Allan Menzies within the segregation unit in terms of Rule 80. This was confirmed by Audrey Park and other witnesses.

I concluded that a refusal to move out of the NIC was sufficient reason, in certain circumstances, to move a prisoner to the segregation unit and I accepted the evidence of Audrey Park on this topic. However, there were other factors which I concluded were given precedence and which caused Allan Menzies to be removed there when he ought not to have been taken to the segregation unit at that time. From the evidence led I was in no doubt that he was removed from the NIC out of convenience more than anything. Another prisoner was on his way. That was the starting point. A space was needed within the NIC. It was convenient to move out Allan Menzies since he was at the head of the list although he may not have known that. I determined that his transfer was unwarranted and in reality there was no justification for it. There was a failure to devise and put into effect a proper plan for transferring Allan Menzies to a suitable location within the prison system with proposed dates for the transfer and consultation with the prisoner. No other prisoner was considered as a substitute and no enquiry was made to see if another prisoner could take his place. There was a failure to investigate if there was any substance to the reason why he said he could not go to B hall. Taking everything into account his removal to the unit was inevitable. It was relevant that his refusal to move to B hall and his subsequent actions in his cell did not result in disciplinary proceedings being initiated immediately. Evidence was heard that normally you would expect such behaviour to result in the prisoner being placed on report and appearing within the orderly room. That did not happen in this case yet the inquiry was told that Allan Menzies was given the most severe sanction when he was placed within the segregation unit and once again no explanation for this was given to the inquiry. Moreover, it was relevant that a unique event occurred in that the following day Allan Menzies walked to the segregation unit accompanied by prison officers. Normally a prisoner was forcibly removed to the segregation unit and as a result there was a protocol in place whereby a nurse always examined a prisoner when they entered the segregation unit to ensure that there were no apparent injuries because of the forcible removal. I do not accept that because Allan Menzies may have indicated a wish to go to the segregation unit he ought to have been taken there. Having heard the evidence on this point I concluded that this was more of a threat on his part than anything else that is to say he was stating that he did not wish to go to B hall because he feared being assaulted there and on that basis they could just take him to the segregation unit if they liked.

In addressing this submission I concluded that the alleged breach of prison rules was used by the staff as justification for the transfer when in fact the real reason was that a space was needed within the NIC, it was decided to move out Allan Menzies and when he refused to go to the hall chosen for him he was removed to the segregation unit. This would account for the discrepancies in the rule 80 documentation.

There was fault on the part of Michael Lawless "bending the rules" as he put it to extend the stay of Allan Menzies within the segregation unit. I concluded that the staff were happy to accommodate his request. Had his case been properly managed this might never have been necessary.

(c) Review by Medical Officer

In giving evidence to the inquiry Fiona Delaney, clinical manager in Shotts at the time gave evidence that a prisoner taken into the segregation unit must be reviewed by a doctor each week. She was present at the review with Allan Menzies on 10th November 2004. As explained before no door to a cell in the segregation unit could be opened without three officers being present. Accordingly there would have been five people there when the medical review took place. In the submission of Miss Gibb this could not be described as being a confidential interview or conducive to a prisoner being able to talk to a medical person about any problems that he had.

This part of the evidence was not explored in any great detail and I could not conclude what would have happened if the prisoner had asked to speak with the doctor in confidence.

(d) Visit

That Allan Menzies missed his visit with his family on Friday, 12th November 2005 was significant according to Miss Gibb. She accepted that there was some onus on him to alert the staff to the fact that he had a visit arranged and that it would not be possible for the visit to proceed as it was outwith the time for visits within the segregation unit. The procurator fiscal depute submitted that Allan Menzies was very particular about visiting arrangements. The fact that he did not rearrange the visit was unusual and perhaps that was an indicator of low mood or that he did not know that he had to rearrange the visit.

I was reminded by the other parties that each cell contained the segregation unit regime plan which included the times for visits and it was up to Allan Menzies to read this and to make the appropriate arrangements. He had access to a telephone to make contact with his visitors and even if he had no credits to use the telephone he could have advised one of the officers about the problem with his visit and in such an emergency he may have been allowed access to the telephone. No evidence was led that Allan Menzies spoke to any of the staff to rearrange his visit but at the same time no evidence was put before the inquiry that he was advised of the change of visiting times or that he had read the regime plan and was aware of this.

