

Sheriffdom of Grampian, Highland and Islands at Fort William
Under the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976
Section 6

2010 FAI 23

DETERMINATION

by

W. Douglas Small, Advocate
Sheriff of Grampian, Highland and
Islands at Fort William

into the circumstances of the death of

JASON MACINTYRE
(born 20.9.73)
formerly residing at
75 Lochaber Road, Fort William

Parties to the Inquiry:-

Alison Wylie, Procurator Fiscal at Fort William

Mr. Henderson, Solicitor for the widow of the deceased

Mr. John MacLeod, Solicitor for the father of the deceased

Mr. MacKenzie, Solicitor for Robert MacTaggart

Miss. Watt, Solicitor for the Highland Council

Fort William,

2010

The Sheriff, having resumed consideration, Determines as follows:-

- (1) **In terms of Section 6(1)(a) of the Act** (Where and when the death and any accident resulting in the death took place)
 - (i) That Jason Macintyre, born 20th September 1973 and formerly residing at 75 Lochaber Road, Fort William, died at around 13.55 hours on 15th

January 2008 at the Belford Hospital, Fort William, following upon a road traffic accident which occurred at around 13.30 hours. on 15th January 2008 on the A82 Inverness to Fort William public road at its junction with the road leading to Carrs Corner Industrial Estate.

(2) **In terms of Section 6(1)(b) of the Act** (The cause or causes of the death and any accident resulting in the death)

(i) That Jason Macintyre's death was caused by a major and "irremediable" head injury which was sustained by him when he was in collision with the Ford Transit pick-up truck, registration number SX55 DGY, owned by the Highland Council and being driven by their employee Robert MacTaggart.

(ii) That the accident which resulted in Jason Macintyre's death was caused by a failure on the part of Robert MacTaggart to observe Jason Macintyre when he made a right hand turn on the A82 into Carrs Corner across the path of Jason Macintyre who, at the time, was cycling in the opposite direction. That Robert MacTaggart's failure was as a consequence of a lack of attention on his part and a failure to keep a proper lookout of the road ahead of him.

THEREFORE recommends

(i) That all motorists keep a proper lookout when turning across an opposing carriageway.

(3) **In terms of Section 6(1)(c) of the Act** (The reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided)

- (i) The accident might have been avoided if Robert MacTaggart had driven with greater care and attention and had kept a proper lookout of the road ahead of him and observed Mr Macintyre before turning off the A82 into Carrs Corner.
- (ii) That the death might have been avoided if Jason MacIntyre had been wearing high visibility clothing.

THEREFORE recommends

That all cyclists wear some form of high visibility clothing when cycling on public roads.

- (4) **In terms of Section 6(1)(e) of the Act** (Any other facts which are relevant to the circumstances of the death)
 - (i) That there is a tendency for vehicles heading northwards and turning into Carrs Corner on the A82 to “cut the corner”. That a traffic island positioned in the centre of the bellmouth there would have the effect of slowing down traffic turning off the A82 and would thus allow them more time to view the road ahead.

THEREFORE recommends

- (i) That the council give consideration to a “feasibility study” for the positioning of a traffic island in the centre of the bellmouth at the entrance to Carrs Corner.

(ii) That although Jason Macintyre's death could not have been avoided by him wearing a helmet at the time of the accident all cyclists, including cyclists in training, should wear a helmet when on public roads.

NOTE

[1] During the course of this Inquiry which was held at Fort William Sheriff Court, I heard evidence and submissions over a period of three days (1st to 3rd March 2010). Twelve witnesses gave evidence, two of whom gave evidence as experts. Police Constable George MacAskill gave evidence as an expert witness for the Crown and Paul Riley as an expert witness on behalf of Jason Macintyre's widow.

[2] In issuing this Determination and making such recommendations as I have, I have had in mind those comments made by Sheriff Kierney in his Determination into the death of Mildred Allan (issued 14th November 1985). In his Determination Sheriff Kierney said this:-

“Fatal Accident Inquiries may be regarded as having two essential purposes and one important corollary. The essential purposes are the enlightenment of those legitimately interested in the death i.e. the relatives and the dependants of the deceased as to the cause of the death (and of any accident resulting in the death) and the enlightenment of the public at large, including the relatives, as to whether any reasonable steps should or could have been taken whereby the death might have been avoided so that lessons may be learnt...”

[3] I have also had very much in mind the comments of Lord President Hope in *Black v. Scott Lithgow Limited* 1990 SLT 612 at 615 where he states:

“There is no power in this section to make a finding as to fault or to apportion blame between any person who might have contributed to the accident”⁽¹⁾

[4] Section 6 of the Act does, however, entitle me to set out in my Determination reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided.

