

SHERIFFDOM of TAYSIDE CENTRAL & FIFE

DETERMINATION

by

**ROBERT ALASTAIR DUNLOP, QC, Sheriff
Principal of the Sheriffdom of Tayside
Central and Fife following an INQUIRY held
at Dunfermline on 15, 16, 17, 18, 21, 22, 23
and 25 February and 3 March 2011 into the
death of**

COLIN MARR

DUNFERMLINE 21 April 2011. The Sheriff Principal, having considered all the evidence adduced, Determines:-

1. In terms of Section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, that Colin Marr, who was born on 18 January 1984, died on Tuesday 10 July 2007 in his home at 14 Johnston Crescent, Lochgelly, Fife at some point in time between 2015 and 2050 hours and that life was pronounced extinct at that latter time.
2. In terms of Section 6(1)(b) of the said Act, that Colin Marr's death was caused by a single stab wound to the chest inflicted by a knife, Crown label 2, which passed through the lower part of the sternum into the chest cavity, through the pericardial sac, into the septum of the heart, through the left ventricle and terminated in the pericardial sac.

3. In terms of Section 6(1)(e) of the said Act, that the following facts are relevant to the circumstances of the death:

3.1 Colin Marr and Candice Bonar were engaged to be married. They had a relationship extending over a number of years and had lived together at 14 Johnston Crescent, Lochgelly for about a year prior to Colin Marr's death.

3.2 During the period of his engagement to Candice Bonar Colin Marr had a relationship with another woman, Roxanne Burns. This relationship was alluded to by Roxanne Burns when she posted an online message on Colin Marr's Bebo social networking website. His profile on his Bebo site showed his status as "engaged", which was a status which had not been disclosed to Roxanne Burns during their relationship. The tenor of the message posted by her was that she could not believe that he (Colin Marr) was engaged and that she felt sorry for the girl he was engaged to.

3.3 At some stage in the three weeks leading up to the death of Colin Marr the message from Roxanne Burns was brought to the attention of Candice Bonar who questioned Colin Marr about it. He denied knowing anyone called Roxanne Burns and persisted in this denial right up to the day of his death, not only in conversation with Candice Bonar but also with others.

3.4 Candice Bonar carried out her own investigation to discover whether there was any truth in the suggestion that Colin Marr either knew or had had a relationship with Roxanne Burns. These investigations included an attempt to contact Roxanne Burns. She also discussed these matters with her friend Rebecca Aitchison who made her own enquiries and discovered that the suggestion appeared to be true. Rebecca Aitchison did not pass on that information to Candice Bonar at that time.

3.5 On Saturday 7 July 2007 Colin Marr and Candice Bonar attended a barbecue at the home of Rebecca Aitchison in Loanhead near Edinburgh. While at this event Candice Bonar was able to go online and accessed a message to her from Roxanne Burns which contained information tending to confirm that she

knew Colin Marr and that she had been involved in a relationship with him. Having seen this message Candice Bonar left the event without confronting Colin Marr and went to her parents' home in Ballingry where she stayed for that night and the next two nights. On that evening and over the ensuing days Colin Marr and Candice Bonar had a number of conversations in which Candice Bonar tried to elicit the truth from Colin Marr.

- 3.6 Colin Marr was concerned that the disclosure of his relationship with Roxanne Burns might threaten his relationship with Candice Bonar and he took steps to try and persuade her that there was no truth in the suggestion that he either knew or had had a relationship with Roxanne Burns. These steps included the creation of a false e-mail message to Candice Bonar purporting to come from Roxanne Burns stating that there was no truth in her earlier message to Candice Bonar. This message was sent on Monday 9 July 2007 at 1711 hours and read by Candice Bonar at some stage before visiting Colin Marr at 14 Johnston Crescent on the evening of Tuesday 10 July 2007. She suspected that it was a fake message. Colin Marr also contacted Roxanne Burns asking her to retract her allegations.
- 3.7 At 1116 hours on Tuesday 10 July 2007 Candice Bonar sent an e-mail message to a friend Samantha Braes in which she stated that she thought she believed Colin but still didn't know what to do. During the course of that day she told Colin Marr that she would visit him at Johnston Crescent that evening. She told Samantha Braes in a telephone call that she was going to see Colin that evening to sort things out.
- 3.8 Candice Bonar arrived at 14 Johnston Crescent at some unknown time after 1922 hours and before 2002 hours. At 2002 hours she telephoned Rebecca Aitchison. The call lasted 3 minutes and 50 seconds. In the course of their conversation Rebecca Aitchison informed Candice Bonar that she had spoken to a friend of hers, Jody Murray, who knew Roxanne Burns and that she had been told by Jody that the allegations about a relationship between Colin and Roxanne were true. At this point Candice Bonar began to cry.

- 3.9 Following this call Candice Bonar and Colin Marr had a heated verbal exchange during the course of which Candice Bonar took off her engagement ring and threw it to the floor of the kitchen, telling Colin Marr that their relationship was over. At some point Colin Marr attempted to prevent Candice Bonar leaving and either then or at some other point took hold of and gripped her arms above the elbow. At some point during this period Candice Bonar hit Colin Marr either on the head or the upper part of his body with her handbag.
- 3.10 At about 2013 hours Candice Bonar knocked at the door of her next door neighbour Craig Martin and then on the door of her neighbours across the street, the Emslie family. By the time Mr Martin answered his door Candice Bonar was returning across the street from the Emslies. She was upset and stated that Colin Marr had stabbed himself. She asked Mr Martin to call an ambulance. Candice Bonar was holding a mobile phone when she spoke to Mr Martin.
- 3.11 Mr Martin's partner, Ms Brogan, phoned for an ambulance and her call was put through to the ambulance service by the BT operator at 2014 hours and 37 seconds. Candice Bonar also called the emergency services on her mobile phone. The call was taken by the BT operator at 2013 hours and 37 seconds and was put through to the ambulance service at 2014 hours and 44 seconds. This call lasted 11 minutes and 41 seconds. Crown label 1 contains audio recordings of both emergency calls and Crown production 3 contains transcripts of them. An ambulance was despatched at 2015 hours and arrived at 14 Johnston Crescent at 2026 hours.
- 3.12 Immediately after speaking to Candice Bonar Mr Martin entered 14 Johnston Crescent followed by Mr Keith Emslie and his daughters, Karla and Ashley, and shortly thereafter by his wife, Ann. Mr Martin found Colin Marr lying face down with his head and body in the living room and his legs in the kitchen. Mr Martin and Mr Emslie turned him onto his back without moving him further into the living room. The resulting position of Colin Marr was as shown in photograph 10 of Crown production 28. The door on the left side of

the entrance to the kitchen (viewed from the living room) required to be opened to allow Colin Marr to be rolled onto his back. When placed on his back blood was visible on his shirt which was, at that stage, buttoned.

- 3.13 Karla and Ashley Emslie gave Colin Marr first aid. Candice Bonar was on the telephone to the ambulance service operator and passed on first aid instructions from her. At one stage Candice Bonar passed the phone to someone else and participated in the efforts to resuscitate Colin Marr. During the initial stages of this telephone conversation Colin Marr appeared to be still breathing but then started to turn blue and stopped breathing.
- 3.14 When Mr Martin first entered the living room, the knife, Crown label 2, was lying on the floor approximately in a position near the angle of the brown rug shown in photograph 3 of Crown production 28. In that position it was visible from the hall. Mr Emslie picked up the knife by its handle and moved it to a position to the right of the doorway from the hall into the living room as shown in photograph 7 of Crown production 28. The blade of the knife was bloodstained.
- 3.15 On arrival at 2026 hours the ambulance crew assessed the condition of Colin Marr and their findings are recorded on the Patient Report Form which is part of Crown production 5. In particular they recorded “? Cheyne stoking on our arrival although unable to palpate pulse. Full CPR protocol carried out, no response from patient.” By the expression “? Cheyne stoking” they intended to indicate the possibility that Colin Marr may have been at the point of death just as they arrived. They issued a Declaration of the Fact of Death form which also forms part of Crown production 5 and in which the time of death is recorded as 2050 hours.
- 3.16 After he received the fatal wound Colin Marr could have moved around, spoken and acted voluntarily for a period of time ranging from a few seconds to a few minutes before collapsing. After collapsing it would be expected that he would lose consciousness, that he would start to turn blue and that he would die within a few minutes.

