

SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY AT
AIRDRIE
UNDER THE FATAL ACCIDENT AND SUDDEN DEATHS INQUIRY
(SCOTLAND) ACT 1976

DETERMINATION

OF

SHERIFF T.S.MILLAR

Following an inquiry into the death of
CATHERINE THOMSON

The Sheriff having considered the evidence adduced and submissions thereon,
DETERMINES in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland)
Act 1976

In terms of S.6 (1) (a): The death of Catherine Thomson, who resided at 11 Fernleigh
Place, Moodiesburn, Glasgow, took place at 11 Fernleigh Place, Moodiesburn
between the hours of 7:00 and 11:45 on 22 August 2005. Catherine Thomson was
pronounced dead at 15:00 hours on that date.

In terms of S.6 (1) (b): (1)The cause of death was a stab wound to the right side of the
neck, penetrating the jugular vein, the main vein draining blood from the head.

(2)The stab wound, along with other injuries sustained by
Catherine Thomson, were inflicted by John Campbell, a serving prisoner at
H.M.Prison, Castle Huntly, while John Campbell was on a short leave, and
unsupervised, to his home address at 9 Deepdene Road, Moodiesburn.

In terms of s.6 (1) (c): (1)A reasonable precaution whereby the death might have been
avoided would have been the carrying out of an assessment of risk to the community
by the granting of short leave to John Campbell and the grant of leave if any such risk
was manageable.

(2)A further reasonable precaution would have been the re-
assessment of any such risk following a positive Drug Test and to suspend the
operation of any short leave approved prior to the carrying out of such re-assessment.

In terms of S.6 (1) (d): The system of assessment of suitability of a prisoner for short release did not operate effectively in that there was no assessment of risk to the community carried out at H.M. Prison Castle Huntly, as was at that time required, it being assumed that such assessment had been carried out elsewhere.

In terms of S.(6)(1)(e): (1) John Campbell had wrongly had his Supervision Level reduced at H. M. Prison Kilmarnock in May 2003, within 12 months of the imposition of his sentence.

(2)Mr. Campbell had not been assessed for appropriate courses or programmes, or had not completed such, prior to the Review in December 2004. He had not met the criteria for review of his Supervision Level prior to that time and should have been of High Supervision Level until then. At this review, he had met the criteria for reduction, which normally would be of one level. Mr. Campbell at that time could have been reduced to Medium Supervision. He would not meet the criteria for transfer to the Open Estate.

(3)Officers at Castle Huntly assumed a Low Supervision Level to equate to low risk to the community and failed to carry out an assessment of risk on the granting of short leave. Personal Officers have a crucial role in the reports for the Community Access Risk Assessment, reviewing the prisoner's file, but have no training in Risk assessment. The process was seen as a "rubber stamping" of a procedure believed to have been carried out elsewhere. This attitude was endemic in that establishment. As a result, no real attempt at an assessment of risk to the community was carried out prior to Mr. Campbell's approval for short leave.

(4)The Direction under The Prisons and Young Offenders Institutions (Scotland) Rules 1994, effective from 15 February 2005 was not complied with, particularly in relation to the obligations on the Governor under S.3(1and (2), inter alia to:

(i)"assess the risk that the prisoner may abscond and/or present a danger to the public"; and

(ii)"The Governor shall record his decision and the reasons for it in writing."

(5)Two separate Officers dealt with Mr. Campbell after he failed a Drug Test prior to his short leave. It is not clear if the Officer who disciplined him initially had access to Mr. Campbell's files. The Officer who dealt with his short leave did not know Mr. Campbell and had not reviewed his file. He had not checked the punishment given to Mr. Campbell to see if his decision was in conflict with, or was relevant to, that

punishment. Having failed this test, for two substances details of which are not recorded, a further risk assessment should have been carried out.

(6) The search of the prisoner prior to leaving Castle Huntly was not thorough and a more thorough search may have discovered that Mr. Campbell was leaving with substantially more cash than he was entitled to have on his person.

INTRODUCTION

Inquiry into the circumstances of the death of Catherine Thomson took place at Airdrie on 3, 4, and 5 September. The enquiry was continued to 19 September for Affidavits and submissions but, due to other business involving the representative of the Scottish Prison Service, had to be further continued to 24 September, all 2007.

Mr. Alan McDonald presented the evidence on behalf of the Procurator Fiscal, Miss Jillian Martin-Brown represented the Scottish Prison Service (S.P.S.) and the family were represented by Mr. Barry Murphy.

Evidence was led from 15 witnesses, together with affidavits from further witnesses.

The Procurator Fiscal lodged 55 productions, the S.P.S. 11, and the family 1.

Each party lodged written submissions which have proven very helpful and which are later reproduced in full.

THE LAW:

A: The Inquiry

The Inquiry was called in terms of S.1 (1) (b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 which provides:

“(1) Subject to the provisions of any enactment specified in Schedule 1 to this Act and subsection (2) below, where-

(b) it appears to the Lord Advocate to be expedient in the public interest in the case of a death to which this paragraph applies 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,

the procurator fiscal for the district with which the circumstances of the death appear to be most closely connected shall investigate those circumstances and apply to the sheriff for the holding of an inquiry under this Act into those circumstances.”

The duties and powers of the Sheriff in respect of his Determination are set out in S.6 of the Act which provides :-

- “6 . (1) At the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the sheriff shall make a determination setting out the following circumstances of the death so far as they have been established to his satisfaction—
 - (a) where and when the death and any accident resulting in the death took place;
 - (b) the cause or causes of such death and any accident resulting in the death;
 - (c) the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided;
 - (d) the defects, if any, in any system of working which contributed to the death or any accident resulting in the death; and
 - (e) any other facts which are relevant to the circumstances of the death.”

The Sheriff does not determine any question of civil fault or blame (*Black v Scott Lithgow Limited* 1990 SLT 612) and, in terms of S.6 (3) of the Act, the determination cannot be founded upon in any subsequent proceedings.

By S.4 (7) of the Act, the rules of evidence shall be as nearly possible those applicable to an ordinary civil cause, so that the standard of proof is on the balance of probabilities and facts and circumstances can be established without the necessity of corroboration.

PRISONER MANAGEMENT:

1. Release of Prisoners

This is governed by the Prisoners and Criminal Proceedings (Scotland) Act 1993 which provides:

“S.1 Release of short-term, long-term and life prisoners.

— (1) Subject to section 26A(4) of this Act, as soon as a short-term prisoner has served one-half of his sentence the Secretary of State shall, without prejudice to any supervised release order to which the prisoner is subject, release him unconditionally.

(2) As soon as a long-term prisoner has served two-thirds of his sentence, the Secretary of State shall release him on licence unless he has before that time been so released, in relation to that sentence, under any provision of this Act.

(3) After a long-term prisoner has served one-half of his sentence the Secretary of State may, if recommended to do so by the Parole Board under this section, release him on licence.

(3A) Subsections (1) to (3) above are subject to section 1A of this Act.”

**Under The Prisons and Young Offenders Institutions (Scotland) Rules 1994
(as amended):**

2. Supervision Levels

“14A. The supervision levels which may be assigned to prisoners in accordance with this Part of these Rules are specified in column 1 of the Table set out below and the description of each level is set out opposite that level in column 2 of the Table:—

<i>Column 1</i>	<i>Column 2</i>
<i>Supervision Level</i>	<i>Description</i>
High Supervision	A prisoner for whom all activities and movements require to be authorised, supervised and monitored by an officer.
Medium Supervision	A prisoner for whom activities and movements are subject to limited supervision and restrictions.
Low Supervision	A prisoner for whom activities and movements are subject to minimum supervision and restrictions, and who may be given the opportunity to participate in supervised or unsupervised activities in the community.

Assignment of supervision levels

14B. — (1) Every prisoner shall be assigned a supervision level in accordance with the provisions of this Part of these Rules.

(2) Subject to the following paragraphs of this rule, a prisoner shall be assigned the appropriate supervision level having regard, so far as applicable, to the following criteria:—

(a) the seriousness of the offence for which the prisoner has been convicted;

(b) the prisoner's previous convictions;

(c) any outstanding charges;

(d) the length of time that the prisoner has spent in custody;

(e) the prisoner's conduct in custody;

(f) the prisoner's trustworthiness and stability; and

(g) any other criteria as may be specified in a direction made by the Scottish Ministers for the purposes of this rule.

(3) Any such direction made by the Scottish Ministers may make provision for the relative importance that is to be given to each of the criteria in determining the assignment of a supervision level, and may make provision as to the form and content of any document that may be required to be completed by the Governor when assigning, or when reviewing the assignment of, a supervision level.

(4) Subject to paragraph (7) below, all prisoners, on reception, shall be assigned high supervision level.

(5) Within 72 hours of reception, the supervision level of all prisoners shall be reviewed in accordance with the provisions of these Rules.

(8) Following the review of a supervision level in terms of paragraph (5) above, the Governor shall keep under review and shall formally review within 6 months, and thereafter at least once in every period of 12 months, the supervision level assigned to each prisoner and may, if appropriate, assign another supervision level to the prisoner.

(9) The entitlement of any prisoner who is assigned low supervision level to participate in supervised or unsupervised activities in the community shall be subject to the requirements of rule 91 and of Part 14 of these Rules.

Information regarding assignment of a supervision level

14C. — (1) This rule does not apply to the assignment of high supervision level on reception or to the review of a supervision level to which rule 14D applies.

(2) Following the assignment of a supervision level or the review of a supervision level in accordance with this Part of these Rules, the Governor shall—

(a) inform the prisoner in writing—

(i) in the case of the assignment of a supervision level of the reasons why the supervision level assigned is appropriate; or

(ii) in the case of a review which has resulted in no change of level, of the reasons why a lower level is not appropriate; “

3. TEMPORARY RELEASE

Short leave and winter and summer leave

“120. — (1) In this rule—

(a) “short leave” means temporary release from a prison of a prisoner for the purpose of enabling the prisoner to visit his home or other approved place for a period not exceeding 3 nights excluding travelling time; and

(2) On the application of an eligible prisoner and subject to rule 126, the Governor may grant the prisoner short home leave or Christmas and summer leave if he is of the opinion that, having regard to the relevant criteria applicable to the grant of such leave, it is appropriate to do so.

(3) For the purposes of this rule, a prisoner is an eligible prisoner only if at the time of application the prisoner—

(a) is confined at a prison or in a particular hall or part of a prison to which this rule applies;

(b) is assigned low supervision level; and

© is not disqualified from consideration for any reason specified in rule 124(1).”