[5] Having made those observations I feel it incumbent on me to confess to not a little disquiet about the nature of some of the questioning of Mr MacTaggart, who was the driver of the vehicle that collided with Mr Macintyre. Prior to this Inquiry Mr MacTaggart had already pled guilty on 11th February 2010 to a charge of causing Mr Macintyre’s death by careless driving. Presumably a narrative of the facts of the accident would have been given to the sheriff dealing with the case at the time by the procurator fiscal. It seemed to me that some of the questioning of Mr MacTaggart at the Inquiry sought, without any foundation or basis in the evidence led to establish a greater degree of culpability for whatever reason. For example he was asked if he had been drinking at the time, whether he had been using a phone at the time of the accident, whether he had been distracted within his cab by adjusting controls, whether he was speeding and whether he suffered from poor eye-sight.

[6] To utilise a Fatal Accident Inquiry in this way is, in my opinion, quite contrary to the spirit of the Act and should not be encouraged by those in whose discretion it lies to authorise the holding of an Inquiry.

(1) See Carmichael – Sudden Deaths & Fatal Accident Inquires and 419 and 420

Background and Circumstances

[7] Jason Macintyre was potentially an Olympic and Commonwealth Games cyclist he had realistic hopes of being able to represent Great Britain in the 2008 Olympics and to represent Scotland at the 2010 Commonwealth Games. He had given up his career as a printer in order to concentrate on cycling. On the day of his accident Mr Macintyre had received news that he was to receive national funding to train. His widow told the Inquiry that sometimes her husband would cycle as much as 90 miles a day when training. On the day of the accident Mrs Macintyre told the Inquiry that her husband had set out from their home in Lochaber Road, Fort William, on a routine training session. His wife described the training as a “spin his legs session”. Her husband was not setting out “to beat his time”. Mr Macintyre followed a route that he had often cycled before and with which he was familiar. His wife watched him leave their home at about 9.55a.m. As he left he told his wife that he would be away for “probably about three hours”. His wife watched him cycle away. The route that Mr Macintyre was to take would take him to Fassifern and along the A830 Mallaig road to the Commando War Memorial in Spean Bridge before bringing him back to Fort William.

[8] The clothes that Mr Macintyre wore were recovered after the accident and were photographed by the police (Crown Production 3 – image 15). They comprised a grey long sleeved under-jacket, a blue and white top in Scotland colours, black/silver shoes, black gloves, a black hat and red coloured mirrored glasses.

[9] An identical blue and white top bearing the “Scotland” logo was lodged as a production and spoken to by Mrs Macintyre (Production 4 – Inventory of Productions for Caroline Macintyre).

The Accident

[10] The accident in which Mr Macintyre lost his life occurred on the A82 Inverness/Fort William public road at its junction into Carrs Corner Industrial Estate. In the Industrial Estate there is a Highland Council depot. Photographs of the junction were produced and spoken to during the Inquiry. (Crown Production 3 at pages 6 and 7 and Appendix 2, images 2 to 6 and Production 7 of the Inventory of Productions for Caroline Macintyre).

[11] The measurements of the bellmouth and the geography of the A82 leading to this junction were spoken to by the expert accident investigators, Constable George MacAskill and Paul Riley. Both these expert witnesses referred to their reports during the course of their evidence (Production 3 for the Crown and Production 6 of the Inventory for Caroline Macintyre).

[12] Constable MacAskill, who attended at the scene of the accident at 14.45 hours, described the section of the A82 where the accident occurred as running in “a general north/south direction and being a two way undivided carriageway with hazard warning lines in the centre of the road and edge of carriageway lines on both sides” (page 5 paragraph 4.3 of his report). At paragraph 4.5 he states “In a southbound direction, the locus is approached by negotiating a left hand bend which is known as Carrs Corner. After the bend the locus forms a long straight which has a very slight decline” and at paragraph 4.6 of his report he describes the junction into the industrial estate as being “about 130 metres south of Carrs Corner” and “marked by a direction sign placed on the west verge”. At paragraph 4.7 he describes “clear views of the road and junction for both northbound and southbound traffic”.

[13] For the purposes of his description of the locus, Mr Riley identified a “zero point at the centre of the entrance leading in to the industrial estate”.

He described that part of the A82 leading to the junction and along which Mr Macintyre would have travelled immediately prior to his collision as being “subject to a sweeping left hand bend heavily banked and subject of a positive camber in favour of a driver/cyclist (paragraph 26 of his report). Mr Riley measured the distance from his zero point northwards to a point immediately prior to the bend previously referred to as being 362 metres (paragraph 28 of his report).