- 3.17 Colin Marr took an unknown quantity of cocaine at some time in the two days before his death. On the date of his death he appeared quieter than normal and withdrawn into himself. He was significantly concerned about the possibility of Candice Bonar breaking off their relationship. He had no known history of psychiatric or psychological illness or disorder.
- 3.18 The post-mortem examination identified “recent trivial abrasions” to the left and right forehead with “no underlying bruising or deeper injury.” The location and dimensions of these injuries are more fully described in the Post-Mortem report, Crown production 12. There were no defensive or tentative wounds on Colin Marr’s body.
- 3.19 PC Michelle Murray arrived at 14 Johnston Crescent at 2020 hours and saw Candice Bonar standing beside the front door. She was distressed, upset and crying and at times hysterical. She said to PC Murray that her partner had stabbed himself and referred to him as a “silly bugger” or “silly bastard.” She also said “he’s been cheating on me”. All these comments were repeated on more than one occasion in the hearing of others.

NOTE:

1. Introduction

- 1.1 In this inquiry the Crown was represented by Mr Clancy QC, Advocate Depute ad hoc. The mother of the deceased, Mrs Graham and her husband Mr Graham, were represented by Mr Sneddon, Solicitor of Basten Sneddon, Dunfermline. The father of the deceased, Mr Allen Marr, appeared on his own behalf. Dr. Brooks-Lim was represented by Ms. Donald, Solicitor of Brechin Tindal Oatts, Edinburgh. Fife Constabulary was represented by Mr Munro, Solicitor, Fife Council. Candice Bonar was represented by Ms. Glancy, Advocate, instructed by Ross & Connel, Dunfermline.

- 1.2 The progress of the inquiry was greatly assisted by the holding of a number of preliminary hearings and by the Crown's preparation of a draft scope of the evidence which it intended to lead. This in turn enabled parties to identify what they saw as the contentious issues in the inquiry leaving much of the uncontroversial evidence to be agreed in two joint minutes. Two matters which were thus agreed were firstly that Colin Marr died on 10 July 2007 at 14 Johnston Crescent, Lochgelly, Fife of a single stab wound of the chest and, secondly, that the fatal wound was inflicted by a knife which was produced as Crown label 2.
- 1.3 In a list of contentious issues the parties identified the central issue in the inquiry as being whether the wound which killed Colin Marr was self-inflicted or whether it was inflicted by Candice Bonar. Although that manner of expression does not exclude some innocent explanation the clear inference which one is invited to draw is that, if inflicted by Candice Bonar, there has been the commission of a crime – an inference which was perhaps reinforced by the Crown's invitation to me to administer a warning to the witness that she need not answer any question tending to show that she was guilty of any crime or offence. On any view this is an unusual issue to be raised in the context of proceedings of this nature.

2. The Legal Framework

- 2.1 The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 provides that a public inquiry may be held into the death of any person where "it appears to the Lord Advocate to be expedient in the public interest ... that an inquiry under this Act should be held into the circumstances of the death on the ground that it was sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern ..." (Section 1(1)(b)).
- 2.2 In the Crown's draft scope of the inquiry it was stated that it appeared to the Lord Advocate that it was expedient in the public interest to hold an inquiry because of the suspicious circumstances in which the death occurred. It was then stated that the State had certain obligations under Article 2 of the European Convention on Human Rights and Fundamental Freedoms to take reasonable steps to ensure an effective investigation into the circumstances of the death of Colin Marr and that the Crown considered that the

proceedings will assist in the discharge of those obligations. My impression was that that was an important consideration informing the Lord Advocate's decision. At the same time the Crown recognised that the purpose of the inquiry was to examine the circumstances of the death and that it was not directly concerned with the question whether the Crown had met its obligations under Article 2 of the Convention. It appears that the family of Colin Marr had reservations about whether his death had been properly investigated but it seemed to be accepted that that was not within the proper scope of an inquiry such as this having regard to the provisions of section 6(1) of the Act. In my view that is plainly so.

2.3 It is of course a matter for the Lord Advocate in the exercise of her discretion to consider whether an inquiry should be held but I am bound to say that, in the circumstances of the present case, it seems to me doubtful whether an inquiry was ever likely to contribute anything useful to the discharge of the State's obligations under Article 2 of the European Convention. It should not be forgotten that the scope of any inquiry will primarily be informed by the circumstances which the procurator fiscal has identified as relevant following the investigation he or she is required to carry out in terms of section 1(1) of the 1976 Act and in light of his or her duty to adduce evidence with regard to those circumstances. In large measure therefore it is to be expected that an inquiry will reflect the investigation already undertaken by the Crown and in the present inquiry that has proved to be the case.

2.4 At one of the preliminary hearings the Crown referred to a decision of Lord Malcolm in a petition of *Ivy Niven* for judicial review of a decision of the Lord Advocate to refuse a request for a fatal accident inquiry (2009 CSOH 110) in which he helpfully reviewed the jurisprudence of the European Court amongst others on the procedural obligations under Article 2 of the European Convention on Human Rights. I gratefully adopt his analysis of this jurisprudence. Article 2, when read along with Article 1, obliges the contracting states to ensure that everyone's right to life is protected by law. It is now well established that this implies certain procedural safeguards, including a duty to carry out an effective investigation whenever the circumstances of a death so require. Such a duty is engaged when an unnatural or suspicious death occurs although it is clear from the case law that the content of the state's obligations in this regard depends on the particular facts of the case. The obligation to investigate is "one of means, not result" –

thus a failure to achieve a conviction or obtain answers does not automatically lead to non-compliance with Article 2.

2.5 As Lord Malcolm puts it at paragraph 56 of his opinion, “the state fulfils its more general obligations to abide by and promote the terms of Article 2 by instituting and operating an appropriate framework of laws and law enforcement institutions. The state is obliged to provide mechanisms whereby the criminal, disciplinary or civil responsibility of persons who may be held answerable for a death can be established.” There may be circumstances which trigger the need for a heightened intensity or level of investigation, as for example where the state is in some way involved in or is responsible for the death, either directly or indirectly, but there is nothing in the circumstances of the present case which would suggest that anything of that sort is required. Lord Malcolm explicitly rejects the notion that a fatal accident inquiry is required in all cases where previous investigations have failed to explain the circumstances of a suspicious death (paragraph 68). In relation to the circumstances of the case before him he states (at paragraph 74) that the “case law demonstrates that ... the application of the state’s general machinery for respecting and protecting human life, for example appropriate prohibitions in the criminal law and the operation of a suitable criminal justice system, are likely to be sufficient.” It seems to me that such a comment is apt in the circumstances of the case now before me. As part of the state’s general machinery for respecting and protecting human life the Crown exercises an independent function in investigating suspicious deaths and having done so I question whether the holding of an inquiry was necessary for compliance with the procedural requirements of Article 2. Furthermore, it seems from the evidence, including the documentary evidence, that the family of Colin Marr were kept informed of the progress of the investigation and to some degree were engaged in it since it appears that they suggested certain lines of enquiry (see for example the evidence of DI Seath and supplementary report from Dr Black, Crown production 24).