Direction dated 11 February 2005 (effective 15 February 2005)

“3.—(1) Following receipt of an application for short leave or winter and summer leave in terms of rule 120 of the Rules, the Governor shall-

- (a) check that the prisoner is an eligible prisoner;
- (b) obtain such reports as are necessary in order to consider the prisoner's suitability for such leave;
- (c) obtain a report on the suitability of the premises at which the leave is proposed to be taken;
- (d) consider whether the criteria applicable to the granting of such leave are satisfied; and
- (e) assess the risk that the prisoner may abscond and/or present a danger to the public.

(2) The Governor shall record his decision and the reasons for it in writing.

Criteria applicable to short leave and winter and summer leave

4. for the purpose of rule 120(2) of the Rules, the relevant criteria are-
- (a) that the reports obtained by the Governor in terms of paragraph 3(1) of this Direction are satisfactory; and
 - (b) that the prisoner's conduct in custody has, in the 6 months prior to his application, been of a consistently high standard."

4 Searching of prisoners

"88. — (1) Every prisoner may be searched by an officer in accordance with the provisions of this rule.

(2) A search of a prisoner may take the form of—

- (a) an examination of the prisoner's person and clothing but without removal of the clothing;
- (b) the removal and examination of the prisoner's clothing;
- © the visual examination of the external parts of his body following removal of the prisoner's clothing; or
- (d) if the prisoner agrees, the visual examination of his open mouth without the use of force or any instrument.

(3) A search of a prisoner shall be carried out—

- (a) only by an officer who is of the same sex;
- (b) as expeditiously and decently as possible;

- (c) in the case of a search of the type mentioned in paragraph (2)(b) and (c)–
 - (i) by 2 officers of the same sex; and
 - (ii) out with the sight of any other prisoner; and
- (d) in accordance with any other conditions as may be specified in a direction by the Secretary of State.
- (4) A prisoner may be searched at such times and in such circumstances as the Governor considers necessary.
- (5) Subject to paragraph (2)(d), the power to search conferred by this rule shall not be construed as authorising the physical examination of a prisoner's body orifices"

5 Conduct constituting a breach of discipline

"94. In this part, "breach of discipline" shall be interpreted in accordance with Schedule 3 to these Rules.

SCHEDULE 3

Rule 94

BREACHES OF DISCIPLINE

"A prisoner shall be guilty of a breach of discipline if he–

- (i) has in his possession–
 - (i) any article which he is not authorised to have; or
 - (ii) a greater quantity of any article than he is authorised to have
- (u) inhales any substance, or the fumes of any substance, which is a prohibited article or consumes, takes, injects or ingests any substance which is a prohibited article;"

6 Governor's punishments

"100. — (1) If he finds a prisoner guilty of a breach of discipline, the Governor may impose one or more of the following punishments:–

- (a) a caution;
- (b) forfeiture of any privileges granted under the system of privileges applicable to a prisoner for a period not exceeding 14 days;
- © stoppage of or deduction from earnings for a period not exceeding 56 days and of an amount not exceeding 28 days' earnings;

- (d)except in the case of a young prisoner, cellular confinement for a period not exceeding 3 days;
- (e)in the case of a short-term or long-term prisoner whose sentence or period of detention was imposed on or after 1st October 1993, but subject to paragraphs (3) to (5), an award of additional days not exceeding 14 days;
- (f)in the case of a prisoner who is an existing prisoner within the meaning of paragraph 1 of Schedule 6 to the 1993 Act who is serving a sentence of imprisonment for a term of more than 5 days, forfeiture of remission of sentence for a period not exceeding 14 days;
- (g)in the case of a prisoner guilty of escaping or attempting to escape, forfeiture of the entitlement to wear his own clothing under rule 18 for any period as may be specified;
- (h)in the case of an untried prisoner or a civil prisoner, forfeiture of either or both of the entitlements referred to in rules 41 and 46 for any period as may be specified; or
- (i)forfeiture of the entitlement to withdraw money in terms of rule 45(3) for any period not exceeding 14 days.

Suspended punishments

- 101.** — (1) The power of the Governor to impose a punishment under rule 100(1)(other than a caution) includes power to direct that the punishment shall not take effect unless, during such period of the prisoner’s sentence as shall be specified in the direction (not being more than 6 months (or 3 months in the case of an untried prisoner) from the date of the direction), the prisoner commits another breach of discipline and a direction is given under paragraph (2).
- (2) Where a prisoner is found guilty of a breach of discipline committed during the period specified in a direction by the Governor under paragraph (1) then the Governor dealing with that breach may–
- (a)direct that the suspended punishment shall take effect;
 - (b)reduce the period or the amount of the suspended punishment and direct that it shall take effect as so reduced;
 - ©vary the original direction by substituting for the period specified a period expiring not later than six months from the date of variation; or
 - (d)give no direction with respect to the suspended punishment.”

FINDINGS

1. On 27 August 2002, John Campbell received an 8 year sentence in cumulo for 2 charges of assault to severe injury and permanent disfigurement having previously evinced malice and ill-will, to date from 27 August 2002 and 6 months consecutive for possession of an offensive weapon.
2. In terms of this sentence, his Parole Qualifying Date (“PQD”) was 26 November 2006, being halfway through the sentence. His Earliest Date of Liberation (“EDL”) was 24 April 2008. His sentence would have expired on 26 February 2010.
3. The Trial Judge noted that John Campbell had had 20 court appearances for 36 offences between 3 December 1987 and 6 July 2001. In particular, it was noted that John Campbell had been convicted at Glasgow High Court on 20 January 1998 of assault and robbery and a contravention of S.17 (2) and (5) of the Firearms Act 1968 and sentenced to 4 years and 3 years imprisonment concurrently on each offence. That offence had been committed while John Campbell had been released on licence in respect of a previous custodial sentence (which itself had been committed while on similar release) and he was ordered to serve a period of 232 days from the original sentence. He was released from the 4 year sentence on 8 March 2001 but his licence was revoked on 8 May 2001 following his appearance at Glasgow Sheriff Court on charges of breach of the peace and possession of a lock knife in contravention of the Criminal Law (Consolidation) (Scotland) Act 1995 S.49(1). He was again released on 1 May 2002, following a Parole Board recommendation in April 2002. The assault offences in para.1 were committed on 10 May 2002.
3. John Campbell was transferred to H.M. Prison Kilmarnock from Barlinnie on 24 September 2002 in respect of the sentence of 8 years 6 months.
4. H.M. Prison Kilmarnock run a number of courses to assist, among other things, in the rehabilitation of Prisoners. The principal courses which affect John Campbell were;

- (a) Anger Management-A prisoner could be referred by the prison, Sentence Management or member of staff. He would then be assessed by a Psychologist to see if there was sufficient evidence that he would benefit from the programme. The programme deals with re-active anger not at those who use violence to achieve a goal. The programme runs over 15 sessions with up to 12 prisoners in each and between 4 and 6 run in a year
- (b) Problem Solving Skills Training-The same referral process as above. The programme is for those with difficulties in self management, perspective taking, and consequential/alternative thinking.
These two programmes are accredited by the SPS.
- (c) Advanced Drug Awareness-Not an accredited programme but approved and agreed activity. This is a less lengthy process.
- (d) Haven-Deals with a different type of violence and runs over 5 sessions in one week.

To progress through the Sentence Management process, a prisoner has to attend courses/programmes assessed as suitable for him. There is no other form of sanction for Prisoners who refuse to participate.

5. In accordance with the 2002 rules , he was initially assessed as High Supervision Level on his admission at Kilmarnock. There is no record of the review of his status within 72 hours thereafter. Production 48 is a blank PSS2 one of which should have been completed in respect of John Campbell. He fell within para.1 of the Supervision Level Flowchart as being “Within 12 months of Commencing a sentence of 4 Years or over for serious Violence.” He should, therefore, have remained subject to High Supervision Level until 26 August 2003, at the earliest.
6. The purpose of the Scottish Prison Service (SPS) Supervision System is “ to maintain secure custody, good order and to ensure that prisoners receive the lowest appropriate level of supervision within establishments according to their behaviour and response in custody.” The system is not an assessment of the risk a prisoner may pose to the community.

7. A Prisoner Assessment Form (Prod.1 p.446-461) and Prisoner Compact Agreement (Prod.1 p.441-445) were completed on or around his date of admission. His supervision level was confirmed as High with a review date of 8 October 2002. There is no record of a review at that date.
8. John Campbell was reviewed by the Sentence Management Board (SMB) on 8 May 2003. PDP1, relevant assessments and Prisoner Interview were prepared (Prod.1 p423-437) Although he had had no positive Drug Tests since admission, he admitted “he still regularly abuses drugs” Also shown is an attempted hanging in January 2003 and he is shown as High Risk in respect of Vulnerability(p429). A Sentence Management referral was completed showing the Supervision Level as “High” and identifying needs as “Anger Management, PSST “ and querying Drug Awareness(P438). The Sentence Management Agreement is signed on 8 May 2003 with a review date of November 2003.
9. The computer print out of Supervision Levels(Prod.55) shows Medium Supervision from 09-05-2003. A reduction in Supervision Level is not shown on any of the papers in respect of the SMB review on 8 May 2003 and would not have been in accordance with the Supervision Level Flowchart, being within 12 months of his sentence.
10. A prisoner should not progress through the system until he has completed all programmes identified as suitable for him or for which he has been referred for assessment.
11. On 24 June 2003 John Campbell had a number of unauthorised items in his possession (presumably drugs) in breach of Schedule 3 Rule 94(i).
12. On 5 August 2003 John Campbell incurred 3 breaches of Schedule 3 Rule 94(x) in that traces of 3 separate drugs were detected in a drug test.

13. The SMB carried out a further review in November 2003. A Prisoner Interview and PDP2 were completed (Prod.1 p411-422). The Psychological Assessment confirms John Campbell is on the waiting list for programmes for Anger Management, PSST and Drug Awareness. It confirms no programmes have been completed. The PDP2 shows "Medium" in the heading of page 1 (p412) and, in Section 4, that he had met a target and was on Medium Supervision Level... Section 6 sets out the various criteria for assessing the supervision level under 10 headings. Risk is assessed as "Higher, Lower or the same as the **initial assessment**" (my emphasis). Under "VIOLENT OFFENDING", "REOFFENDING" and "CONTROL PROBLEMS" he is assessed as "SAME RISK." Under "SEXUAL OFFENDING", "VULNERABILITY", "ESCAPE/ABSCONDING", "ABUSE OF TRUST" And "SELF HARM", he is assessed as "Lower Risk". Under "SUBSTANCE ABUSE" he is assessed as "Higher Risk".

The breaches above were referred to and he was on a waiting list for programmes identified previously. The Sentence Management Agreement is dated 6 November 2003 with a review date in May 2004.