[14] In addition, Mr Riley measured northwards on the A82 from the roundabout where the A830 joins the A82 to his zero point. This was the route travelled by Mr MacTaggart immediately prior to the accident and was measured by Mr Riley as being 335 metres (paragraph 22 of his report).

Circumstances prior to the accident and the accident

[15] The circumstances immediately prior to the accident were spoken to by Craig MacDonald and George Swan. Robert MacTaggart, who was driving the council pick-up which collided with Mr Macintyre, spoke to the accident itself. John Laggan and Peter Lees, employees of Highland Council, gave evidence of what they discovered at the scene of the accident immediately afterwards and Police Constable (now Sergeant) Ferguson gave evidence along with his colleague Police Constable Craig Still of what they found when they attended at 13.35 hours, i.e. within five minutes of them receiving an emergency call.

[16] Craig MacDonald (26) a mechanical engineer, told the Inquiry that at 12.45p.m. that day he was travelling northwards on the A82 behind the council pick-up truck which was being driven by Mr MacTaggart. He was returning to his office in Torlundy. He first became aware of the pick-up at a point past the road markings outside the BP garage (shown in photograph 1 of Production 7 for Caroline Macintyre). Mr MacDonald told the Inquiry that

he recollected seeing the indicator lights of the pick-up truck coming on and indicating an intention to turn right into Carrs Corner Industrial Estate. He described seeing Mr Macintyre on his bicycle cycling towards him “pretty much immediately as soon as the indicators came on”. He identified the position on the road of Mr Macintyre’s bicycle by referring to photograph 11 of Production 7 and as being at a point where two cars proceeding round the corner can be seen. Mr MacDonald told the Inquiry that he slowed down fully expecting the pick-up truck to stop before turning right. It was Mr MacDonald’s evidence to the Inquiry that he “seemed to remember getting close to the pick-up truck... which led him to believe that the vehicle had slowed down”.

[17] Mr MacDonald told the Inquiry that the pick-up failed to stop before making the right hand turn. It was his evidence that the pick-up “turned right as though nothing was coming”. He saw Mr Macintyre’s bicycle collide with the pick-up. He carried on northwards to the next junction before stopping and returning to the scene of the accident. He was unable to estimate the speed that Mr Macintyre was travelling on his bicycle but did say that he had seen the cyclist for “five to ten seconds before the collision... enough time for me to take whatever steps”. He could not say if the pick-up had cut the corner when turning into the Bellmouth and could offer no explanation as to how the accident had happened other than that Mr MacTaggart failed see “the cyclist coming”.

[18] Mr George Swan, an experienced cyclist of some 50 years, was proceeding southwards along the same route as Jason Macintyre on the A82 prior to the accident. He overtook him at a point south of Inverlochy Castle. He described Mr Macintyre as “riding a specialist high-speed road cycle... and travelling at a remarkable pace... I guess 30 m.p.h.” Mr Swan told the Inquiry that as he had overtaken Mr Macintyre, Mr Macintyre glanced at him before looking behind in “a long deliberate look”. He described the

positioning of Mr Macintyre's cycle on the road as being well up the straight and one third on to the lane". It was his impression that Mr Macintyre was going to "drop on to his bottom handlebars... and change into top gear for maximum speed and velocity". Mr Swan described the A82 at that part before the entrance to the junction as having a "long gentle downgrade".

[19] Mr MacTaggart, the driver of the pick-up that collided with Mr Macintyre, made his position to the Inquiry quite clear. On the day of the accident he had gone to work at 6.45a.m. He had been given a list of duties to perform which included picking up some discarded white goods. He required to use the pick-up truck to carry out his tasks. There were no time constraints for him to complete these tasks. At 1.15p.m. he returned from Corpach to the council depot at Carrs Corner Industrial Estate. He described driving up the A82 towards the junction and checking that the road ahead was clear before indicating to turn right into the depot. He was "certain" that he indicated before he did so. He did not see anything coming towards him. As he turned in to the junction he heard a "thump". He stopped his vehicle "about ten metres" into the junction, got out and saw Mr Macintyre's bicycle on the road. He saw Mr Macintyre at the back of his truck. He could not explain how it was that he had not seen Mr Macintyre on the road.