2.6 Of course, if there has been an inadequate investigation, there may have been a failure to satisfy the Article 2 obligation but it is not clear in the circumstances of this case how an inquiry might assist in rectifying that position. There may be gaps in the evidence which might otherwise have been available and relevant to those matters with which the inquiry is concerned but which cannot now be filled. In such circumstances however

any inadequacy will not be made good simply by holding an inquiry and, as I have already noticed, in my opinion an inquiry under the 1976 Act is not a proper vehicle for examining, at least directly, any deficiency in the investigation since that is a matter outwith the focus of section 6(1) which is the circumstances of the death itself.

- 2.7 It seems to me doubtful therefore that the need to comply with the Article 2 obligation was sufficient reason by itself for the holding of this inquiry and without that consideration the public interest in holding an inquiry seems to me less clear, particularly when there are no wider issues such as those to which sections 6(1)(c) and (d) are directed. I entertain considerable reservations therefore about whether such a stark issue as that identified as the “central issue” in this case ought to be considered at an inquiry under the 1976 Act. In saying this I observe that the Crown offered no submission as to what determination might be made on that central issue in light of the evidence led and, while I am grateful for the considerable assistance afforded by the advocate depute throughout the inquiry, his seeming discomfort at being asked to address this question and his unwillingness ultimately to suggest an answer point up the unsatisfactory nature of the decision to submit such an issue for determination at all. Although this inquiry is not about guilt or innocence of a crime, the way that the central issue has been framed invites a determination which in the minds of the public may well be indistinguishable from a finding of guilt or innocence and that on a balance of probabilities only. We have a system of criminal justice which is intended to deal with such questions. In that system the Crown has the responsibility for determining whether or not criminal proceedings are instituted and a key component of any such decision is the question whether there is sufficient evidence to prove guilt beyond reasonable doubt. On the reasonable assumption that the evidence led at this inquiry represents the full extent of the information which the Crown has been able to discover, there is plainly insufficient evidence to mount any criminal prosecution and of course none has been launched. But that does raise the question whether it is really appropriate to invite the court to make a determination about a matter so closely connected with issues of guilt or innocence of a crime on some lesser standard of proof. While recognising that this is a matter for the Lord Advocate, I would nevertheless be concerned if the request for an inquiry in this case indicated an emerging inclination to ask the court to adjudicate on issues which ought more appropriately to be considered within the context of the criminal justice system, in which, of course, suspects are presumed innocent until

proved guilty beyond reasonable doubt and the Crown has a particular responsibility for deciding whether there is a sufficient basis in evidence to demonstrate such guilt.

2.8 In making these observations I have not overlooked the five judge decision in *Mullan v Anderson* 1993 SLT 835 to which the Crown referred. In that case a civil action for damages had been raised by a widow and her children against the man who had been acquitted of the murder of her husband. The averments made by the family of the deceased amounted to an allegation that the defender had murdered the deceased. The case was primarily concerned with the question whether the action, which had been raised in the sheriff court, should be remitted to the Court of Session but in the course of the judgments it was stated that the standard of proof was on a balance of probabilities. On that authority therefore it might be suggested that there is nothing untoward in the Lord Advocate seeking an inquiry in which the issue of criminal conduct may be judged on a similar standard of proof. It seems to me however that the context of that case is different, not least in the identification of the party pursuing the action but also in the purpose which it sought to achieve. In circumstances however in which the Lord Advocate presumably accepts that guilt of a crime beyond reasonable doubt cannot be demonstrated, is it right that she should initiate an inquiry which may result in Candice Bonar in effect being branded as having committed a homicide on some lesser standard of proof than that which the Crown would normally be expected to satisfy in bringing home guilt to any individual of such a crime? I would suggest not.

2.9 Having made that point, I recognise that, rightly or wrongly, the Lord Advocate has deemed it expedient in the public interest that an inquiry should be held and in these circumstances I have no alternative but to apply myself to the requirements of section 6 of the Act. Section 6(1) of the Act provides:-

“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.”

2.10 Plainly sections 6(1)(c) and (d) have no relevance and I need say no more about them.

In relation to section 6(1)(a) the evidence is uncontroversial and poses no difficulty. My determination in this regard speaks for itself. Section 6(1)(b) is the question which poses the most difficulty and the remainder of this note will largely concentrate on that. In that regard, I have already alluded to the fact that the standard of proof which I require to apply is proof on a balance of probabilities. No issue was taken with that proposition. It is also important to emphasise that the function of the court is to undertake a detached and objective consideration of the evidence with a view to establishing on a balance of probabilities what that evidence points to. In this respect the position is no different from the position in any civil litigation.

2.11 In parenthesis I should refer to the fact that on a number of occasions the memory of a witness was prompted by reference to a prior statement which had been given to the police. In some instances a particular passage in such a statement was adopted as the oral evidence of the witness and to that extent the statement becomes evidence in the inquiry. However there were other parts of the statement which were not referred to and these parts do not become part of the evidence which I am entitled to consider. The court is not entitled to speculate about whether other circumstances might exist which have not been raised in the evidence or whether there is other evidence which was not led which might cast a different light on matters. Rather the task for the court is to consider the evidence which has been led and to reach a conclusion, **if it can**, as to what that evidence demonstrates so far as concerns the particular matters set out in section 6(1), recognising that the evidence may not be sufficient to satisfy the court that there is any clear conclusion that can be reached. Insofar as any finding in fact can be made however it must not be forgotten that such a finding in fact is a finding on a balance of probabilities only.

2.12 With these introductory remarks I turn to address the evidence relevant to the issues raised under section 6(1)(b).

3. The Pathology Evidence

- 3.1 I heard evidence from no less than seven witnesses qualified in the field of pathology, some of whom were only first involved in 2009, apparently following a decision by the Crown to carry out further investigations. Dr Brooks-Lim was the pathologist who carried out the post-mortem examination of Colin Marr and Dr Sadler was her supervisor at the time. Professor Pounder was the head of their department and was involved in the further investigation. Professor Green was initially approached by Colin Marr's mother but then instructed by the Crown to prepare a report on the circumstances of the death from a review of case papers provided to him. He also considered a report from the National Injuries Database which is a medium for gathering reports from Home Office pathologists of unusual injuries encountered in their work. Reports were also commissioned from Professor Busuttil, Dr Black and Dr Leadbetter. The latter carried out a review of the medical literature relating to self-inflicted stabbing. Dr Black carried out a review of the case files from the Department of Forensic Medicine, Glasgow from 1995 to 2009. On any view there has been an exhaustive investigation of the circumstances of the death from a pathological point of view.
- 3.2 The findings of Dr Brooks-Lim, who carried out the post-mortem examination of Colin Marr, are contained in a report, Crown production 12. There is nothing in the evidence to suggest that this post-mortem examination was not carried out in a proper and competent manner. A question arose about the precise meaning of the description in the report of the wound track passing through the "inferior border of the body of the sternum" (page 7 of the report). However this was elaborated upon by Dr Brooks-Lim in her oral evidence under reference to a sketch, Crown production 34, which showed that the full breadth of the blade of the knife passed through the body of the sternum with the squared edge of the knife very close to if not actually impinging on the edge of the body of the sternum.
- 3.3 In my view, if there is any lingering question mark over the precise track through the sternum, it is immaterial since the evidence from the pathologists was all to the same effect, namely that, in either case, a significant or considerable degree of force would have been required to inflict this wound. I accept that view. In similar vein all the

pathologists accepted that it was possible for Colin Marr to have exerted that degree of force so as to stab himself and to have removed the knife from his body having done so. No one suggested that it was anatomically impossible that the wound was self-inflicted.