14. The SMB carried out a further review in May 2004. (Prod 1 p398-410). The Prisoner Interview sets out that he had completed a Detox and advanced Drug awareness programme. Unfortunately, there is nothing in the Records regarding this. It confirms 2 breaches of the Rules-Rule 94(i) when a package (drugs) was passed to John Campbell during a visit by his brother Craig, and 2 breaches of Rule 94(x) following positive drug tests on 18 February and 16 March 2004. (Prod 54 indicates a further positive test on 13 April 2004) It further states that he was deselected from Anger Management assessment on 8 March 2004. The Psychological assessment (P407) states "Did not wish to attend Anger Management 8/3/04".

In Section 6 (p400) under "VIOLENT OFFENDING", "REOFFENDING", and "SUBSTANCE ABUSE" the assessment is "SAME HIGH RISK" in relation to the question "Is risk assessed to be Higher, Lower or the same as the **initial assessment**" (my emphasis). In respect of "ABUSE OF TRUST" and "CONTROL PROBLEMS" (p401) the assessment is "HIGHER RISK".

In Section 9(p402) the assessment in relation to long term action plans etc. is:”Mr. Campbell admits that he is still misusing drugs and is currently on the waiting list for a methadone programme.Once he has addressed his addiction problems he needs to be assessed for programmes.”

John Campbell did not meet the criteria for lowering his Supervision Level at this time.

16:John Campbell had further positive Drug Tests on 8 June and 6 August 2004(Prod 54).

17:The Sentence Management Review documents (Prod.1 p380-393) confirm Medium Supervision Level and that he started on a methadone course.No further details of this are recorded in his file.In respect of “VIOLENT OFFENDING”, “REOFFENDING”,”SUBSTANCE ABUSE”,”ABUSE OF TRUST”, and “CONTROL PROBLEMS” he is assessed as “LOWER RISK” in comparison to that “**as at the last review**”(my emphasis).The Psychological Assessment prepared ,in respect of refusal/failure to attend an assessment or course states-“Anger Management gp24-no need ID” and “PSST gp21-no need ID.”(gp24 and gp21 refer to the number of a group course).No details of any interview, assessment or otheerwise is within the file in respect of John Campbell.

John Campbell did meet the crireia for a lowering of his Supervision Level at this time.

18: John Campbell was transferred to Friarton, Perth on 6 May 2005 and thereafter to Castle Huntly on 13 July 2005 Castle Huntly is part of the Open Estate. There are no fences around the prison and prisponers are eligible for work or visits in the community.Castle Huntly houses a number of different types of offenders without segregation.

19: Following his admission,an Admission Screen was completed (Prod 9). This is based on information provided by the Prisoner.The prisoner is assigned a Personal Officer who may then have very little contact with him.A Community Access Risk Assessment is then prepared drawing together information from a number of sources;

Social work-Home background Report

Personal officer-Risk Assessment and Progression Report

Training Officer

Intelligence Unit

Addiction Services

Nurse Practitioner

In addition, several other matters are checked. In particular that the Prisoner has been awarded Low Security status, has been Drug free in the last 4 months, and free of Governors Reports in the last 4 months.

Notwithstanding that this is called a Community Access Risk Assessment, the risk to the community from the Prisoner is not assessed in this process. Rather it is a review of the Prisoner's behaviour while in custody. No consideration was given to John Campbell's previous convictions nor that many had been committed while on licence.

A Low Supervision Level was equated with Low Risk to the community but that is not the purpose of Supervision Levels which, after the initial assessment, are based solely on recent behaviour in custody. The Personal Officer, whose report is very important in this process, has no training at all in Risk Assessment and little or no personal knowledge of the Prisoner.

A further crucial report is the Home Background Report (Prod.15). This report is to address the following issues:

- 1 The suitability of the proposed address.
- 2 The attitude of the family towards the prisoner residing at the proposed address on home leave periods.
- 3 The attitude of the local community towards this offence.

The Report is carried out by North Lanarkshire Council, Social work, who were responsible for Throughcare in respect of John Campbell. The report was prepared following an interview with John Campbell's mother and brother. The information given by them was checked in relation to housing of the brother but not otherwise, and it would be difficult so to do. The information was not truthful in many regards but in particular in relation to drug use within the home.

20: Following submission of the Community Access Risk assessment to him, the Governor approved short leave for John Campbell.

The Governor did not comply with Rule 3 (1)(e)(assess risk that the prisoner may abscond and/or present a danger to the public) or (f)(The Governor shall record his decision and the reasons for it in writing).

21: John Campbell provided a further positive drug test on 11 August 2005, in respect of two substances not identified in his records.

22: John Campbell was placed on report in respect of each for breaches of Schedule 3 rule 94(x). The Governor awarded 7 days loss of pay and 7 days with no access to his personal cash from 16 August 2005. These dates cover the start of the short leave period which was to start on 19 August 2005.

23: John Campbell also required to attend on the Deputy Governor for review of his short leave on 18 August 2005. The deputy Governor did not know John Campbell. He did not review the file for him. John Campbell provided an explanation which was not recorded. The deputy Governor imposed a penalty of loss of the next home leave suspended for two months. He did not carry out an assessment of risk following this positive test. He did not record his reasons for his decision.

24: John Campbell was released on short leave on 19 August 2005. He was transported by Reliance staff to Buchanan Street bus station in Glasgow in accordance with arrangements for prisoners to the west of Scotland. He thereafter made his way to his mother's home at 9 Deepdene Road Moodiesburn.

25: John Campbell was in possession of over £200 on arrival there. He told his brother, Craig, that he had been given money to buy drugs to take back into Castle Huntly. John Campbell consumed cocaine and heroin later that day, in the company of others including Catherine Thomson.

26: On 20 August, John Campbell and his brother Craig travelled to Airdrie to fill John Campbell's methadone script. They purchased cocaine which they later consumed along with Catherine Thomson. She acknowledged having borrowed money from John Campbell. Later John and Craig Campbell smoked cannabis and drank alcohol. John Campbell told Brian White that he had been given money from prisoners in Castle Huntly to buy drugs for them.

27: John and Craig Campbell purchased further drugs on 21 August. John Campbell made several attempts to contact Catherine Thomson who was avoiding him. He asked others to contact her on his behalf. He stated to Brian White "Have you seen that wee Catherine bastard?" and "I fucking need that because that's fucked me for my parcel for the jail" and "I'm telling you if she doesnae come across with that money, I'm gonna do her in, I mean it I'm gonna really fuckin' do her in"

28: On 22 August, Ann Thomson, Catherine's mother, rose at her home, 11 Fernleigh Place Moodiesburn and left for work by 06:30. Martin Thomson, Catherine's brother, arose about that time. He found John Campbell in the livingroom of the house with his sister. He left for work at 07:05. His sister had told him that John Campbell had left. He locked the door when he left. He had seen his sister's keys on the coffee table in the livingroom when he left. His sister was then watching television.

29: At about 11:45 that day, Catherine's sister, Caroline called at 11 Fernleigh Place with her daughter, Saffron. She sent her daughter upstairs to look for Catherine. She then went up and found her sister on the floor of the front bedroom. She was fully clothed, face down and wrapped in a bloodstained quilt. She called for help. The police were contacted. A police surgeon pronounced Catherine dead at 15:00 that day. Catherine's keys and mobile phone were missing from the house.

30: At about 10:25 that day, John Campbell was seen running for a bus. He dropped a mobile phone which was later recovered and found to be Catherine's. He was sweating and looked agitated.

31: On 24 August, John Campbell had been arrested on another matter. He was searched at Kirkintilloch Police Office and found to be in possession of Catherine's keys.

32: An examination of 11 Fernleigh Place was carried out. A knife was found in the bedroom where Catherine had been. It was heavily bloodstained. The blade was bent, consistent with it being used with force. The blood was consistent with Catherine's DNA.

A piece of handrail was found at the bottom of the bed. It was heavily bloodstained. The blood pattern was consistent with swinging and dropping of the handrail. Again the blood matched Catherine's DNA.

Heavily bloodstained white denim/cords were recovered from a linen basket at the top of the stairs within 11 Fernleigh place. The blood matched Catherine's DNA. DNA tapings from within the legs identified the wearer as John Campbell.

An analysis of Catherine's underpants showed semen staining on the inside back close to the crotch. A DNA profile of this matched John Campbell.

33: The post mortem on Catherine showed multiple incise wounds and injuries consistent with blunt trauma. The primary cause of death was a stab wound to the right side of the neck penetrating the jugular vein and the resultant blood loss.

34: That stab wound, and the other injuries, were inflicted on Catherine Thomson by John Campbell.

35: Following upon his arrest on other matters, John Campbell was committed to HM Prison Barlinnie. He telephoned his mother from there and was advised of the police investigation into the murder of Catherine Thomson. On 26 August 2005 John Campbell jumped from a fourth floor balcony within the prison. He died as a result of his injuries from said fall in The Royal Infirmary Glasgow at 15:00 on that date.

36: The systems for Sentence Management have changed since August 2005. Following The Management of Offenders etc. (Scotland) Act 2005, new procedures have been developed. The process is called Integrated Case Management, a case conference model involving all service providers. S.10 and S.11 place a statutory function on local authorities, the Scottish Prison Service, the Police and Health Services to establish arrangements jointly (i.e. the Multi-agency Public Protection Arrangements (MAPPA) for the assessment and management of risks posed by certain high risk offenders.

An Integrated Practice Guidance for Staff involved in the Home Leave Process was issued on 14 February 2007 (Circular No. JD 1/2007). This sets out a number of headings. The Assessment For Temporary Leave are particularly relevant following this Inquiry. The Circular recognises: "37. Where the current system is in need of most improvement is in relation to the first period of home leave. This is

where procedures for risk assessment and information sharing need to be robust. If not, problems may arise.”

This section highlights that the principal focus will be on community safety in general and on victims in particular. It stresses that past offending history has to be considered.

At Para 53, it is acknowledged that, in the past, risk had been framed in relation to supervision levels rather than on the risk posed by the prisoner being released temporarily on leave.

However, this has not been emphasised to those involved in the process, lower levels of staff still equating low supervision level with low risk. No systematic training has been provided to prison staff, particularly Personal Officers who still have a significant role in the process.

The Circular also deals with-(a) contact for those on home leave which was non-existent in August 2005.

(b) Home Background Reports which are to be more focused on risk and need.

(c) Notification to relevant authorities of timing and conditions of release.

36: The failure of a drug test after approval of home leave will now automatically suspend home leave for a period while risk is re-assessed.