The suggestion that it was up to a prisoner to find out by himself the visiting times by reading a notice was unacceptable in my opinion. To begin with it does not address the problem of those who may be illiterate. The inquiry was told that a significant amount of paperwork was generated when a person was admitted to the segregation unit. There were various procedures which had to be gone through and I concluded

that it would not be excessive to suggest that the procedures ought to include the staff finding out if any visits had been arranged by a prisoner for the immediate future which would result in that visit being necessarily cancelled. Such a visit could be rearranged if possible and at the same time the prisoner could contact his visitors, some of whom may require to travel some distance, to advise them of the change.

(e) The Silent cell

Miss Gibb submitted that it was unnecessary to place Allan Menzies within the silent cell upon admission to the segregation unit. Its use increased the likelihood of Allan Menzies suffering psychological damage. No evidence was led at the inquiry which would support this submission. While the inquiry was not given an explanation for this evidence was heard that all the cells within the segregation unit were occupied at the time and that Allan Menzies was not detained within this cell for an excessive period before he was transferred to cell 5.

(f) Assessment within Silent Cell

Miss Gibb submitted that when anyone was removed to the segregation unit a nurse had to be called to examine the prisoner in case injury had been caused when being removed by a three man team. Allan Menzies was not brought by a three man team but came voluntarily. Nurse Mary Gilfillan gave evidence that she was summoned only to look at pre-existing marks on the body of Allan Menzies and this was confirmed by the prison officers. Mary Gilfillan concluded that the marks gave her no cause for concern and she did not consider they were marks which would indicate self harm. The submission of Miss Gibb, as I understood it, was that the staff were so concerned about these marks that they called upon a nurse to examine them. The prison staff were expected to know the prisoner better than anyone, including the medical staff, which in this case ought to have included knowledge of his history of self harm. Miss Gibb submitted that this resulted in each relying on the other as to whether or not any action should be taken about the marks. Once Mary Gilfillan gave the all clear the officers relaxed. It was an oversight, she submitted, by Mary Gilfillan that, taking these marks into account together with all the other factors, Allan Menzies was not placed under the ACT procedure at that time. Further investigation was appropriate and the ACT procedure ought to have been initiated. It did not matter that the marks were superficial. Miss Gibb referred to the evidence given by David Douglas who indicated that when a prisoner was received into prison questions were asked regarding self harm. In his opinion prisoners would always let you know if they felt suicidal. Miss Gibb maintained that the answer to that question ought not to be relied upon.

In opposing this submission it was said that while Mary Gilfillan was principally looking for injuries which may have been suffered during the removal process she was also there to assess the mood of the prisoner. To her Allan Menzies appeared calm and relaxed. Communication was good as was eye contact. She had stated that if she had any concerns she would have initiated the ACT procedure. The marks witnessed by Mary Gilfillan were not evidence of self harm because, according to her, the scratching was so superficial. Mr Gillies went on to say that there was no evidence which could call this assessment into question. Allan Menzies was not

exhibiting indicators of low mood. What the witnesses saw at that time allowed them to conclude that the ACT procedure was not necessary.

Having considered this matter I concluded that there was an argument for suggesting that the assessment made of Allan Menzies was not as thorough as it could have been. Clearly the staff were concerned about the marks on his body when he was stripped and searched to the extent that they thought it necessary to seek a medical opinion. The assessment concentrated on these marks and there appeared to have been a lack of consideration of anything other than these marks. When asked about the scratch marks he said that these had happened a couple of days before as a result of an accident. He did not elaborate on this but if he had elaborated by saying that he himself had done it then Mary Gilfillan said that she would have asked further questions of him. There was no evidence led that he was pressed to explain what happened in this accident. The word of Allan Menzies was accepted in this regard. In addition whilst saying that he was calm and relaxed and that there was good eye contact and good communication Mary Gillfillan also stated, confusing the issue, that Allan Menzies was non verbal, shrugging when questioned. There was also the evidence that her interview with Allan Menzies may have been shortened because, she said, the officers just wanted to get Allan Menzies into his cell and to get their paperwork done. Moreover she could not recall asking Allan Menzies about his mood and she could not recall any talk of self harm. Old scarring that she saw on his arm she thought had come either from self harm or else from a fight. Again there was no evidence to suggest that this avenue was explored at the time.