- 3.4 On the central issue of whether the pathology evidence helps to determine whether or not the fatal wound was self-inflicted the weight of evidence clearly supports the view that it does not. The proposition that one cannot tell from the pathological evidence alone whether this was a case of suicide or homicide was explicitly accepted by Dr Brooks-Lim, Dr Black, Professor Pounder and Dr Sadler. In her report, Crown production 23, Dr Black stated:

“... the injury sustained would be consistent with a suicidal stab wound, but on pathological grounds homicide cannot be excluded as the findings would also be consistent with such a scenario. Whether such cases are suicide or homicide can only be determined after a full police and forensic investigation of the circumstances of the incident including evaluation of forensic evidence and the veracity of witness statements.”

- 3.5 This was a statement with which Professors Green and Busuttil also both agreed, although in each case they clearly inclined more to the view that this was a case of homicide. Professor Green stated in his report (Crown production 21) “My subjective view is that homicide is much more likely than self-infliction. I cannot exclude self-infliction completely but would be very reluctant to accept it.” In his oral evidence he retreated from the view that it was “much” more likely to be homicide but nevertheless adhered to the view that it was homicide on a balance of probabilities, while declining to offer any view on the degree of probability. The factor which seemed to carry most influence with him in reaching this view was the degree of force which would have been required to inflict the fatal wound. His assessment in that regard was informed at least in part by his own failed attempts at producing “transfixion injuries on isolated fresh sternums using a standard mortuary autopsy knife” from a distance of 15-20 centimetres (see page 12 of his report Crown production 21). His final position was one of “cautious suspicion” and a “subjective” preference for homicide.

- 3.6 The evidence of Professor Busuttil was more confusing. In his report (Crown production 19) he concluded that it was “highly unlikely” that the fatal wound was self-inflicted. He modified this position in his oral evidence but his resulting position was by no means consistent throughout his evidence. So, for example, in examination in chief he acknowledged that it was possible that the wound was self-inflicted and that it was also possible that it was inflicted by another and then stated - “Where we lie between the two I can’t make up my mind.” Under cross examination by Mr Sneddon he stated that he thought it unlikely that the wound was self-inflicted and yet under cross examination by Ms Glancy seemed to move in the opposite direction when it was put to him that there was no fingerprint from Candice Bonar found on the knife or any evidence of blood on Candice Bonar’s clothing. In re-examination he appeared to settle on a slight preference for homicide but with the comment “I cannot really tell.”
- 3.7 As part of this discussion consideration was given to the review of the medical literature carried out by Dr Leadbetter and some at least of the cross-examination was directed to the question whether anything could be inferred from the presence or absence of particular factors so far as concerned the central issue whether this was a case of homicide or a self-inflicted wound. Such factors included for example the fact that the clothing was not pulled aside, the absence of tentative wounds and the absence of any mental disorder, all of which it was suggested might point away from suicide. On the other hand the absence of defensive wounds and the fact that the fatal wound was horizontally aligned might suggest that this was not a case of homicide. In the final analysis however Dr Leadbetter was unable to draw any helpful conclusion from the literature reviewed and nor can I. There was a degree of consensus that suicidal single stab wounds to the chest are rare but Professor Green confirmed that that fact tells you nothing about whether the wound in any particular case was or was not self-inflicted. In similar vein Dr Black stated that her review of her department’s case files did not assist in distinguishing homicide from suicide. She did however describe Colin Marr’s death as being “at the more unusual end of the spectrum in suicidal deaths.”
- 3.8 Other findings of relevance at the post mortem examination were the two injuries to the forehead, which, according to Professor Pounder, were not explicable from a single fall. A number of possible causes for these injuries were discussed, including a fall to the carpet or a blow from a handbag or contact with the bracelet worn by Colin Marr at the

time of his death. However these explanations are essentially speculative and Professor Pounder stated that he could draw no helpful conclusion from them. In these circumstances I do not feel able to make any finding in fact about the cause of these injuries, although it should be noted that Candice Bonar described Colin Marr as falling to the ground in a manner in which his forehead might well have impacted the carpet and also spoke to having struck him with her handbag in the general area of his head or shoulders, although she was unable to say precisely where.

- 3.9 Looking to the pathological evidence as a whole therefore I am satisfied that there is no objective basis for determining from that evidence alone whether this wound was self-inflicted or inflicted by another and in my view the passage from Dr Black's report to which I have referred above fairly summarises the position. It seems to me that Professor Green's use of the word "subjective" is telling and enables some reconciliation of his acceptance of this passage from Dr Black's report with his obvious preference for homicide. I shall return to this at a later stage of my analysis.

4. The Fingerprint Evidence

- 4.1 Much of the fingerprint evidence was a matter of agreement and the Joint Minute sets out the particular areas of agreement. Oral evidence was taken from four witnesses experienced in the identification of fingerprints, namely Christopher Heath, Paul Deacon, James Aitken and Allan Bayle. A single partial fingerprint was found on the side of the handle of the knife (Crown label 2) which inflicted the fatal wound. Elimination prints were taken from, among others, Keith Emslie, who had handled the knife, and Candice Bonar. No fingerprints were taken from Colin Marr prior to his body being cremated. However a number of impressions were lifted from items which had belonged to Colin Marr and were believed to have been touched by him. These impressions were compared with the fingerprint on the handle of the knife and a match was found. While it cannot be stated conclusively that the impressions made on the items believed to have been touched by Colin Marr were indeed made by him I am satisfied that they probably were and that one can therefore conclude that the fingerprint impression found on the handle of the knife was made by Colin Marr. The fingerprint officers were able to exclude the fingerprint on the handle of the knife as having been made by either Keith Emslie or Candice Bonar.

- 4.2 The fingerprint on the handle of the knife was probably from either the middle or fore finger of either the right or left hand of Colin Marr. It was not possible to say which of these alternatives was the more likely. In the final analysis none of the fingerprint witnesses was able to say with any degree of probability how or when this fingerprint impression was left. Mr Deacon sought to establish how the print could have been made if it was placed there by Colin Marr at the time the fatal wound was inflicted. With the aid of a model of the knife used he suggested that the fingerprint could have been applied by holding the knife in the right hand in a “dagger” hold with the blade pointing towards the body and the fingers curling round the handle in a grip. In that orientation the blade of the knife would have been in a position consistent with that required to produce the shape of the incision found in the sternum at post mortem examination. While this explanation was persuasively set out, in my view it is too speculative to warrant any finding in fact that that was indeed the manner in which the fingerprint impression came to be left. Mr Deacon effectively conceded that point when he acknowledged that the impression could equally have been left at some other time and the uncertainty of the position was echoed by all the other witnesses who gave evidence on this matter.
- 4.3 Mr Bayle maintained that the amount of pressure used to deposit the fingerprint impression was that of a light to normal touch, the suggestion from Mr Sneddon being that this was inconsistent with the sort of grip that would have been needed to exert the force necessary to inflict the fatal wound. That conclusion was not supported by the other witnesses who gave evidence on this matter and Mr Deacon in particular thought it would be necessary to have some control prints, without which it would not be possible to say what was “normal” pressure. He also referred to studies which he had carried out which suggested to him that this was a complex area in which the approach suggested by Mr Bayle could not be adopted without some robust study independently validated. It was clear from Mr Bayle’s own evidence that his claimed expertise in identification of fingerprint pressure is not currently accepted in this country although it may be elsewhere. There is currently no accepted and validated methodology for measuring fingerprint deposition pressure and in these circumstances, while Mr Bayle may be at the cutting edge of an emerging new expertise, I do not consider that I can safely place any reliance on his evidence on this matter.