NOTE:

The evidence in the Inquiry covered three basic chapters-(Firstly) John Campbell's admission and progress while in Kilmarnock before subsequent transfer to the Open Estate, (Secondly) his period in the Open Estate, principally within Castle Huntly and (Thirdly) the period during his short release to his home address at 9 Deepdene Road, Moodiesburn.

In respect of the period within Kilmarnock prison, I heard evidence from Michelle Gilluley, Senior Psychologist, Maureen Brown, resettlement co-coordinator, George McShane, Assistant Director Prison Management and Morven Miller, Senior Social

Worker, Criminal Justice Manager with the responsibility for social work at Kilmarnock and Throughcare Partnership Service.

The first of these witnesses was **Michelle Gilluley**, the senior psychologist. She is head of a department with five psychologists at different levels and the department has an overview of offending behaviour. The department provides assessment and intervention in general terms. There are a number of offending behaviour programmes which look at behaviours which brought the prisoner to custody. Interventions are then devised which are programmes, essentially group work, provided for the prisoners and these programmes include Anger Management and Problem Solving Skills, both of which are accredited by the Scottish Prison Service.

In more detail she explained in relation to the courses:

Anger Management: run over fifteen sessions, normally one per week but sessions two and three and ten and eleven are run together. Up to twelve prisoners are on each course and four to six courses are run each year.

A prisoner may be referred by the prison, sentence management team or member of staff.

After referral the prisoner is assessed by a psychologist to see if there is sufficient evidence that the prisoner would benefit from participating in the programme.

The programme is designed to look at the risk posed principally in the establishment and in future. The location of the prisoner in the establishment will be considered, e.g. should he be in a vulnerable wing.

The programme is meant to deal with re-active anger rather than those who use anger to achieve a goal. This can be on a sliding scale. Anger is a normal motion but some have poor or no coping strategy and others deal with it effectively. Violence does not need anger; it can be a means to an end so there is no emotional arousal. John Campbell could have shown he was able to manage anger and therefore the course would be of no benefit to him. It is not possible to say from the paper work and his previous convictions whether John Campbell had reactive anger or used anger as a means to an end.

Problem Solving Skills Training: this runs over thirty sessions in a ten week period. Four programmes are run per annum with twelve prisoners per course.

The process for selection is the same as for anger management. The programme is designed to consider prisoners with difficulties with self management perspective taking, consequential/alternative thinking. .

Advanced Drug Awareness Programme: This is an approved and agreed activity similar to approved courses but less lengthy in process. It is not accredited by the Scottish Prison Service.

Haven: This runs over five sessions, Monday to Friday, and runs once per month. This deals with a different type of violence from the anger management.

In relation to the productions in respect of Mr Campbell's time at Kilmarnock Prison, these are found all within Production 1.

Page 438 is a sentence management referral which is not completed by a psychologist but simply says that "John Campbell was a candidate for anger management and problem solving skills training." On page 422, dated 06 November 2003, it states that "he is on a waiting list." It is normal to be on a waiting list for that time, i.e. over a year after admission to the prison.

Page 418, dated 30 October 2003, is signed by Tracy Murray, a psychologist. The procedure is for the form to be given to the psychologist by the sentence management staff to check progress of the prisoner. It is then returned to the sentence management staff. Courses referred to means the programmes or interventions mentioned above, e.g., Anger Management or Problem Solving Skills Training.

Page 407, dated 05 May 2004, is complete by Sonia Porter-Auld. It would appear John Campbell was approached to attend for assessment and did not wish to be assessed. No reason for that is recorded anywhere.

Page 390, dated 25 November 2004, contains basically the same information as page 407 but in different form. This is completed by Nieve Kennedy, a psychologist. GP 24 and GP 21 refer to the group numbers of the courses being run. “No need ID” - this would indicate Mr Campbell’s position had changed. He will have been assessed for both programmes and found that he would not benefit from the programmes offered in these areas. There can be a number of reasons for this, e.g., he may not present with reactive anger or he may manage well or cope with anger. In relation to the Problem Solving Skills Training, he could show ability to use consequential or alternative thinking. There is no further documentation to show why he was then assessed as not needing to attend either programme and it is not possible to say whether he had reactive anger or not or whether he was able to use consequential/alternative thinking.

In relation to the programmes, the move to the Open Estate is not a decision made by the psychologist but if a programme is not completed then the prisoner should not move on or progress through the prison management system.

There are no services available outwith the programmes mentioned above.

The assessment is not a risk assessment which the individual may pose to the community and the supervision level bands relate to behaviour within the prison solely.

There is no sanction if a prisoner refuses to be assessed or to attend courses for which he is assessed as suitable or, while waiting assessment, refuses to be assessed, other than he will not progress through his sentence management until he has been assessed and attends those courses deemed suitable for him.

The position has now been reviewed. The psychologist would now attend a Risk Management Group which the prisoner also attends. There is also an Integrated Case Management Group to assess risk to others and to the prisoner within the prison and further risk to the public where the group have not yet carried out any assessment or risk of potential danger to the public.

In the case of a prisoner, such as John Campbell, who has been released, offended, released and offended, she accepted that was still not flag up a requirement to look at risk to the public. At an Integrated Case Management meeting, if it was felt there was a need for an intervention programme or behaviour caused concern, the meeting could request a full psychological assessment and then look at the risk of the offending. This opportunity was not in place when John Campbell was in prison.

If a prisoner behaved while in prison, he is not likely to be referred further, e.g., to the Risk Management Group.

In respect of John Campbell, Gail Benzie had completed the referral to the offending behaviour programmes. The programmes only treat needs that exist so not everyone goes to every programme and not all violent prisoners have reactive anger.

Prisoners can develop strategies while in custody to cope. Progress throughout the prison system can be affected, e.g., if they attend programmes and that makes a difference to their behaviour that is a positive. The progression throughout the prison also looks at a number of other matters, e.g., behaviour in the establishment, participation in work or drug testing.

Integrated Case Management differs from the old scheme and is a progression from that. Coordinators have similar roles, there are multi disciplinary meetings with a coordinator, social work, psychologist, prisoner, but not all attend every meeting.

A full risk assessment is more robust, looks at level of probability of further offending which can be assessed but she maintained that those carrying out the process do not have a crystal ball.

The next witness was **Maureen Brown**, a residential coordinator at HM Prison, Kilmarnock. She had been in the post for three years on giving evidence. She had been responsible for overview of court desk procedures, warrants, transfers and sentence management planning.

Essentially when a prisoner first arrived he would be met by officers who would discuss how to progress during his sentence. Progression means progression in the system from closed to semi-open to open and thereafter to release. The same approach is had with all prisoners. The time they require to spend in closed prison depends on the length of sentence, the longer the sentence the longer the time in the closed estate. She had not had personal knowledge of John Campbell. He would have had his initial assessment within seventy-two hours of his arrival and there should have been a review of the risk and needs assessment six-monthly thereafter, this would look at the number of previous convictions to see if there is any programmes which would assist in addressing his behaviour. There is a similar process in both review and assessment.

The Personal Officer would look at the wing narrative and progress while in prison and compile a report.

The sentence planning assessment should be six months after the initial seventy-two hour interview and annually thereafter which is running in parallel with the review of his supervision level. Prisoners start at High and reductions or increases in the status would depend on their behaviour.

There are three supervision levels, High, Medium and Low and a prisoner has to attain Low supervision before being eligible for transfer to the Open Estate.

She agreed that low supervision is not the same as low risk to the community.

A record is taken of each supervisory review meeting which should be with the prisoner's file and move with the prisoner to each establishment.

In relation to John Campbell, she was referred to Production 1 pages 427-434, the Prisoner Development Plan 1 (PDP1).

This paperwork should be passed to the Sentence Management Board.

There should be other paperwork for the Sentence Management Board that is not within the documentation available.

Accompanying the PDP1 is a prisoner interview and other assessments including health care, the PE department ,employer, psychology and a record of any disciplinary action within the prison These papers relate to the May review.

She was then referred to page 412 – namely the PDP2 for review in November – the date noted here was 06 November which was the six month review. It was shown on page one of that to be on a basic regime something having happened in the house-block with a target for medium supervision, which was marked “not met.” The target would have been to go from high supervision level to medium and he may not have completed a programme. He would not have normally reduced from high if within twelve months of receiving a sentence of over four years. Again the paperwork was accompanied by a prison interview (page 411) which showed a positive mandatory drug test in August 2003. She confirmed that this would then be reported to the controller for punishment. There should also be a PSS2 form discussing supervision levels but that was absent from the paperwork.

Mr McDonald then referred her to page 399 PDP2 for a review in May 2004. This form indicated medium supervision and had been signed by her and it was six months from the previous review. Her reference to Sentence Planning Board was the same as the previous Supervision Review Board. The forms indicated that Mr Campbell was still abusing drugs but that was not a reason for him to be on high supervision and was consistent with medium risk. This was however reason not to be on low supervision. The prisoner failed a mandatory drugs test and this was recorded at the prisoner interview (page 398) which confirmed that he completed a Detox programme and an advanced drug awareness programme but had lapsed back into drug misuse.

A further Sentence Management Review was carried out in December 2004. The Sentence Management Review is the same system as the PDP2 system but basically very similar, the Sentence Management Review is on page 385 and is accompanied by supporting documents again from health care, employer, education, psychology, chaplaincy and a record of any contraventions of the prison rules. In relation to programmes where it is stated he was “not suitable”, this is taken as being the same as

“completed.” The prisoners would continue to move forward if they had been of good behaviour for three months and no positive mandatory drug tests and had addressed behaviour. It would of course all depend on the length of sentence and regard to the minimum periods. The Scottish Prison Service set the criteria for progress at that time. She did not know why page 385 showing signature for the Chair of Board was blank.

She agreed that supervision levels should be shown and the supervision level forms should be within the file but they were not. In that regard she was referred to Production 55 which showed Mr Campbell to be High Supervision at 08 November 2002; Medium at 09 May 2003; Medium at 11 November 2003, Medium at 12 May 2004 and Low at 03 December 2004. The name – S Nelson- refers to the assessment and clarification clerk.

Once on a low supervision level, there is no set criteria or time to pass before progression to the Open estate, but there would normally be within a number of months.

She referred to Production 53 – a computer print out showing that the various establishments occupied Mr Campbell for his days in custody.

She agreed that certain incidents had occurred which were not recorded in Production 54 but could offer no explanation for that. This incident would not have affected his supervision level: if medium, he would remain medium but if low would mean revised to medium.

In relation to Production 52 at page 104 “concerted indiscipline”, if that resulted in a change of supervision level, it should show on the paperwork. She was aware that an incident had occurred but not aware that Mr Campbell was involved or whether he was found guilty of the offence and he could have been named and listed as being present. If he was convicted he could have been downgraded for six months to be of good behaviour before being reviewed again.