[20] Mr. MacTaggart repeatedly reiterated this position to the Inquiry. He told the Inquiry "I can't explain why I didn't see him... I just don't know why I didn't see him... I simply did not see him". His explanation to the Inquiry was that it was "a tragic accident that I have to live with as well". Mr MacTaggart accepted that in colliding with Mr Macintyre he had driven without due care and attention and had failed to keep a proper lookout of the road ahead. He confirmed to the Inquiry that he had pled guilty to a criminal charge in those terms and had been fined and disqualified from driving for a period of 6 months. He had not driven since the accident and did not wish to drive again. As regards a suggestion put to him that he had not seen Mr

Macintyre because of poor eyesight he told the Inquiry that there was nothing wrong with his eyesight at the time of the accident although he did now needed glasses for reading. He categorically denied that he had been using a mobile phone at the time of the accident and explained to the Inquiry that although he did have a phone with him at the time, that phone had been in his bag. His position on that matter was supported by the evidence of John Laggan and Sergeant Ferguson (*infra*) who spoke to Mr MacTaggart requesting to borrow a phone when he arrived on the scene.

[21] Mr MacTaggart similarly denied that he had been listening to a radio in his vehicle or adjusting anything within the vehicle at the time. He categorically denied that he had been under the influence of drink/drugs, a fact which was also later confirmed by Sergeant Ferguson and P.C. David Bellshaw (*infra*).

[22] As regards his driving licence, Mr MacTaggart told the Inquiry that he had had a licence since 1991 and that had been checked when he commenced his employment. He had been given instructions and training when he commenced his employment as to the workings of a pick-up. Mr James Tolmie, Mr MacTaggart's line manager, confirmed this to be the position. He told the Inquiry that Mr MacTaggart's licence would have been checked on an annual basis to ensure that it was "relevant".

Circumstances immediately after the accident

[23] John Laggan and Peter Lees were both employed by the council as joiners at the time of this accident. Both men told the Inquiry that they were "retained firefighters". When the accident occurred both men were returning to Carrs Corner depot in a transit van. As they turned into the bellmouth John Laggan noticed a bicycle lying on the road. The men drove a short distance into the bellmouth before seeing a pick-up lorry "just off the road

and stationary". The exact positioning of the pick-up was identified on images 5 and 6 of Production 3 (supra). John Laggan described seeing Mr MacTaggart sitting in the passenger seat of his vehicle with the door open. He was asked by Mr MacTaggart for a phone. Mr Laggan described Mr MacTaggart as being in a "distressed state". He described Mr MacTaggart as saying "that he didn't see him... I think I've killed him." Mr Laggan, who meantime had telephoned the services, was instructed by the ambulance service men to remove Mr Macintyre from the back of the pick-up. He described Mr Macintyre as being "draped over the back of the pick-up". He was assisted by two other men who had arrived at the scene (Ian Small and Colin Pinkett) to remove Mr Macintyre from the truck and place him on his back. Mr Macintyre was then taken to Belford Hospital where resuscitation attempts were unsuccessful. He was pronounced dead at 1.55p.m. that day. A post-mortem examination was later carried out on 17th January 2008 and determined the cause of death as being a "irremediable head injury". At the Inquiry Dr. Rosslyn Rankin, one of the pathologists who carried out the post-mortem, explained that the injury to Mr Macintyre's brain was a "rotational injury" and that the wearing of a helmet would not have prevented his death.

[24] Sergeant Ferguson and Police Constable Craig Still arrived at the scene of the accident within five minutes of their receiving a call to attend. Sergeant Ferguson identified the position that he found the pick-up truck in by referring to images 5 and 6 of Production 3. He told the Inquiry that when he arrived Jason Macintyre's bicycle had been moved on to the grass verge. Sergeant Ferguson closed the access road into the depot. He was directed to Robert MacTaggart who he described as sitting in the passenger seat of his vehicle. Robert MacTaggart confirmed to the Sergeant that he had been the driver of the vehicle and said "he couldn't remember what had happened... he didn't see anything... he had turned into the junction when he heard a bang..." Mr MacTaggart explained to the Sergeant that he had "stopped his vehicle and when he got out saw the bike lying in the roadway and Mr Macintyre at the back of the pick-up." Sergeant Ferguson told the Inquiry

that he could see that Mr MacTaggart was suffering from shock. He told the Inquiry that Mr MacTaggart was very upset and “asked if he could borrow a phone in order to phone his partner”. Because of his distressed condition Sergeant Ferguson decided to call another ambulance which then took Mr MacTaggart to hospital.

[25] Sergeant Ferguson told the Inquiry that at that stage Mr MacTaggart was not considered as a suspect. He was quite emphatic that there was no smell of alcohol on Mr MacTaggart’s breath “none whatsoever”. He did not administer a breath test at the scene of the accident because he could not be satisfied that Mr MacTaggart was physically fit enough to be able to provide a sample. Constable David Bellshaw was to later tell the Inquiry that he attended at the hospital and administered a breath test to Mr MacTaggart at 4.30p.m. that afternoon. The breath test was negative for alcohol.