4.4 The fingerprint witnesses all accepted that the knife could have been handled without any fingerprint impression being left. Self evidently that was the case with Keith Emslie who had moved the knife after he came into Colin Marr's house. The fact that Candice Bonar's fingerprint was not on the handle of the knife therefore does not exclude the possibility that she inflicted the fatal wound. The question was raised whether the handle of the knife had been wiped or washed but none of the witnesses saw any evidence that that had occurred and the weight of opinion was that it had not. The question was also raised whether, had the fingerprint impression on the handle been left at some earlier stage, one might have expected to see some smudging of the print by subsequent handling. The weight of evidence was that this might be expected but that there were exceptions which depended on a variety of different factors. It was acknowledged that there was no way of saying whether this case involved one of those exceptions. In this state of the evidence I agree with the submission of the advocate depute that the fingerprint evidence is essentially neutral so far as concerns the central issue in the inquiry.

5. Other Forensic Evidence

5.1 Clothing worn by Colin Marr at the time of his death and clothing worn by Candice Bonar were subjected to forensic examination by forensic scientists Susan Ure and Lee Cowie. The report of this examination (Crown production 15) was agreed to be true and accurate. With the exception of a small stain of her own blood on her left trainer shoe, no blood was found on the clothing of Candice Bonar. The knife (Crown label 2) was also examined and blood staining was found from the tip to midway along both sides of the blade. There does not appear to have been any blood on the handle. In their report the forensic scientists state that in their experience, in cases where a single stab wound has occurred, it is rare to find a transfer of blood from the injured individual to an accused or witness to the event. They conclude that the absence of blood on the items taken from Candice Bonar was therefore neutral. This seems to me to be a reasonable conclusion particularly as the other eye witness evidence suggests that there may not have been a significant amount of blood shed in any event.

- 5.2 Evidence was given by Samantha Braes who saw what she took to be blood when she went with Candice Bonar to the house several days after the fatal incident. She thought this was on the door between the living room and kitchen but described the colour of the surface on which she saw it as white. That would suggest that she was mistaken about the blood being on the doors as they were coloured brown. She accepted that it might have been the ceiling. Evidence was also given by James Bonar that he had visited the house at 14 Johnston Crescent “a good few weeks” after the fatal incident and saw what appeared to be signs of blood having spurted onto the ceiling at a point above the double doors between the living room and kitchen. He described it as a line of spots of blood about four feet in length and similar in the appearance to that which one would find if one flicked a paint brush. Mr Bonar cleaned this up and it was never subjected to forensic examination.
- 5.3 Crown production 33 is an agreed statement by Lee Cowie in which he discusses the various possibilities which might explain how blood could have got on the ceiling. He states that, on the assumption that what is on the ceiling is blood, and that it is from the fatal incident in question, the most plausible explanation is “cast off”, that is to say blood that has been transferred by centrifugal force off an item or hand resulting in spots in a line. He goes on to state however that the presence of blood on the ceiling is neutral in determining whether the fatal wound was self-inflicted by Colin Marr or inflicted by another.
- 5.4 The reality is that one does not even know whether what was seen by James Bonar and Samantha Braes was indeed blood and, if it was, how it came to be deposited there. In the final analysis any finding based on this evidence would be entirely speculative. In my view it casts no useful light on the central issue in the case.

6. Events preceding the Fatal Incident

- 6.1 There seems little doubt that the circumstances of Colin Marr’s relationship with Roxanne Burns and the disclosure of that relationship to Candice Bonar provide the essential context in which the fatal incident was set. In paragraph 3 of my determination I have sought to make findings in fact which capture the essence of that context and

many of these findings are uncontroversial and require no further elaboration. There are however a number of specific issues which deserve particular mention.

6.2 The first of these is the nature of the relationship between Colin Marr and Candice Bonar and the inferences which can be drawn from that relationship. There was evidence from Margaret Graham which suggested that Candice Bonar was “high maintenance” and that she always wanted to get her own way, shouting at Colin Marr at the least little thing. She also referred to the fact that they had had their difficulties in the past and had on one or more occasions split up. Chris Marr described a period when their relationship was volatile and that there were occasions when Candice Bonar would “roar at Colin over something trivial.” On the other hand both witnesses acknowledged that for the most part they were a loving couple and had a good relationship. While there may have been a difference of emphasis, Samantha Braes spoke in not dissimilar terms and Candice Bonar also conceded that there were arguments between them and that she probably did get her own way. On the other hand she stated that they had a very loving relationship and that she viewed him as her best friend.

6.3 This assessment seems to me credible and reliable. While the relationship may have had its ups and downs it was essentially a loving relationship to which each was committed and the seeming procrastination of Candice Bonar in deciding what to do in face of the evidence of Colin Marr’s apparent infidelity in my view supports that conclusion. Her inability to resolve the tension between her natural inclination and desire that the relationship should not founder with her unwillingness to countenance a continuation of the relationship if the allegation was true was in my view genuine and is a relevant context for the events of 10 July.

6.4 The fact that there had been a prior occasion of infidelity, which had precipitated a separation, would have left Colin Marr in no doubt about what might be the consequences of any repetition of such behaviour quite apart from the fact that, according to Candice Bonar, she had told him that if he did anything like that again she would not be back. The evidence of Colin Marr’s fellow employees plainly supports the view that he was only too well aware of the possible consequences and that he was significantly concerned that they might come to pass. His colleague, Lee Williamson, gave evidence that on the day of his death, in marked contrast to his normal demeanour,

he was “very, very quiet; very withdrawn into himself.” I found that evidence particularly compelling and it gives a clear indication of the extent of his concern. But that concern also reflects the reality of how he viewed Candice Bonar. Lee Williamson gave evidence that he spoke of Candice Bonar all the time and absolutely adored her. In similar vein another co-worker, Marjorie Moffat, stated that he loved her very much, that he thought she was wonderful and was proud of her and that these feelings were reciprocated. In a conversation with Samantha Braes on the evening of Monday 9 July Colin Marr told her that he missed Candice and wanted her home and that life was not worth living without her. While I do not interpret this last statement as indicating any intention to take his own life nevertheless I think it illustrates the depth of his feeling for Candice Bonar and the anxiety that he felt at the prospect of his relationship with her ending. I have no reason to doubt the authenticity of these expressions of feeling. Some slight support for his anxiety is also found in his apparent use of cocaine on the evening of Sunday 8 July. It has no greater significance however and in particular cannot be implicated as a contributory factor in the fatal incident.

- 6.5 The second issue which merits specific mention is the timing and sequence of events between Candice Bonar’s arrival at 14 Johnston Crescent and the raising of the alarm at about 2013 hours. As the advocate depute pointed out, there is no clear evidence as to when Candice Bonar arrived at the house and she herself was unable to be specific about that time, although in her first statement to the police she said that she had arrived at 7.30pm. I think it reasonable to assume that it was at least after 1922 hours, which was when Colin Marr called her mobile. If one then goes to the other end of this period one can get a fixed point of reference from the evidence of the BT and ambulance records which show that Candice Bonar and Ms Brogan made almost simultaneous calls to the emergency services at about 2014 hours. This is in line with the summary of telephone records compiled by the police (Crown production 1) which show that Candice Bonar initiated a call to the emergency services on her mobile phone at 2013 hours and 37 seconds. The evidence from Craig Martin was that his partner Ms Brogan had heard what Candice Bonar had said when she knocked on their door and that she phoned for an ambulance straight away. This would put the time at which Candice Bonar knocked on his door at about 2013 hours and is consistent with Craig Martin having seen Candice Bonar on her phone at that time.