Questioned by Mr Murphy in that regard, she agreed that there is no detail of investigation but all information should be in the core paperwork. If he had been involved in an incident he could have been put on high supervision or into segregation for punishment or even moved out of the establishment. The November review of that year would look over the previous six months' behaviour, the prison record of him having been found guilty of this incident, the PSS2 should have been present in respect of matters.

In response to questioning from Miss Martin-Brown, she confirmed that Production 52: page 7 was the referral for offending behaviour programmes, such as Anger Management and Problem Solving but the psychologist would be able to better explain these matters. As far as she understood, Haven was a course allowing alternatives to violence:

Page 8 was a sentence management action plan .This showed attendance at a Drug Awareness programme, run by a separate addictions Team She confirmed that if a person did not attend courses identified as suitable then that person would remain at Kilmarnock

In relation to Production 16 annex B, where a prisoner is sentence to a period of four years and over he would remain on high supervision for a period of twelve months of conviction.

This is reflected in Production 55. By June 2004 he was reduced to medium and he remained there unless raised by an adverse development, and he had achieved low status by December 2004.

Production 48 is a PSS2 blank and one should have been completed for each review in respect of Mr Campbell.

She was then referred to Production 16 - Access to the Open Conditions. When eligible a prisoner could then removed to a top end prison which is less secure than Kilmarnock (e.g. Friarton) before going to the Open Estate, the process is for a sheet 312, transfer form, to be completed, there is a tick box. If all satisfactory go to

Friarton for a time. On being shown Production No 2 for the Scottish Prison Service she confirmed that was not in use at that time, the criteria is set at Production 47 – revised SPS criteria check list for admission to top end/open prison. This is the same for all prisoners in relation to Production 52, per privilege board, if report free the prisoner may get to, e.g. wear his own clothes, being unlocked for longer – extended visits.

In relation to progression, the idea is talking about rehabilitation throughout the sentence moving to semi-open then open. Progression is difficult; prisoners have to work to earn it. She confirmed that rehabilitation was very important as prisoners who will be put out at the end of their sentences in any event. There has been a substantial change with Integrated Case Management where all agencies sit down with the prisoner formulate an action plan to carry throughout prison. This came into effect in June 2006.

The next witness is in respect of Mr Campbell's time at Kilmarnock was George McShane, Assistant Director of Prison Management at Kilmarnock. He had nineteen years experience in the Prison Service and had been at Kilmarnock from December 2005.

Mr McDonald took Mr McShane through Productions 16, the access to the open conditions. He confirmed that Mr Campbell was a long-term prisoner, having been sentence to eight years six months. He would have been eligible for transfer after two years from his earliest parole date. In relation to high offence related needs these would refer to items such drug addiction and anger management.

He would have spent a minimum of six months in closed conditions.

Integrated Case Management was not available in 2005 but the conditions in place prior to then are the same.

In accordance with Appendix B Production 16, Mr Campbell would have been eligible to move to open prison after two years and he would qualify for parole after four years. He can move from closed state to open state two years before parole date

and can be in an open state for two years before the earliest parole date. The targets set by the Scottish Prison Service to ensure prisoners who are progressing through the system are in the appropriate place to test freedom so when the Parole Board meet they are assured all has been done to minimise risk to the public.

He confirmed that Production 47 is a check, list part A referring to long-term prisoners, PSS is prison sentence and supervision, to qualify to have to be of low supervision or be in top end for certain offences, such as Pentland, Friarton, Chrisswell House in relation to “immediate testing” or could be in a closed prison but allowed out for periods of time. All boxes have to be ticked yes.

He confirmed that a high risk act would be such as self-harm or suicide attempts. If yes is answered to all the questions in part A the prisoner would progress.

He was not aware of any logic for the three months’ time period set out in many of the questions and there is no discretion to look at matters outwith the three month period even if misconduct had been very serious, all acts of misconduct were treated the same and if outwith the three month period were disregarded.

He was then referred by Mr McDonald to Production No 48 – a PSS2 showing the review of supervision levels in prison and in particular flow chart at page 2. In terms of flow chart the sentence of eight years for violent offending would merit high supervision and also look at previous offending behaviour patterns outwith that twelve month period but within three years and also means and willingness of escape. All these could lead to high supervision levels.

In relation to Production 2, the conviction for assault and robbery, that was not a relevant conviction as it was outwith the three year period. Again Production 3, breach of the peace and possession of a knife in July 2001; that would not be relevant to supervision.

Production 4 was the index offence for which he was sentence to eight years six months and in respect of that he would be on a high supervision level. He then went over the meaning of paragraphs 4 to 10 on the flowchart, Section B of the flow chart,

if the answer was yes to any of the items from 4 to 10 he would have been on medium supervision, and the answer to all would have to be no before placing on low supervision. Only answers 1, 2 and 3 relate to high supervision levels, even if involved in serious misconduct, having a drug misuse problem resulting in a methadone course was not covered by any of the questions. The Review Board would meet once per year although you could have more than once per year.

In respect of the reviews as shown on Production 55, the Review Board would have regard to items 4 to 10 on the flow chart only.

In respect of Production 52, page 104, which was relating to the incident report of 08 June 2004 that would fall within the flow chart if it had been shown that Mr Campbell had been involved under paragraphs 4 and possibly 5, that would have been relevant within the period. The production however only showed that he had been charged otherwise there is no evidence that he participated and it is not possible from the paperwork to see if he was involved. He would have expected further reports to the ordinance room and more paperwork, none was available. He confirmed that prisoner would have to be on low supervision before moving to open state and that he would normally be three months on low supervision before transfer.

Production 54 is a computer printout of drug test history report for John Campbell. On 08 October 2004 – 22 June 2005 – all were negative where it is headed for “Risk Assessment” this is a test done outwith mandatory drug testing to test prisoner’s progression.

He agreed that John Campbell met the criteria for a move to the open state. He maintained that that prisoner’s record could make a considerable difference and if an officer was uncomfortable he could ask for a risk management assessment. However, John Campbell was on low supervision for three months and was therefore eligible to move under the check list. He did not know John Campbell and did not know how he had changed during supervision.

In respect of the judge’s report, Production 46, which set out the prisoner offences while on licence – none of that would be relevant as it was not on the check list.

In response to question from Mr Murphy he advised that the check list was set out following an Act of Parliament, his personal view was that matters should depend on a case and if he knew the prisoner he would see how far he had travelled during his sentence. If all the boxes are ticked there has to be a good reason not to progress a prisoner or could face judicial review, he agreed that personally John Campbell caused concern to him and he would recommend a risk management group. He agreed that that had been in place since 2005 but was not available prior to that and he was doing a different type of job at that point.

When asked how he would have addressed his concern he advised that he would have made Mr Campbell a high supervision level and force a review. The result of that would be that he was not available for transfer to the open estate.

Miss Martin-Brown then reviewed with him the incentives to behaviour. He confirmed that would be the standard regime at first, with regard to visits, the time out of cell, recreation, if he misbehaved the privilege would be reduced, if he behaved they would be enhanced Security -v- progression run in tandem, even if you earn privileges that does not mean that you progress. Programmes were assessed by experts. Risk that needs assessments would be assessed when the prisoner first arrived and could be reviewed thereafter depending on behaviour, a multi disciplinary conference would be involved in a risk needs assessment. He agreed that the three categories of supervision were as set at Production 48.

Miss Martin-Brown then took him to Production 52 when he confirmed that a number of reports were obtained, including from the employer and education within Kilmarnock (pages 16 and 17) these reports contribute to the low assessment by being read.

He then agreed that Mr Campbell's was then transferred to Friarton, the top end prison where he may enjoy escorted leave plus a work placement all leading to the Open Estate, the point of the transfer is to lead up to open conditions to allow him to reintegrate.

Integrated Case Management and the new risk management regime were better than the old regime. External social workers come in and all assist in the process.

The final witness in respect of the Kilmarnock aspect of Mr Campbell's custody was Morven Millar, Senior Social Worker, Criminal Justice Management, who had the responsibility for Social Work at Kilmarnock and Throughcare Partnership Service. She spent 50% of her time working at Kilmarnock and 50% in the community. She was involved in criminal justice management for four years and had been a social worker prior to that with experience in the Prison setting for seven years. Her current post was created for throughcare purposes about three or four years prior to giving evidence and she has now been in place for approximately four years. She was a full time social worker before being given this position and the purpose was delivered through care services for Ayrshire, North, South and East and was responsible for cover in every prison and community in that area and was to provide a seamless service from point of sentence to release using social work services.

In respect of Mr Campbell, who was in custody from 2002 until 2005, the service was in its early stages and had not been rolled out in the form as it existed now, some areas were earlier than others and some are thought to have been better prepared with staff finance etc. In 2004 there should have been a nominated community based criminal justice social worker for Mr Campbell before his release into the community. North Lanarkshire would have the responsibility for Mr Campbell, Production 46 showed the letter from Ayrshire East Ayrshire Council. This is done based on prisoner's home address; the release can be on parole licence where the Board grant early release or non parole. If released on parole then they engaged the parole process, if non-parole, then of course there is no parole and a further review of twelve to eighteen months after, she accepted that not all individuals get out on parole and Lanarkshire would be responsible for the prisoner post release.

If released from the open estate for home leave, she was not aware who would be responsible as she worked in close conditions so there is no unsupervised home leave, the letter therefore related to release of a prisoner on parole or at a later stage of sentence. Her role is to identify what area an individual returned to post release (parole or non-parole) and identify which authority accepts the individual on-release.

Mr McDonald asked if throughcare is applicable in the situation such as Mr Campbell being transferred from Kilmarnock to Perth and then to Castle Huntly and allowed a home leave prior to parole. She confirmed that throughcare would be applicable. Prisoners have to progress. There is no home leave from Kilmarnock. To transfer from Kilmarnock they have to make the criteria of that establishment for transfer, e.g., if a prisoner has an addiction problem they have to work to address this. Part of home leave is personal responsibility, risk assessments and reports done can be both prison based and community based. A home leave report is prepared before a prisoner is released for weekend leave. She agreed that there appeared to be a gap in the supervision. However, she can only speak for Kilmarnock which is a closed prison so there is no home leave. They have to progress through their sentence to be transferred the open estate if an individual moves on she notifies the relevant authority, North Lanarkshire in this case, so they are aware of his progress throughout his sentence, the social work file should record that he has moved from Kilmarnock. She is very concerned there is no note in the file for Mr Campbell that that has been done as it should be automatic. The letter should have been sent out to North Lanarkshire but it is possible the letter was not filed; also there is no significance in not notifying. There would have to be a report before his home leave and their local authority would have to be notified for the purpose of those reports. She did not accept any significance in any breakdown of communication regarding the transfer of Mr Campbell; any file would transfer with Mr Campbell.