Mary Gilfillan judged that these marks did not indicate self harm and she was not concerned by them. There was no reference to anything other than the marks. Having reached this conclusion neither nurse Gilfillan nor the staff considered initiating the ACT procedure.

In court Mary Gilfillan indicated that she stood by her decision although I concluded that the evidence upon which she based her opinion was lacking in fullness which was not her fault. This was indicative of an apparent rush by other staff to have Allan Menzies assessed, processed and put into his cell as quickly as possible. Again the staff were prepared to accept the word of a prisoner without making further investigation. No evidence was led which suggested that the staff present knew anything at all about the background of Allan Menzies or about previous suicide attempts. Evidence was heard that his personal manager from the NIC was not contacted to ask about his history. I concluded that some further investigation was required.

(g) Personal Officer

The thrust of Miss Gibb's submission under this heading was that the personal officer of Allan Menzies was changed approximately five weeks before his move from NIC. There was no member of staff who knew Allan Menzies well and who was in a position to monitor his behaviour during the process of his removal to the segregation unit. This was important as his behaviour then may have exhibited what David Douglas referred to in his evidence as "cues and clues" about a prisoner's state of mental health. Against this it was pointed out to me that while there may

have been some confusion as to who was the case manager once he was removed to the segregation unit there were still a number of members of staff involved with the care of Allan Menzies with a view to seeking a solution to his situation. There was no evidence that Allan Menzies had exhibited any of the cues or clues which David Douglas had spoken about.

I concluded that the submission of Miss Gibb must be repelled on this point. Allan McGrain was present when Allan Menzies was advised of the proposed move to B hall and found out about his later reaction. He was the personal officer assigned to Allan Menzies about five weeks previously and for sometime had been working in the NIC so knew him reasonably well. In addition to this Phillip Woodlock knew Allan Menzies and he too had dealings with him at this time. I concluded that there were persons present at the relevant times who were in a position to monitor his behaviour although their interpretation of the circumstances was suspect in that the ACT procedure ought to have been initiated.

(h) Appeal

In her final submission Miss Gibb recalled that following upon his conviction Allan Menzies had lodged an appeal which had not been dealt with by the time of his death. It had been suggested in evidence by Audrey Park that the question of an appeal was a matter considered when assessing whether a prisoner was to be moved out of the NIC. This was on the basis that sometimes prisoners had difficulty adjusting to a sentence until such times as their appeal had been dealt with by the appeal court. The inquiry had been told that the ethos of the NIC was to help prisoners adapt to their sentence yet, in the submission of the depute, this could not be gauged if an appeal remained outstanding.

If I understood this submission correctly then Miss Gibb was suggesting that either a prisoner ought to remain within the NIC until his appeal had been resolved or alternatively, in this case, the outstanding appeal had not been considered in assessing whether Allan Menzies was ready to move on. As I determined at an earlier stage the assessment of a prisoner ought to involve a number of matters which would include an outstanding appeal. It should not be the only criterion in deciding whether a prisoner should remain within the NIC. Since each prisoner was different it would not be possible to set a hard and fast rule that all prisoners should remain within the NIC while an appeal was outstanding. On the other hand I did not hear any evidence to suggest that in the case of Allan Menzies his outstanding appeal was considered before deciding to move him on but neither was there any evidence to suggest that his outstanding appeal was causing him any anxiety. In these circumstances I do not propose to make any findings on this matter.

I have therefore found that, for the reasons given above, the following facts were relevant to the circumstances of the death of Allan Menzies in terms of Section 6(1)(e) of the Act-

(a) The period of notice given to Allan Menzies of his removal from the NIC was inadequate.

(b) Rule 80 was not applied properly.

(c) The staff within the segregation unit ought to have made enquiries to find out if Allan Menzies had arranged a visit prior to his transfer.

(d) The assessment of Allan Menzies upon being admitted to the segregation unit was not as thorough as it ought to have been.