6.6 It is clear that both Craig Martin and Keith Emslie went to the house at 14 Johnston Crescent more or less immediately they were alerted to something being wrong. They found Colin Marr lying on his front in the doorway between the living room and kitchen. Craig Martin stated that they had to open one of the double doors before they could roll him on to his back which they did. While the direct evidence of the witnesses is not entirely clear on the condition of Colin Marr at that time, the audio tape recording of Candice Bonar's contact with the ambulance service (Crown label 1) casts some light on that matter. At the initial stages of the recorded conversation Candice Bonar was apparently outside the house but went in at the request of the operator. Once inside she tells the operator that "he's going blue". In response to the operator's question whether Colin Marr is still breathing she apparently asks the others whether he is breathing before replying that he is. She then confirms that he is breathing. A short while later the operator gives her instructions on what to do and it is apparent that she is relaying this information to others in the room. At one point she refers to them turning him over and then relays an instruction not to put him on his side but to lay him flat on his back. At a later part of the conversation she relays an instruction to put an ear to his mouth to see if they can feel or hear any breathing and reports back that he is still breathing. Seconds later Candice Bonar says "he's stopped breathing" and then "he's breathing too slow" and then after passing over the name of Colin Marr to the operator she states that she can hear the ambulance arriving and then "that's them saying that he's stopped breathing now."

6.7 While I recognise that there is room for misinterpretation of what is going on during the period of this recording, it does suggest that Colin Marr was still breathing for at least some time after Craig Martin and Keith Emslie entered the room and that he may only have ceased breathing not long before the ambulance arrived. In their report form the ambulance crew recorded the possibility that there had been "Cheyne Stoking" on their arrival, by which they intended to indicate the possibility that Colin Marr may have been at the point of death just as they were arriving, and this would seem to be consistent with what was apparently observed and reported to the ambulance operator on the telephone.

6.8 When one sets that evidence against the expected timeline spoken to by a number of the pathologists regarding the period between the infliction of the wound and Colin Marr's death (finding in fact 3.16) it is in my view unlikely that there was any delay between

the infliction of the wound and Candice Bonar raising the alarm with her neighbours. Furthermore it points strongly to the likelihood that Candice Bonar's telephone conversation with Rebecca Aitchison preceded the infliction of the fatal wound quite apart from the fact that it is difficult to imagine that she could have had that conversation without betraying any emotion had the fatal wound already been inflicted. That telephone call started at 2002 hours and 51 seconds and lasted 3 minutes and 50 seconds so there was a gap of about six or seven minutes between the end of the call and the first 999 call. That sort of gap seems to me consistent with the evidence of Mrs Scott in the flat above 14 Johnston Crescent. She heard raised voices in the flat below and thought they were arguing. This went on for a few minutes. She then heard a thud and nothing else before she heard a commotion outside in the street which turned out to be Candice Bonar screaming. Mrs Scott then saw two people run in to the house. She was unable to say how long it was between hearing the thud and the commotion outside but described it as not long.

6.9 In my view this all lends support to a sequence of events in which Candice Bonar received confirmation of the truth of the relationship between Colin Marr and Roxanne Burns in her telephone conversation with Rebecca Aitchison, that she again challenged Colin Marr about that relationship and that there was then a verbal exchange with raised voices which Mrs Scott interpreted as an argument, after which there was a thud, consistent with Colin Marr falling to the ground. On that hypothesis the telephone call was the catalyst for what then ensued. In itself however it tells one nothing about how the fatal wound was inflicted.

6.10 In his closing submission Allen Marr attached importance to the question of Candice Bonar's purpose in going to 14 Johnston Crescent that evening and pointed to the apparently inconsistent accounts given by her in this regard. He questioned whether the phone call to Rebecca Aitchison had really precipitated the confrontation to which Candice Bonar referred. He suggested that Candice Bonar knew for certain that the allegation of infidelity was true when she read the e-mail message from Roxanne Burns at the barbecue on 7 July 2007 and that the telephone conversation with Rebecca Aitchison very shortly before the fatal incident gave her no information which she did not already have. From these circumstances he argued that Candice Bonar went to the

house in Johnston Crescent on the night of Colin Marr's death "with the mood and the motive to confront Colin, not to patch up their relationship and move back in."

6.11 In his closing submission Mr Sneddon made a similar point, suggesting that the original plan had been for Candice Bonar to take their dog up to 14 Johnston Crescent to see Colin Marr and that she was then going out at 7pm. This was supported by evidence of an e-mail message from Candice Bonar to Colin Marr sent at 1241 hours. It was suggested that Candice Bonar had then become aware of the false e-mail message purportedly sent by Roxanne Burns and that this had prompted a change of plan so that Candice Bonar had gone to the house to confront Colin Marr about this, having already had a conversation with Chris Marr in which she had accused him of having a hand in this deception.

6.12 I accept that there are certain inconsistencies in the accounts given by Candice Bonar on these matters but I am not persuaded that this necessarily supports the inference of mood and motive suggested by Mr Marr and Mr Sneddon. In the first place that suggestion seems to me inconsistent with Candice Bonar apparently putting a chicken in the oven for supper. Although that evidence came from Candice Bonar herself nobody took issue with that evidence and it seems unlikely that it is something she would have made up. In the second place, it is inconsistent with the e-mail message sent to Samantha Braes on the morning of 10 July stating that she thought she believed Colin but still didn't know what to do. Unless that message was a cynical attempt at a smokescreen, and albeit displaying a degree of further procrastination, it seems to me to reflect a genuine desire that their relationship should not founder and a hope that the allegation was untrue notwithstanding appearances. In any event, whatever her true intentions in going to the house that night, I think it likely that she still wanted clarity and, according to her own evidence, she had discussed with her mother the need to check other sources of information before finally deciding to move back in. That account is consistent with what she said when first interviewed by the police on the night of the incident. I am not inclined therefore to attach any sinister motive to her making a call to Rebecca Aitchison, given that she had discussed the matter with her and was aware that Rebecca knew someone who in turn knew Roxanne. The information she received during this phone call may not have added anything to what she already knew but it seems reasonable to conclude that she would have viewed it as at least corroborative of what

she already knew. It plainly had an effect on her because, according to Rebecca Aitchison, she started to cry during the course of the call. I found the evidence of Rebecca Aitchison in this regard quite telling and it seems to me entirely plausible that it was this telephone call which precipitated the verbal exchange between Candice Bonar and Colin Marr to which I have already referred. Furthermore, the fact that Colin Marr had spoken to his mother on the phone at 1953 hours and gave no indication of anything being wrong supports the view that it was the telephone call with Rebecca Aitchison which set in train the altercation which ultimately ended with the fatal incident. I consider this a more likely scenario than one in which Candice Bonar went to the house with the mood and the motive for a confrontation as suggested by both Mr Marr and Mr Sneddon.