While in Kilmarnock Mr McDonald asked what services social work would provide. Miss Millar confirmed that he did not meet criteria due to staffing levels at that time.

She had agreed with her service manager only to see those prisoners in the parole phase of sentence. If she had had appropriate staff he would have allocated a social worker and if there had been issues regarding information or the parole process he could access social workers.

There were to be meetings once per year by legislation, usually more regular if in the parole process. He could access a social worker once per month. The staffing levels are now better and now all long-term prisoners, and those subject to statutory supervision, have been allocated a social worker. The social work would have

minimum intervention in progression through the supervision levels which is basically prison responsibility. Whether he meets the criteria for transfer is up to prison staff to accept him.

The position now has changed in that there is some involvement with other agencies. In Integrated Case Management these start to be convened in 2007 in Kilmarnock, having started very quietly and these are in terms of the 2005 Act, all agencies are involved with an individual. There have to be Integrated Case Management meetings on at least an annual Integrated Case Management meeting. Social work and custodial staff would be present and she would estimate the social work, prison board, community justice – community based from throughcare and custodial staff including assessment officer be present, it would be chaired by a custodial member of staff, prison officer or assessment officer normally. You could also have involvement from psychology, health care, education, link care staff. In Kilmarnock a number of agencies attended. They take place in education centre, Kilmarnock for a round table discussion. The individual is also present, the risk and needs assessment is done, the available comment on the report or assessment. Prisoners' needs and risk assessment discussed with the prisoner, for long term sentence often the prisoner isn't interested at first. It is part of the review's job to support the prisoner, e.g., work on addictions or other programmes with regard to previous offending behaviour, she advised this to be done by custodial staff who have a wide holistic picture of what they need to do during the progression progress. Social work would hope to agree matters with the individual but not all want to take part of the reviews or to take part in programmes and that would rule out progression. They try to encourage prisoners to be proactive. However, these meetings were not held at the time of John Campbell was at Kilmarnock. He probably would have had a sentence management board where supervision levels were discussed but the social worker not involved in that. As far as she is aware if he met criteria he would simply move on but the receiving establishment would have to accept the individual. She believed comparing the past with the present regime, the present now incorporates good practice and best practice.

In reply to Mr Murphy, she agreed that all hope to achieve good and best practice. The prison based social work is only now being integrated properly; while it has been

integral part before now they share responsibility for all including health, education, psychology, etc. She believes this is important for best and good practice.

Decisions in the past could have been taken in isolation but she had no involvement.

When asked about concerns about the previous system she said that things can always be done better but people always strive for good practice. She was assured that all systems were adequate but the new systems are better and with more resources will get better still.

In response to question from Miss Martin-Brown she accepted that the prisoner should always be involved, it is his life and the goal is post-release. In relation to a home leave report the purpose of this is to see if there is an adequate address, is it suitable. The report would look at family response, risk, community response, area of offence, is he well-known, is due to any bad behaviour, could he assault a family member. Negatives would be overcrowding, domestic violence issues.

The report should be robust but is for home leave purposes only. No one is released from Kilmarnock for home leave. She confirmed that open estates were useful so that the prisoner could be tested. While in prison, the prisoner would ensure that all programmes relative to him e.g., addiction, had been completed and be drug free. The prisoner probably worked within the system and was not a management problem. When the prisoner gets to that stage a lot of work has been done and should have earned his position. He would have been through the establishment and ticked off all criteria for progression into the semi-open or open estate.

The evidence moved on to the period covering John Campbell's time at Castle Huntly.

The first person to give evidence relative to that was Nicol Welsh, Population Manager, Perth Prison covering Castle Huntly and Noranside. He had been manager from 2005 which was a re-branding from the previous name but same duties.

He confirmed in relation to John Campbell, that he arrived at Castle Huntly on 13 July 2005 (Production 9). Castle Huntly was an open prison in its own right with a maximum population of 285 of predominately long-term prisoners deemed suitable

for the open estate and community access. They housed all types of offenders and all prisoners were mixed. Being deemed suitable that means they had been assessed against the relevant criteria, for a long-term prisoner that he had had the appropriate period in the closed estate, that he had no positive drug tests, no adverse reports within a specified period and a risk assessment had been carried out. He confirmed that ultimately it was the open estate who would decide whether to accept a prisoner into the open estate or not.

He believed that John Campbell would have been placed into a new building, with double bedroom, i.e., two bunks. The regime would be that the rooms would be unlocked in the morning, there were no walls or fences around the premises, the prisoners were treated as responsible adults and they all worked in or out of the prison for about eight hours.

As shift manager he would be responsible for prisoners and staff.

In relation to his home leave on 19 August, Mr Campbell could either be picked up by a family member or transferred by Reliance and dropped off at a central point. For that time for Moodiesburn he would be dropped off in Glasgow at the Buchanan Street bus station. There are other drop-off points in Edinburgh and Stirling. Mr Campbell would be issued with a licence setting out conditions for him during his time in the community e.g., not to travel outwith twenty miles from his home address, to be of good order and discipline, not to frequent any licensed premises. In addition, particular conditions can be imposed by the prison but doesn't think they were in respect of Mr Campbell.

The prisoner is issued with a travel warrant to enable him to get from Glasgow to and from his home address. That is issued at the prison.

In addition the prisoner may carry cash with him. He would have a maximum of £50 of their own money but could request extra from their funds to give to family members. In addition, they would receive £7 per night allowance. They receive extra if going to a hostel. He believed the limit is now increased to £10 per day. There is no provision for prisoner running out of money. The prisoners are

searched before they leave, not a full search, just a pat down and a search of the bags which should reveal extra money or other items. The procedure for search is still the same. The prisoner can now leave with any amount of money but he would have to state the reason for carrying out cash and John Campbell did not state any reason to take money out.

Mr Campbell would remain the responsibility of the prison while on leave as he was on licence. There is no requirement for Mr Campbell to check in or arriving at Moodiesburn and no provision for checking that he had gone to that address as given for his home leave.

A standard letter is sent to the social work and to the police stating that Mr Campbell is to be granted home leave and when. There is no explanation as to why these letters were not in Mr Campbell's file and he can only presume that the letters had been issued.

No other checks were carried out during the home leave period unless the social work and police advised these.

They return to Castle Huntly, Mr Campbell would get to Glasgow and be picked up by Reliance at Buchanan Street bus station at about 1.30 pm or 2.30 pm. He would generally be back at Castle Huntly at about 4.00 pm. Castle Huntly would not be aware of what the prisoner had done during the home leave.

In relation to John Campbell's leave, the prison was advised that he had not been collected but he did not say when and believe that he was later advised that the prisoner was apprehended by police, he thinks in respect of murder. Generally when a person fails to turn up for collection Reliance calls in to control and the prison would be advised. Reliance may wait ten minutes to see if the person turned up late and would then have to return to the prison. There is a contact number at the prison for the prisoners to contact the prison if they are delayed. If they return by themselves before 4.00 pm they will be spoken to. If not they will be treated as an absconder. If treated as an absconder they could be sent back to the closed estate. The prisoners are still able to speak to prison staff during the weekend as the prison is manned at all times.

When asked if Mr McDonald if he agreed that it was a concern that a prisoner not yet at parole date could simply be dropped off in Glasgow and be able to do what he wants before return, Mr Welsh advised that before he entered the open estate the prisoner would be assessed as low risk, having been through various programmes and the risk was assessed as low enough to go into the open estate.

When Mr McDonald suggested that that might be because the prisoner knew what to do in prison he agreed and also that they relied a lot on trust. To gain that trust however the prisoner would have to progress to the open estate, to be of good behaviour and progress through the closed and then semi-open and then open estate. He agreed that could be said of any prisoner that they just play the system. Spot checks are done occasionally and if they suspect the prisoner is not at the home address, they check from time to time.

The home leave system is now changed so that where it used to be for three nights it is now seven nights in respect of Castle Huntly it is Thursday to Thursday, Noranside – Wednesday to Wednesday. The procedure for admission to home leave is the same. It is now possible for a condition to be put in to meet social worker or external lay worker or other agencies if felt necessary.

It is down to each individual prisoner. It could still be that they have to meet no one during their home leave. It could have been made a condition for John Campbell to have external involvement with police or others if necessary.

In response to questions from Mr Murphy, Mr Welsh stated that he was responsible for the search of such prisoners before home leave. Generally the person to be called forward, bag to be put on table and searched, the prisoner would be given a rub down search but no clothing would be removed. Predominately this was to try to find out if extra cash was leaving the prison. If a prisoner was found with extra cash he would be removed from home leave system and placed on report. This would be treated as a serious breach of discipline but the incidents were few and far between. The search procedure now in place is the same as that before although in a different location. If a prisoner holds money within his body they have no authority to

search for that. They rely on trust element.

Mr Murphy asked about the concern regarding the release procedure, i.e., being taken by Reliance and dropped off at a central point and if they had no intention to return the prison would not know about that until the return time. Mr Murphy agreed that was a concern but that that was the system; the number of incidents of that type is minimal so the system appears to work. Every prisoner is assessed before released and there are now 120 prisoners in the community at any one time from Castle Huntly. He believed the process before release is rigorous. He was not aware of any way the system could be improved. They would not have the resources to make calls to home addresses to check if a person had arrived. One of the purposes of home leave was to progress to their eventual release back in to society and at Castle Huntly to test the trust. They found the present system acceptable as on the whole the system works, failures to return are small and further tracking would be difficult to do. He agreed that the system was as only as good as the assessment of the prisoner.

Thereafter, in response to questioning from Miss Martin-Brown he confirmed that the criteria, as set at Production 16, Scottish Prison Service, Production 7 and others were nationally set criteria which were followed by Castle Huntly and all other prisons. He believed that the prisoner would normally be within the open estate for release four weeks before earning home leave.

The prisoner can be transferred back to closed estate, e.g., as a result of illicit drug taking, breach of prison rules or further charges being made against him.

A mandatory drug test was a random search generated by computer, at that time it was a urine test and analysis was sent off which may take five days for the report to be returned. If a positive response then the prisoner was placed on report.

A voluntarily drug test would not result in disciplinary action; the purpose is to get prisoners to take responsibility for their own lifestyle to progress for parole and future release.