[26] There was some criticism of Sergeant Ferguson by Mr Henderson and by Mr Riley (*infra*) as to why it was that he had not closed off the A82 when he arrived at the scene. It was Sergeant Ferguson’s position that when he had arrived at the scene he had not been certain as to where the accident had occurred i.e. whether it had been on the A82 or in the Bellmouth. He told the Inquiry that he had examined the southbound carriageway of the A82 by walking from the speed limit, which can be seen in photograph 17 of Production 7, to the opening of the Bellmouth and half of the northbound lane. He had seen no marks or gouges on the road. He conceded that his examination had taken place some 23 minutes after he arrived at the scene and that “marks may have been affected by passing traffic”. In hindsight he said that he would have closed the southbound lane of the A82.

[27] The expert witnesses who gave evidence to the Inquiry (P.C. MacAskill and Paul Riley) both gave evidence about their examinations of the locus. P.C. MacAskill spoke of a slight gradient on the road “less than 1°” as one proceeds southwards towards the junction. He calculated that a vehicle travelling in that direction would be visible for sixteen seconds to a driver who was stopped and positioned at the centre of the junction if the vehicle

travelling towards him were travelling at 30 m.p.h., and for twelve seconds if travelling at 40 m.p.h.

[28] Constable MacAskill told the Inquiry that he had attended similar accidents before where drivers had simply failed to see cyclists, cars/motorcyclists and even in circumstances where these vehicles had their headlights on. He was not surprised by Mr MacTaggart's explanation for the accident. He did not think there was anything to suggest that Mr MacTaggart had cut the corner and considered that even if he had it would have made no difference to the outcome. Constable MacAskill speculated that Mr MacTaggart, when stopped at the junction and looking northwards, "had not looked properly" or "had not looked" and because he had not seen a car had proceeded to turn right.

[29] Constable MacAskill expressed the opinion that the lack of a high visibility vest being worn by Jason Macintyre "played a part". He considered that bright yellow jackets "helped people to see and forced visibility on people more than normal clothes."

[30] Paul Riley, a self employed Consultant Accident Investigator, was responsible for taking the photographs contained within Production 7 of Caroline Macintyre's second Inventory. Mr Riley spoke to his report (Production 6). For the purposes of his calculations at the locus, Mr Riley fixed as a "zero point" the centre of the junction of the A82 and Carrs Corner Industrial Estate (*supra*). (Paragraph 21 of his report). He described the "sweeping left hand bend", shown in photographs 14 and 15 of Production 7, which would have been on the route taken by Jason Macintyre before coming on to the straight stretch of road shown in photographs 16 to 18. Mr Riley calculated the distance from the junction direction sign, shown in photograph 15, to his zero point to be "around 152 metres" and told the Inquiry that a person travelling southwards towards the junction would have a "good view" of the road in front of him from a distance of between 152 metres and 194 metres. He measured the width of the mouth of the junction, shown in photograph 22, as being 24.2 metres and described the cross-fall on the A82 at

this point as “nothing unusual” and as having “no relationship to the circumstances of the accident”. During the course of his investigations Mr Riley asked Mr Laggan to re-position Mr Macintyre’s cycle at the spot where he had found it. He was not surprised that the police reports showed no specific marks on the road surface where the bike was found.

[31] As mentioned (*supra*) Mr Riley was critical of the fact that Sergeant Ferguson had not closed the A82 on his arrival at the accident scene. He told the Inquiry that it was his experience that accident scenes such as this would invariably be closed until such time as the accident inspector declared that they could be opened.

[32] Mr Riley considered the damage to Mr Macintyre’s bicycle as spoken to by the police to be consistent with the Transit pick-up being driven diagonally by Mr MacTaggart across the path of the bicycle where the impact had occurred. It was his opinion that “around 2.3 metres of the van had moved across the front of the cycle prior to the collision” (paragraph 58 of his report).

[33] As part of his investigations into this accident, Mr Riley observed a number of vehicles which were turning right from the A82 into Carrs Corner. He told the Inquiry that he had watched twenty vehicles (mainly vans and pick-up trucks) making this turn. It was his evidence that all but one of the vehicles made the turn in one continuous movement (paragraphs 62 and 63 of his report) and that the vehicle that did stop was forced to stop because of opposing traffic. It was Mr Riley’s evidence that “all of the vehicles cut the corner by some amount”. He was later to suggest that the positioning of an island in the centre of the bellmouth at the exit could reasonably be expected to slow down traffic making a turn into the junction thus allowing drivers making the turn more time to see and assess the road environment (paragraphs 78 to 82 of his report).

[34] It was Mr Riley’s position that if Jason Macintyre had been travelling at between 20 to 35 m.p.h. when the Ford Transit pick-up started to turn, he would have been at a distance of between 30 to 39 metres from the van. He

told the Inquiry that having owned a Transit pick-up himself he was of the opinion that they were “excellent for unobstructed visibility”.