7. The circumstances in which the fatal wound was inflicted

- 7.1 This brings me then to the circumstances in which the fatal wound was inflicted. The only direct evidence of these circumstances comes from Candice Bonar and, given the neutral findings of the forensic evidence, the opinion of Dr Black that the only way of determining whether this was a case of suicide or homicide is by an evaluation of the veracity of witness statements is thrown into sharp relief. As the advocate depute pointed out, Candice Bonar can hardly be mistaken in her evidence that Colin Marr inflicted the fatal wound and her credibility therefore is an issue for consideration.
- 7.2 According to the evidence of Candice Bonar the call to Rebecca Aitchison convinced her that it was true that Colin Marr had had a relationship with Roxanne Burns. In examination in chief she stated that she was really upset and slightly angry and kept asking Colin Marr to tell her the truth. After some initial denials there came a point when he changed his story and said words to the effect “OK, OK, I know who she is” adding “but I never slept with her.” She stated that it was at that point that she decided to leave. She stated that she went to the kitchen and told Colin Marr that their relationship was over. There was a point in time when Colin Marr grabbed her by the arms to stop her leaving and in response to this she hit him with her handbag in the area of his shoulder or head. She then went to the front porch to get her trainers but they were not there. At that point she heard sounds of banging and clanging coming from the kitchen and heard Colin Marr say that he was going to kill himself. She told him not to

be stupid and then returned towards the living room to look for her shoes. As she came into the living room he said that he had stabbed himself. She saw him standing in the kitchen doorway facing towards her and clasping his hands over his abdomen. He remained standing for about five seconds and then fell forward on his face. She saw a knife on the floor but at no point saw it in his hand. She then saw her trainers beside one of the seats in the living room. She looked for her phone in her handbag but couldn't find it and ran outside for help. She explained that her recollection was hazy and that she could not remember the sequence in which things had happened.

7.3 In cross examination she stated that the conversation after the phone call with Rebecca Aitchison took place in the hallway. She stated that she could not remember why she went back into the kitchen but accepted that what she had said to the police in her second interview might be right, namely that her handbag was on the bunker in the kitchen, and in her third interview that it was next to the knife block. She stated that Colin Marr was standing next to the sink when she threw her engagement ring at him and that there was a point when he was stopping her leaving and that that happened while they were still in the kitchen. She accepted that her first statement to the police could be right when she told them that he “stopped me at the door and wouldn't let me past. I then hit him a couple of times on the side of his head.” In cross examination by her own counsel she stated that Colin Marr was standing at the sink when she hit him with the bag but then that she hit him with the bag when he tried to stop her leaving the kitchen.

7.4 In her first statement to the police Candice Bonar stated that, after she had indicated that she was leaving, Colin Marr shouted “I'll kill myself if you leave me, I've got nothing to live for.” In her evidence she did not specifically adopt these words but stated nevertheless that she thought he was just trying to make her come back in.

7.5 In finding in fact 3.9 I have made certain findings as to what happened during the period to which this evidence relates. The precise sequence of events is however unclear and in particular it is not clear from this evidence whether or not Colin Marr was blocking her exit from the kitchen as appears to be the picture given in her first interview with the police. Finding in fact 3.9 nevertheless reflects particular aspects of the evidence of Candice Bonar which I feel able to accept as they are supported by other evidence,

notably the finding of the engagement ring on the floor of the kitchen and the evidence of bruising on Candice Bonar's arms characteristic of having been grasped by another and reinforced by the evidence of Mrs Graham that Candice Bonar had told her that there had been a scuffle. These findings do not assist however in pointing to the identity of the person who inflicted the fatal wound.

7.6 A number of factors were referred to as potentially relevant to the issue of Candice Bonar's credibility. The first factor is the extent to which Candice Bonar's account of events in her three police statements and in what she said to others with whom she spoke is consistent or inconsistent. On the central issue whether the wound was self-inflicted she has been unwaveringly consistent and her account is also consistent with the sequence of events which I have suggested in paragraph 6.11. On the other hand there are a number of inconsistencies in relation to the surrounding circumstances which it was suggested raise the question whether her credibility is undermined on the central issue. In her own evidence she attributed these inconsistencies to the passage of time and also to the fact that she had had many discussions with people about the events in question as well as having dreams with the result that she found it difficult to differentiate between her own recollection, her dreams and what she had been told by others. This is a plausible explanation and not one which is confined only to her evidence. Detective Inspector Seath stated that the passage of time had caused the police huge problems in the re-investigation with a lot of the witnesses being unable to remember exactly what happened and getting events in the wrong sequence. As a general proposition therefore I can credit the possibility that inconsistencies are to be expected and that they do not necessarily indicate any lack of truthfulness. In general I am inclined to think that the account given in her first interview with the police is likely to be the more reliable of the various accounts given by her. Nevertheless there are some features of the evidence which call for closer examination.

7.7 Mr Sneddon drew attention to the different accounts given by Candice Bonar in her three police interviews regarding the state of Colin Marr when she arrived at the house on 10 July. In her first interview on the night of the fatal incident she stated that he was just sitting on the couch as usual watching the television. In her second interview she said that he was "quite upset, just lying on the couch" and in her third interview she said that he was "just lying on the couch crying." The suggestion was that this change of

emphasis indicated a desire to provide more support for the contention that Colin Marr had stabbed himself. It was also suggested that other aspects of her evidence could be seen as showing a desire to emphasise that he was in an apparently agitated state immediately before the fatal incident.

7.8 There were also a number of discordant notes in her evidence. The first of these relates to her evidence that she could not find her mobile phone immediately after the fatal incident when in fact it is clear that she had that phone when she went to raise the alarm with the neighbours. Furthermore it is not clear why she would need to use Mrs Scott's phone when she had her own. The finding of the contents of her handbag tipped out on the floor supports her evidence that she had done that in an effort to find her phone but the fact that she had the phone at 2013 hours contradicts her evidence that she could not find the phone at that time. Mr Sneddon suggests as one possibility that, rather than seeking help in contacting the emergency services, she was making sure that other people were immediately aware that Colin Marr had stabbed himself, consistently and loudly making it clear to all and sundry that that is what had happened.

7.9 Why Candice Bonar should ask others to phone 999 when she herself had her mobile phone in her hand and was apparently using it for that very purpose has not been satisfactorily explained. However I am not persuaded that there is any sinister inference to be drawn from that fact. The evidence plainly supports the view that she was in a genuinely distressed state, verging on if not actually hysterical, and it must be open to question therefore whether she was capable of the calculating behaviour which is implied by Mr Sneddon's suggestion. I consider that in such a hysterical condition it is quite possible firstly that she might be confused and secondly that she would say the sort of things which she did. The evidence that she said on a number of occasions "Silly boy, why did he do it?" struck me as authentic. On the other hand she also said on more than one occasion that Colin had been cheating on her. That remark seems somewhat incongruous to me and may indicate a mindset in which she was seeking to explain or justify what had happened. However, if that was her mindset, it does not necessarily point to her as the person who inflicted the fatal wound. In similar vein the fact that she was distressed is a neutral finding and I agree with the submission of Mr Sneddon that that might have been expected whoever had inflicted the fatal wound.

- 7.10 The second discordant note relates to the evidence from Candice Bonar about the location of her shoes. She maintained that she was in the porch when she heard Colin Marr shout that he had stabbed himself but that she did not believe that. In her initial statement to the police she states that she went back into the living room to find her trainers. There was evidence that she liked to keep the house tidy and she acknowledged that her normal practice was to take off her shoes and leave them at the front door when she came into the house. She was unable to explain why she had not done so on this occasion. The suggestion from Mr Sneddon is that if the shoes were in the living room that gave her a reason to go back into that room rather than just leaving the house and thus provided her with a reason for becoming aware of Colin Marr's injury. On the other hand it must again be open to question whether she was in sufficient control of herself after the incident to have devised such pretence.
- 7.11 In the final analysis I do not think that any of these matters assist in reaching a clear view about whether or not Candice Bonar was telling the truth when she said that Colin Marr had stabbed himself.
- 7.12 In their closing submission both Mr Marr and Mr Sneddon referred to the fact that Colin Marr had no known history of psychiatric or psychological illness or disorder and prayed that fact in aid of the suggestion that it was unlikely that he had inflicted this wound on himself. As Mr Sneddon accepted however there was evidence from the report of Dr Cavanagh that it is not unknown for someone to kill themselves without such a history or without expressing suicidal ideation and accordingly I consider that this factor is essentially neutral. What I think can be said however is that there is no evidence of suicidal intention before the evening of 10 July. Although I have concluded that Colin Marr was significantly concerned and anxious about the possibility of his relationship with Candice Bonar coming to an end I do not interpret that as evidence of any prior suicidal intention.
- 7.13 Margaret Graham gave evidence that Colin Marr had said to her that if he and Candice did not get back together again he would go to America with her (Mrs Graham) for a few weeks, the inference suggested by Mr Sneddon being that he had already contemplated the possibility that the relationship would founder and that when confronted with that reality it was unlikely that he would act impulsively. In similar

vein it was suggested that, knowing that his mother would shortly arrive at his house (an arrangement to that effect having been made by telephone at about 1953 hours on the date of his death), it was unlikely that Colin Marr would have stabbed himself.