He then spoke to Scottish Prison Service, Production No 1, Interim Extended Home Leave report, introduced after Mr Campbell had left Castle Huntly. This covered a period when the leave period was seven rather than three days, at the time of dealing with tolerance towards drug taking. Any person who fails the drug test should not be going out into the community but returned to a closed estate. If the prisoner fails drug test after a visit it would be discussed at a Friday conference and look at the reasons, the prisoner's history, any mitigating circumstances, why he took the drugs and for further action to be determined.

As for Production No 2 – this was a summary of selection of prisoners for transfer to the open estate. All prisoners should have high needs assessed prior to transfer (Section A question 4) currently a methadone programme – not addressed by this witness).

He next addressed the Scottish Prison Service, Production No 3 Surescreen Results which indicate the process which is now in operation. The results would reveal in 30 seconds so more tests are carried out. The instances of drug taking are reduced over the last months since the instruction of this process.

On the question of absconding, this was referred to in the Production 44 which showed peaks and troughs throughout the year.

On the question of trust he confirmed that in the open estate prisoners are under lock and key from 9.00 pm until 8.00 am otherwise they are on prison grounds or in work parties. They are not meant to leave the premises unless authorised to do so. In re-examination, in respect of the failed drug test on 11 August, he confirmed that if that had happened today Mr Campbell would not have been allowed home leave and could have been referred back to the closed estate subject to the conference meeting on the Friday to discuss the reasons for his failure.

The Enquiry then heard from Gordon Robinson who had been in the Prison Service for eighteen years, ten years at Castle Huntly. His role was to be in charge of prisoner employment within and without the prison with a remit to ensure that all have employment, that employment can be certificated and they progress from within

the prison to outwith. Prisoners can be involved in cleaning gardens, plumbing, brick laying and other courses and they are in partnership with about 100 community projects in Castle Huntly on a daily basis. Parties can work in a variety of areas from Perth, Cupar, Dundee, Arbroath, basically the Tayside region. About 30% of the employment is in charitable areas, 70% commercial and e.g., blacksmiths, building sites, joiners, butchers, etc. The purpose is to give employment on arrival to assist and progress planning to help with rehabilitation, to revive dormant skills or to make them better skilled so they are better able to work on release. Prisoners go through an induction course of approximately two weeks at the end of which he would work with them and see what type of work or what education would be required and all prisoners are required to undertake this unless they are unfit or over sixty-five.

In relation to Production 9 (the community access risk assessment) his role was restricted to employment views and that he had been on holiday at the time the prison progression plan had been completed in respect of employment. It appeared to have been signed by Norman Dice, who is based at the Noranside. The form indicates that Mr Campbell is a member of Group A, there being four groups on different weekends. The Glasgow bus is Group A. He had already been approved for access to the community by the time this report had been completed and the report was completed in the normal timescale for that time although it is now down to two weeks. The reduction of time is due to developments in the process and prison numbers so that if he gets to see the prisoners quicker he can get them into employment quicker. On arrival at Castle Huntly, prisoners are expected to get out as all boxes will have been ticked for them. Mr Campbell's Personal Officer, Mr Crombie, as shown in the Production and the reference in the production the methadone programme would not be a bar to getting out. He liked to obtain advice from medical staff but if stable and working with them then he was able to work with them. If the prisoner is not stable, e.g., drugs, taking methadone inappropriately, then that would be a cause for concern. His reference to the transfer on the form was that opportunities are really difficult in prisons e.g., HGV training would be a Noranside. With reference to the ILU is in independent living unit where you would live alone, get up and to wash, feed themselves etc.

Progression from Castle Huntly to Noranside would depend on particularly the prisoner. In respect of Mr Campbell it was discussed as Noranside could allow independent living unit he could be training for his H.G.V. licence. You have to gauge what is best for the prisoner; some can't even boil an egg so you have to look at what's best suited for them. He could follow up his placement for home leave through his driving licence, with the health centre reducing methadone. He could be transferred to Castle Huntly obtain placements community until the New Year then transferred to Noranside to do the other training.

In response to questions from Miss Martin-Brown, he confirmed the criteria all as set out in the first page of Production 9.

Work Placement is beneficial; this allowed the prisoner to adjust back to normal life moving from jail to real life. The Open estate was basically bed and breakfast and evening meal otherwise no responsibility for his own lifestyle.

He confirmed that a violent prisoner would not be treated any differently.

The next witness for this period was Jim Robertson who is now Residential Officer and with 17½ years experience in the Prison Service. He was now basically in charge of the demands of prisoners, general custody of the prisoners and to ensure that they are locked in at night and that they are where they should be.

Again he was referred to Production 9 and agreed that he had completed the admissions screen. The purpose of this was to see a prisoner within 72 hours and explain the regime, introduce himself and explain the standard procedure. Any residential prison officer could do that but he did it for John Campbell. A Personal Officer would be allocated on arrival when the admission log was completed. Now the Personal Officer would do the admission screen but that was not the situation at that time. Up to 12 could be done at any induction, there is no significant change in the practice other than now it would be done by the Personal Officer and in respect of the induction interview he would simply go through the questions and note the responses. In respect of question 6 on substance – misuse – he explained that some prisoners might be on a detox programme the first part of question 6 can lead on to

the second question regarding methadone prescription. He would not note details of the medical intervention. Methadone programmes are now common whereas they have been limited to six in the Open estate but now they are very common. At the time it was a logistical problem as they didn't have the nurses to give methadone at the weekends and the persons had to go to Perth to receive the methadone. It was now dispensed from the health unit. In respect of home leave the prescription would be issued for the destination address, the prisoners given the prescription before he leaves the prison.

Under Q.7 issues, LR refers to the home background report and PP refers to the prison progressing planning and Group A refers to visits and this would be the Glasgow one the next being on 19 August 2005. At the time of completing this report these were not approved but with possibilities agreed if he did nothing wrong then the likelihood of getting home leave but matters not set in tablets of stone. Before approving home leave they would look at behaviour in Castle Huntly, his record and his conduct reports.

It is not necessary for the prisoner to sign the interview; it is put in a computer data base. He probably completes about twelve at a time and signs them all at a later date. It would take a half an hour to complete. It indeed was very time consuming process which is why the procedure had been changed.

Once completed the forms for interview go to the Administrative assistant and then into the Prison Management file with other sentence management information. This process is not related to the offence for which the prisoners are sent to prison.

They would probably not have access to the prisoner's record as sometimes files are not put into the proper folder for two weeks after he completes the interview but now all matters should be on the computer.

Mr Robertson is Personal Officer to 16 prisoners and has access to the records on computer.

He has no particular recollection of Mr Campbell just vaguely as a prisoner but he never stood out.

Mr Murphy questioned Mr Robertson initially in respect of the admission interview when Mr Robertson agreed that these be signed a group at a time. He would arrange for prisoners to see him, would speak to the prisoners and sign and date the form later, possibly in the wing office. Ideally, the form would be signed by the prisoner before transferred to computer but now all sign before the Personal Officer. That indicates that the prisoner agrees all the information on the form. He advised that all prisoners were seen when they came in, but the admissions screen was not vitally important. It is basically for staff to introduce themselves to the prisoner and vice versa. It may not be the first document done as other forms are completed at reception at Castle Huntly. Also, it is not highly rated in respect of progression planning it simply highlights, e.g., areas of concern. It has never been a concern that it is not signed but it has now been drawn to his attention that it should be signed when completed. He accepted that at the time he had no access to prison records but these could now be available on computer. The reason for not having them is because of the time of the transfer. All files are put in an envelope and sent to the administrator who then makes up another file for Castle Huntly. Basically it is all down to cost although ideally it would follow from the sentence up to release and it was agreed that it would assist if he had the file, e.g., to view misconduct reports, previous convictions, nature of the index offence. It would particularly help the Personnel Officer who does the Community Access form. It would be good ideally you should have a file per person for insight into the prisoner and to verify what the prisoner was telling the Personnel Officer. At present they have to take what they are told as true.

In response to question from Miss Martin-Brown, he confirmed that the forms completed to introduce parties, together with setting out what was available, to give information and to gauge how the prisoner was settling. It is certainly not a risk assessment.

Referring back to Production 9, first page, the consent was required for psychometric tests, e.g., for risk assessment and FCDO (family contact development officer).

He was asked about the benefits for change from weekend to seven day leave and advised that the more reality in the longer period the better progress for prisoners for release.

The Enquiry then heard from Mr Campbell's Personal Officer, John Crombie. Mr Crombie had been a Residential Officer for sixteen years. He was involved in mainly gallery work to patrol the gallery, locking and unlocking rooms, work parties and Personal Officer duties.

Residential officers, as part of their role, are expected to be Personal Officers. At present seventeen prisoners are allocated to him. His role is to be first point of contact for the prisoner. They do not actually have to report to the Personal Officer but if on duty, the prisoner would be expected present to go his personal officer.

Mr McDonald referred to Production 9 and Mr. Crombie confirmed that pages 1, 2 were one document, being a summary of all reports before home leave is granted. He has never actually used the form himself but believed the form would cover home leave and community work. He believes it is completed by o Board and he is not part of that.

He completes pages 7 of that, a Risk Assessment Progression Report and agrees that he signed the Report for Mr Campbell on 03 August 2005. It is typed up for convenience on a computer. He was allocated as Mr Campbell's Personal Officer on admission but had not done the admission screening, all that is now changed.

To complete page 7 at the time he would have accessed the prisoner's file, everything is listed under the relevant information, the prison have a record system for drug offences or reports, i.e., he would check the social work report – basically the report would be put in the file before the home background report. He did not recall what was in that but he would be looking for anything that jumped out to see if there was anything to give him cause for concern. However, if in the open estate, he would not expect anything to give concern or he should not be in the open conditions.

He would have access to the trial judge's report and any supervised release order. The latter did not apply to Mr Campbell. The prisoner Sentence Management File would follow him as part of the prison records. The latest Needs and Risk Assessment was not on file. That would be done annually. He would have expected the last establishment would have to do a Needs and Risk Assessment and this was not on file. He made no enquiry about that.

He would sit down with Mr Campbell; the form gives his earliest release date and parole qualifying dates. The prisoner's needs are in the papers and Mr Campbell advised that there were drugs problem and the fact that he had done a course.

On paragraph 1, in respect of identifying needs, this was done in conversation with Mr Campbell, from taking anything in the file which was not previously addressed. The only matter was drug awareness and he had done a course. He had no contact with the social work on this or anyone out with the establishment.

Mr Crombie was of the view that the blips referred to were not of concern, the most recent tests had all been negative. As he was now in the open estate, there was nothing of relevance.