[35] As regards the wearing of “high visibility jackets”, Mr Riley expressed the opinion at the Inquiry that high visibility jackets “do make cyclists more obvious”.

[36] Mr Riley considered that the cycle and the van should have been visible to each other for a matter of “some seconds before impact”. He calculated that at the time the van turned to cross the centre white line of the road Mr Macintyre would have been “extremely close” and may have been in the region of “13 to 39 metres away”. It was his opinion that the presence of the cyclist should have been readily visible to the van driver had he undertaken the necessary checks expected of him prior to making the right hand turn. In the concluding paragraphs of his report (page 19) Mr Riley expresses the opinion that “the fault of this accident lay entirely with the driver of the Ford Transit whose action, in all probability, allowed Mr Macintyre who was riding his cycle within his correct traffic lane and having right of way with either very little or no opportunity to take any form of avoiding action”. He suggested that on the basis of his observations of northbound traffic that “the provision of a traffic island within the centre of the mouth of the industrial road would cause a turning vehicle to reduce speed, thus creating additional time in which a driver could assess the road conditions prior to making a turn.” Such an island, said Mr Riley, would provide an addition to road safety at the junction.

Submissions

[37] Miss Wylie submitted that the cause of the accident was down to driver error “pure and simple”. She reminded the Inquiry that Mr MacTaggart had accepted that position from the outset and had tendered a plea of guilty to driving without due care and attention. She reminded the Inquiry that there was no evidence that Mr MacTaggart had been drinking nor was there any

evidence that he had been distracted by using a phone or by anything else. The driver, she said, “just did not keep a proper lookout”. Miss Wylie submitted that the location of the accident was not a “black spot” and that there had been no evidence that a traffic island would have prevented the accident. There was no evidence, she said, that Mr MacTaggart had been travelling at excessive speed or that he had “cut the corner”.

[38] Miss Wylie submitted that consideration “might be given to a recommendation that high visibility clothing be worn by cyclists”.

[39] Mr Henderson submitted that the accident had happened not simply because Mr MacTaggart had failed to see Mr Macintyre, but rather because “he did not look or in any event look sufficiently”. He submitted that it was clear from the evidence that Mr Macintyre had been “there to be seen”. He invited the Inquiry to make a determination under Section 6(1)(b) that the cause of death, and the accident resulting in the death, was the right hand turn by Mr MacTaggart’s Ford Transit pick-up vehicle across the southbound lane of the A82 in circumstances such that Mr Macintyre was not provided with any reasonable opportunity to avoid the collision and that the collision took place when Mr Macintyre ought to have been visible to Mr MacTaggart. It was Mr Henderson’s position that the wearing of a luminous jacket would not have made any difference to the outcome. He drew attention to the evidence of Mr MacDonald who had seen Mr Macintyre approaching in the opposite direction.

[40] Mr Henderson was critical of the fact that the A82 had not been closed after the accident and that Mr MacTaggart had not been questioned immediately afterwards, particularly as regards his use or otherwise of a mobile phone or in relation to distractions within his vehicle. He drew the attention of the Inquiry to the fact that Mr MacTaggart had not been breathalysed until two hours after the accident.

[41] On the question of “corner cutting” Mr Henderson, whilst conceding that it could not be determined that this had been a factor in the accident, submitted that it would be open to the Inquiry to make a determination under

Section 6(1)(e) of the Act that the positioning of a traffic island on the access road would have the potential effect of improving safety. He maintained that the very fact that there had been an accident at the junction would justify giving consideration to such a recommendation.

[42] Mr MacLeod associated himself with Mr Henderson's submissions. He drew attention to the fact that Mr MacTaggart had had with him at the time of the accident an "operational mobile phone" and that he had not been specifically questioned by the police as to whether he had been using the phone at the time of the accident.

[43] Mr MacKenzie submitted that it made little or no difference whether the accident had occurred simply because Mr MacTaggart did not see Mr Macintyre or because he hadn't look properly. It was his position that Mr MacTaggart accepted that if he had driven with greater care and attention and had noted Mr Macintyre's presence on the road before he turned right, then the accident might have been avoided.

[44] In accepting that the wearing of a helmet would have made no difference to the outcome of the accident, Mr MacKenzie submitted that had Mr Macintyre been wearing light coloured or fluorescent clothing, as recommended in the Highway Code, he might have been seen by Mr MacTaggart. He reminded the Inquiry that there had been no evidence whatsoever of alcohol having played any part in affecting Mr MacTaggart's driving and likewise submitted that there was no evidence that he had been using a mobile phone. Mr MacKenzie made no submissions as regards the placing of a traffic island at the access road.