7.14 I am not persuaded that these inferences can necessarily be drawn when one sets these two pieces of evidence within the wider context which I have described in paragraph 6.4 as illustrative of Colin Marr's feelings for Candice Bonar and his underlying state of mind on the day of his death when considering the possibility that his relationship with her might break down. While it might be thought that Candice Bonar harboured hopes that the allegation was untrue, it might equally be thought that Colin Marr harboured hopes that he would find a solution to his problem and that the matter would blow over. If he were then confronted with the reality of the termination of his relationship, I think it possible that he could have experienced an acute emotional reaction which might well have pushed into the background any rational thought along the lines suggested in the preceding paragraph. Whether such an emotional reaction would have led him to inflict the fatal wound however is a different matter and altogether less clear.

8. Analysis

8.1 The only basis for suggesting that Candice Bonar inflicted the fatal wound is the fact that, so far as the evidence discloses, the only two people in the house at the material time were Candice Bonar and Colin Marr and that if the wound was not self-inflicted it must have been inflicted by Candice Bonar. Allen Marr speculated that it was possible that there was another person in the house but there is no evidence to support that suggestion. It will be clear from what I have said thus far that the answer to this central issue depends entirely on the evidence of Candice Bonar. Without that evidence, be it orally from the witness box or through the medium of her police interviews, it is clear that there would be no basis upon which one could determine the central issue. The lack of evidence against which one can objectively test the evidence of Candice Bonar however is one of the acute difficulties with which I am faced.

8.2 There is much to be said for the submissions of her counsel in arguing that I should accept her as credible. She attended the inquiry on a voluntary basis travelling from Australia to give her account in open court. She answered all questions put to her

despite being warned that she did not require to answer any question if that might tend to indicate that she had committed a crime. She co-operated fully with the police and appeared to answer their questions in a perfectly straightforward manner. She did not seek to hide the fact that there had been an altercation, that Colin Marr had taken hold of her and tried to stop her leaving and that she had hit him with her handbag. Had she been responsible for inflicting the fatal wound it might be thought that she would have been more reticent on these matters. Furthermore there was nothing in her demeanour in the witness box which caused me to think she was being untruthful. While there are inconsistencies in her various accounts after the event these do not point convincingly to any lack of truthfulness on her part.

- 8.3 It might be thought that this was a sufficient basis for concluding that the fatal wound was indeed inflicted by Colin Marr as Candice Bonar maintains. However I come back to the evidence of Professor Green and his “subjective” preference for homicide based on the degree of force required to inflict the wound and on his general experience. While there is nothing in the pathological evidence which enables one to distinguish homicide from suicide, what I think Professor Green was trying to articulate (as indeed was Professor Busuttil) was a sense that it is difficult to imagine Colin Marr inflicting this blow on himself with the requisite degree of force if he was not actively intending to kill himself – in other words that it seems an inherently improbable event. The inference to be drawn from the degree of force required to inflict the fatal wound is arguably not a matter properly falling within an expression of expert opinion but nonetheless Professor Green’s “subjective” opinion gives voice to a pertinent concern which I can readily understand and which requires serious and anxious consideration. I have already referred to the lack of any convincing evidence that Colin Marr intended to kill himself and, given the degree of force required, the nature of the injury seems on the face of it inconsistent with a spontaneous dramatic gesture designed to persuade Candice Bonar not to leave. If that was the intention to be inferred from his having shouted “I’ll kill myself if you leave me” (paragraph 7.4) it is odd that he should then have stabbed himself without seeing whether these words had the desired effect. On the other hand Professor Busuttil referred to the possibility of a “cry for help which goes wrong” and it is no doubt necessary to take account of any heightened emotional state.

- 8.4 One of the difficulties in resolving this issue is that there is no direct evidence of how Colin Marr may have inflicted the wound if he did nor is there any evidence about how he took the knife out of his body if he did and how the knife came to be in the position in which it was found. None of this was seen by Candice Bonar according to her evidence. There has been an assumption that he plunged the knife into his chest holding the knife with either one or both hands but there is no objective basis for saying that that is in fact the way it happened and the inferences to be drawn from the degree of force required to inflict the wound are to this extent somewhat speculative. On the other hand Dr Black commented that people who self inflict injury are capable of doing the most horrendous things.
- 8.5 Section 6 of the 1976 Act requires me to set out the circumstances of the death so far as they have been established “to my satisfaction”. While there is nothing in the demeanour of Candice Bonar which would cause me to disbelieve her I am not satisfied that there is any firm point of reference in the evidence against which I can objectively test her credibility in relation to the crucial period of time after the telephone call with Rebecca Aitchison. On the hypothesis that Colin Marr did inflict the fatal wound it is not possible to understand his thought process and it would be speculation to attribute any explanation for what he did, albeit I can credit the possibility that he would be in an upset and emotional state. While I think it is conceivable that he could have inflicted the injury (and all the pathologists agreed about that) I can understand Professor Green’s reluctance to accept that possibility having regard in particular to the considerable degree of force which would have been required. In the end of the day however, lacking any evidence about the precise manner in which the fatal wound was inflicted, it is not possible to say whether that reluctance is or is not properly justified. Nevertheless it is in my mind a significant cause for hesitation in giving unqualified acceptance to Candice Bonar’s evidence without having some other independent strand of evidence in relation to the crucial period which supports her account. As I have already indicated, there is no evidence beyond that from Candice Bonar in relation to this matter and in these circumstances I am left in the position of having to conclude that there is an insufficient evidential basis to allow me to say that one explanation for the fatal wound is any more likely than the other. In the result therefore, I cannot say that Colin Marr probably stabbed himself but nor can I say that he probably did not. It follows that there is no basis for saying that Candice Bonar probably stabbed him.

8.6 In many ways this is a most unsatisfactory outcome but perhaps not unpredictable. In her closing submission, and in response to a point I raised with her, Ms Glancy referred to the fact that Candice Bonar enjoyed a presumption of innocence which was untainted until these proceedings were launched. Although this inquiry is not about guilt or innocence of a crime, I have already referred in paragraph 2.7 to the risk that there may be those who view it otherwise and it is possible that my conclusions in this determination may be viewed by some as tainting that presumption of innocence. It is important to emphasise therefore that an inconclusive outcome ought not to be interpreted as in any way undermining the presumption of innocence which Candice Bonar enjoys.

9. Miscellaneous

9.1 In his closing submission Allen Marr suggested that there were unresolved issues and that I should recommend further investigative work be carried out. I do not see that as part of my function but in any event, in light of the evidence I have heard, I doubt whether there are any other useful lines of investigation which could be pursued and I see no basis for thinking that further investigation would cast any more light on the circumstances of the death.

9.2 It only remains for me to acknowledge and commend the assistance of counsel, solicitors and Mr Marr in the efficient conduct of the inquiry and to again extend my sympathies to the family of Colin Marr at his premature death.