[45] Miss Watt submitted that the cause of the accident was Mr MacTaggart's failure to see Mr Macintyre. Mr MacTaggart, she said, had been consistent on that from the outset and during the course of his evidence. She submitted that his position was entirely consistent with the evidence of Craig MacDonald, John Laggan and Peter Lees. Miss Watt submitted that there was no evidence to support the proposition that Mr MacTaggart had been using a phone at the time of the accident and she reminded the court that there was

no evidence that Mr MacTaggart had cut the corner or that he was speeding at the time or that his eyesight was poor. She submitted that a reasonable precaution whereby the accident resulting in the death may have been avoided would have been if Mr Macintyre had been wearing high visibility clothing. Had he been wearing high visibility clothing as recommended by the Highway Code, said Miss Watt, the chances of him having been seen would have been greater. It was Miss Watt's position that a traffic island on the access road would not have prevented this accident. She referred to Mr Tolmie's evidence that there had been only one accident at the junction within the last ten years and to that part of Mr Riley's report where he states that a traffic island would allow a driver one or two more seconds to view the road before making the turn and his concession that an additional one or two seconds would not have resulted in a different outcome.

Conclusions

[46] Jason Macintyre's death was a tragic loss, not just to his family and his friends but also to the cycling fraternity. I tender the sincerest sympathies of all who participated in this Inquiry to those who have been affected by his death.

[47] As regards the statutory requirements of Section 6(1) and (2) of the Act, I have little difficulty in determining under the provisions of Section 6(1)(a) that Jason Macintyre died at around 13.55 hours on 15th January 2008 at the Belford Hospital following upon a road traffic accident which occurred at about 13.30 hours that day on the southbound lane of the A82 Inverness to Fort William road at the junction to Carrs Corner Industrial Estate. Nor do I have any difficulty in determining that he died as a result of a "major and irremediable head injury" sustained when the bicycle he was riding collided with the pick-up truck being driven by Mr Robert MacTaggart and that the wearing of a helmet could not have prevented his death.

What then caused him to collide with the pick-up truck?

[48] It is perfectly clear from the evidence that the collision occurred because Mr MacTaggart made a right hand turn across Jason Macintyre's path and that Mr Macintyre had no reasonable opportunity to avoid a collision. How it was that Mr MacTaggart failed to see Mr Macintyre was a matter about which there was some controversy. Mr MacTaggart said that he quite simply did not see Mr Macintyre. He could give no explanation as to why it was that he had not seen him either at the time of the accident or immediately after. In pleading guilty to a charge of careless driving at Fort William Sheriff Court on 7th August 2008, Mr MacTaggart accepted that he was at fault and that he had driven without due care and attention.

[49] In his evidence to the Inquiry, Sergeant MacAskill said that he was not surprised at Mr MacTaggart's explanation. He had attended accidents where drivers had simply failed to see other drivers in similar circumstances. It was suggested to Mr MacTaggart that he had been listening to his radio or adjusting controls within the vehicle and that he had been using a mobile phone when he made the fateful turn. Mr MacTaggart denied these suggestions and, of course, there was no evidence at the Inquiry which would in any way have supported these propositions. The only evidence at the Inquiry of Mr MacTaggart having used a mobile phone came from Mrs Caroline Macintyre and related to an entirely different occasion. Mrs Macintyre told the Inquiry that she had seen Mr MacTaggart using a mobile phone on an occasion in the town after the accident and that on this occasion he had been using the phone in the cab of a refuse vehicle and not whilst driving. While Mr MacTaggart accepted that he had had a phone with him at the time it was his position that the phone was in his bag. That evidence was supported by John Laggan, Peter Lees and Sergeant Ferguson (*supra*).

[50] Any suggestion that Mr MacTaggart may have been under the influence of alcohol/drugs at the time of the accident was firmly rebutted by the evidence of Sergeant Ferguson and the negative breath test which was provided by Mr MacTaggart to Constable Bellshaw at the Belford Hospital.

[51] It was suggested that Mr MacTaggart's eyesight was defective. Mr MacTaggart's position was clear. At the time of the accident his eyesight was "fine" although he now wore glasses for reading. Other suggestions put to Mr MacTaggart, i.e. whether he had been speeding at the time and whether he had "cut the corner" when turning, were likewise rebutted by him. He told the Inquiry that he had no reason to be speeding and in fact had slowed down to a speed of approximately 10 m.p.h. and was in second gear before he turned. Craig MacDonald, who was travelling behind him, remembered slowing down behind Mr MacTaggart's vehicle "fully expecting" him to stop before taking the turn.

[52] Having considered with great care all of the evidence adduced in relation to the cause of this tragic accident I am of the opinion that no cause, apart from a failure on the part of Mr MacTaggart to see Mr Macintyre, can be identified. That failure has been accepted by Mr MacTaggart.

[53] I am satisfied that Mr MacTaggart's failure arose as a consequence of him not keeping a proper lookout of the road ahead of him when he turned across Mr Macintyre's path. I have accordingly made an appropriate determination and what may be regarded as a rather obvious recommendation under the provisions of Section 6(1)(b).

What reasonable precautions, if any, might have avoided the accident and consequential death?

[54] It was suggested by Mr Henderson that reasonable precautions might have been the carrying out of a check, or in any event a proper and sufficient check, by Mr MacTaggart before he turned right. Mr MacKenzie also suggested that the accident might have been avoided if Mr MacTaggart had driven with greater care before he turned right. I am in agreement with those submissions and have made an appropriate determination and recommendation under the provisions of Section 6(1)(c) of the Act.

[55] Mr MacKenzie and Miss Watt submitted that the accident may have been avoided if Mr Macintyre had been wearing high visibility clothing.

[56] Whether the accident might have been avoided if Mr Macintyre had been wearing high visibility clothing was touched upon both in the evidence and during the submissions. The procurator fiscal submitted that the wearing of high visibility clothing “could” be a circumstance relevant to the death. Both Mr MacKenzie and Miss Watt went further. It was their position that had Mr Macintyre been wearing high visibility clothing then the accident might have been avoided. Mr Henderson disagreed. It was his position that Mr Macintyre was “there to be seen”. Mr Henderson’s position was supported by the evidence of Paul Riley who thought that the front of Jason Macintyre’s over-garment and red glasses made him readily identifiable (paragraph 69 of his report). In that regard it must also be borne in mind that Jason Macintyre was wearing a black woollen hat and that shortly before the accident George Swan formed the impression that he was going to “drop onto his bottom handlebars”

Mr Riley referred to the cyclist shown on the bend before Carrs Corner in photographs 28 and 29 of Production 7 and stated that the cyclist in the photograph “can be seen”. On close examination of the photographs referred to by Mr Riley it is difficult at first glance to determine if the cyclist is cycling towards the camera man or away from him. In any event the cyclist appears in those photographs to be wearing a high visibility “H” across his jacket.

[57] Having made a determination under Section 6(1)(b) that the cause of the accident was a failure on the part of Mr MacTaggart to see Mr Macintyre by not keeping a proper lookout, the question of whether the wearing of high visibility clothing as a reasonable precaution “might” have avoided the accident resulting in the death falls to be considered under Section 6(1)(c).

[58] It is helpful when considering the provisions of this section to bear in mind what is said by Ian Carmichael (*supra*) at paragraph 575. In that regard he states:

“What is required is not a finding as to the reasonable precaution whereby the death or accident resulting in a death “would” have been avoided but whereby the death or accident “might” have been avoided... What is envisaged is not a probability but a real or lively possibility that the death might have been avoided by the reasonable precaution.”

[59] In my opinion notwithstanding that Craig MacDonald, who was driving behind Mr MacTaggart, saw Mr Macintyre and notwithstanding the evidence of Mr Riley (*supra*) there is a “real or lively possibility” that Jason Macintyre’s presence on the road might have been brought to Mr MacTaggart’s attention and the death might have been avoided had he been wearing high visibility clothing. I have made an appropriate determination and recommendation under Section 6(1)(c) to that effect.

[60] There remains the question of whether a traffic island within the Bellmouth of the junction should be considered as a fact relevant to the circumstances of the death.

[61] Mr Henderson suggested that the fact that a fatality had occurred at the location when taken along with Mr Riley’s observations of vehicles turning at the locus left it open to the Inquiry to include a finding in that regard under Section 6(1)(e). In my opinion, notwithstanding Mr Tolmie’s evidence that this was not “an accident black spot”, the fact that a death has occurred at the location when taken along with Mr Riley’s observations and recommendation that there should be a traffic island within the Bellmouth is persuasive that consideration should be given by the Council to a feasibility study as regards the sighting of such a traffic island within the Bellmouth. I have made a determination and recommendation to that effect.

[62] In concluding her submissions Miss Watt, whilst conceding that a cycle helmet would have made no difference to the tragic outcome of this accident, invited the Inquiry to make a finding that it would be reasonable to make a determination that cyclists when training should, as is recommended in the Highway Code, wear a helmet.

[63] In my opinion common sense dictates that whenever possible cyclists should wear cycle helmets when on public roads. I have so determined and made an appropriate recommendation under Section 6(1)(e) of the Act.