Mr McDonald suggested that this was simply rubber stamping of the position. Mr Crombie was of the view that the open estate is simply to test the prisoner in the community. To fail to get out, the prisoner would have to be reported for an offence, or latterly if he failed a drug test. Other reasons would be, for example, Governor's report for misconduct and all this would go against him to get into the community, otherwise, providing the home background report was acceptable, the prisoner would get out.

Mr McDonald asked what risk was being assessed; Mr Robertson advised that he was assessing the prisoner's current state of mind having been placed in the open estate. It is not done at any great depth but his part was only one report.

He accepted that he was not assessing risk in the community.

He had no training on risk assessment; the forms were of behaviour in prison and his most recent behaviour.

He confirmed that the present assessment was pretty much the same although there had been slight changes. His role as Personal Officer has not changed.

He agreed that basically he was assessing the prisoner's then state of mind, his behaviour and how he is in prison. He was not aware why the document was referred to as a Risk Assessment.

Looking at other parts of the complete form, "L Gourlay", is a member of the medical staff. He accepted all these forms were headed Risk Assessment but they really were not.

He then referred to education, learning plan and finally he agreed that while a number of pages were headed Risk Assessment they were not but would assess if they found something wrong. Rather than being risk assessments, they were more progression reports.

His record should be within his file but the nature of the offence and early release were not matters for this time as it would be in a parole report. The parole report would include his previous convictions and have to list these. It would not mention whether offences were committed while on licence.

Mr Robertson's position was that he, Mr Campbell, was in the open estate so someone had assessed him as suitable for community release and he was dealing with him on that basis. When asked by Mr McDonald if he agreed that low supervision did not equate with low risk he advised that someone else had dealt with that but he supposed so.

In respect of the completed "Risk Assessment" the papers are forwarded to someone although he didn't recall who, that person then completes page one of Production 9. He understood that a prisoner had to be four weeks in the Open Establishment; all reports had to be collated before home leave was dealt with.

If assessed as suitable then home leave would be four weekly.

The current position is that the Community Access Risk Assessment form is completed as shown at Production 49 and he would complete page 5 of that. That now has no reference to risk or progression. The form deals with purely current issues at the time the form was completed, he felt that the form was not as good as the old form but the system was better for collating information.

On a question by Mr Murphy, Mr Robertson was taken back to Production 9, and again explained procedure for collating papers for referral all before going to the Governor. He accepted that all this would take into account when home leave was considered.

He advised that he had considered the trial judge's report; he did not recall anything in the report which caused concern.

When excerpts from the judge's report (at Production 46) were read out to him he accepted there may be concern (saying "see where you are going") but insisted that someone else had assessed the prisoner as suitable for the open estate, what was said by the trial judge would have already been noted and taken into account when in the open estate, that he was suitable, so he works from there and assumed that the comments had been taken into account previously so not taken into account by him. He could not be 100% sure that these matters had been considered previously and agreed there was no safety net, certainly not to his level. He maintained he was simply the residential officer; there were many tiers of responsibility above him.

He had no opinion on the system but agreed that the overall system might be better but again he repeated he was only there to do the Personal Officer report and again agreed that latest Needs and Risk Assessment was not in the folder, stating that they may not be due but it would only have been important if anything had been identified that he had to address. He then conceded that it could show something still to be addressed if the form was important. Again, he insisted that his report was more of a progression report, that he was not doing a risk assessment just progress within the

open estate, the risk may have been on other reports such as health, referring to his addiction. When again asked what risk could be in a needs assessment he felt that this was more concerned with drugs, gambling, etc. i.e., risk and needs within the establishment.

When asked if a lay person was reading the form what he would assume was meant by risk to the community, he indicated that you could draw from it what you wanted. He believed that certain failures might result in home leave not being granted such as failing drugs test, not applying himself at work, be on Governor's report. In relation to the failed drug test, Mr Crombie had been made aware of that just before the inquiry. The question of what involvement he would then have as his Personal Officer, he advised that he would have little contact and he would not particularly expect to be told if one of his prisoners had failed a drugs test. The prisoner's Personal Officer is on a point of contact for the prisoner to assist and provide parole reports etc. If the prisoner failed a drugs test, that would not be highlighted to the Personal Officer.

At present he is Personal Officer to seventeen prisoners, compared to possibly eight or nine when Mr. Campbell was at Castle Huntly. He accepted that he would not necessarily be told anything concerning the prisoner, there is no official way for him to know about the prisoners for whom he is Personal Officer. If a prisoner was involved in an act of violence, he would not seek out his Personal Officer. The Personal Officer would not necessarily know the prisoner best as he could be on a different wing from him. He wasn't really sure what the point of a Personal Officer was.

In respect of failed drug test, in his opinion that was a serious matter but at that time any action was of the discretion of the officer dealing with it in the orderly room – the Governor or Depute Governor.

The system is now different.

Miss Martin-Brown had attempted to take Mr Crombie through various other productions. In respect of Production 47 – criteria check list – he didn't know about the form.

In respect of Scottish Prison Service Production No 7 – he agreed that the supervision levels set out are national levels and he felt that he could rely on a low supervision status to equate to low risk.

In respect of Production 9 – he advised that he was feeding in the prisoner's current state, the Governor's report on work etc, and basically how he had behaved since moving to Castle Huntly. He accepted that various other parties were involved and it could involve information from other prisoners or outside. He accepted that he would not be considering community access; that would be considered by a Board and could not recall the procedure in 2005. He accepted that all reports would be considered as a whole by the Governor.

When being asked, in the Progression Report now completed, risk to the community was not mentioned but if something came up, would it be noted, he said some group would note that.

The Inquiry then heard from Jim Mackay, Depute Governor from Castle Huntly. Mr Mackay has twenty-nine years experience in the Scottish Prison Service and had been Depute Governor at Castle Huntly from May 2005 so had little experience at the time Mr Campbell was there. He had been in Glen Ochil Prison for eighteen years prior to transfer to Castle Huntly.

In 2005, when John Campbell was transferred to Castle Huntly, there were approximately 156 prisoners which has now increased to 319. Noranside had approximately 130.

He was taken through Production 44, statistics for absconding, all of which showed absconding rates as fairly low but peaks and troughs. There were some peaks, e.g., February 2006 which may be put down to Christmas leave.

As far as he was aware there are few prosecutions for offences committed while on leave.

Mr McDonald then took into Production No 9 – Community Access Risk Assessment. He confirmed this to be signed by Ian Whitehead, then the Governor, the purpose was to sign someone off as being given access to the community; home leave or work. All the documentation is part of Production 9 and would go to the Governor, at that time it would go to the Governor not to a committee for approval or rejection. The top sheet, when completed, would go to administrator and the link unit, then Lorraine White, and when all forms were completed, would go to the Governor.

Mr McDonald asked what “risk” was to be assessed. Mr Mackay advised the risk of moving from the open estate to home area or work. Any victim issues would have to be looked at and supportive family environment. The prisoner was already in the open estate so this is the next stage. Issues to prevent this may relate to the situation at home or intelligence that the prisoner may be a risk to the public.

This is basically the final sign out and any additional risks from putting the prisoner back into the open estate for testing.

Following a question from myself – he confirmed that there had been no training in particular to this process.

Mr McDonald asked from the heading on the form whether one would not expect the prisoner to be spoken to in respect of his background to be investigated and the risk assessed by a suitable qualified person. Mr Mackay informed that any formal risk assessment would be carried out earlier, as part of the risk management scheme within the first twelve months of his starting his sentence and then annually and that would be done by trained officers who would assess the static and dynamic risk factors. When asked if Personal Officers should have access to that he advised that this should be part of the process for transfer to the open estate so at the time he reached Castle Huntly, the prisoner would be assessed as suitable for the open estate and would be going out.

He accepted that to qualify for the open estate, a prisoner would have had to have been two years into his sentence, of low supervision, no particular drug problem. When asked again by Mr McDonald if he agreed that there was no assessment of risk to the community he stated it was part of the process, the process looks at what else, if anything, is needed to protect the community. When it was suggested by Mr McDonald that the open estate did not decide risk to the community for Mr Campbell, Mr Mackay believed this was a matter of terminology; other matters were factored in, from the home background report, if the prisoner needs support and other conditions could be added in.

He did accept that having entered Castle Huntly in July 2005 no one trained had spoke to Mr Campbell or assessed the risk to the community.

Mr McDonald went over Mr Campbell's history of previous convictions, particularly the most recently one when he had committed an offence when released early, he committed another offence, released early, committed another offence, released early, committed another offence, released early, committed murder and asked if the process considered the violent offences committed by Mr Campbell while out on licence. Mr Mackay said that the sentence management programme would look at the offence related issues (this programme being before entry to the Open Estate).

Production 10 showed a number of negative drug tests from 08 October to June 2005.

They showed a positive test on 11 August 2005 in relation to risk assessment. This was probably in relation to consideration of home leave to see if he was still negative for substances. The terminology used as a positive would be a risk but is used as part of the management programme; the process for administering tests has increased significantly so that approximately 50% of prisoners prior to home leave and 30% on returning are now tested. The prisoner can be tested at any period for home leave, there is no particular requirement. It was accepted that Mr Campbell had tested positive on 11 August after having been approved for home leave and that as a result he was placed on the Governor's report.

Production 12 – misconduct report. Unfortunately it does not say for what drugs he had tested positive but it must have been more than one drug. Then it goes on to an orderly room hearing, this had been dealt with by Colin Shannon, as a result Mr Campbell had seven days loss of earnings and seven days loss of access to his personal cash, which is money sent in to him.

Mr Mackay agreed that prisoners should have no more than £50 at any time on their person and in terms of his punishment he should have access to no additional money, the penalty was administered on 16 August and that penalty had nothing to do with community access, the officer would not give all papers for review but it would have applications for home leave which is an administrative decision. In that regard he was seen by Mr Mackay on 18 August, probably in the custody manager's office and possibly with other persons present. He would not have the Community Risk Assessment at that time and had had no dealings with Mr Campbell previously. He would not discuss the matter with the Governor, Personal Officer or anyone else and the decision at that time was taken without reference to any other documentation. The decision is written in the administrative decision book, on 18 August 2005. It was determined that he would lose his next home leave but that would be suspended for a period of two months.

The consequence of that was that he was able to go on his home leave visit for 19 August.

Mr Mackay advised he must have been satisfied with the explanation given by Mr Campbell but there was no note of that explanation whatever it had been.

He accepted that if the negative tests are important and that he would not have moved had he not provided negative tests in the three months' prior to transfer and that negative tests are important for progression.

He had still allowed home leave here based on his discussion with Mr Campbell and his management of risk, the fact that he could lose home leave or be returned to the closed estate would have safeguarded other lapses. The stopping of home leave was a possible punitive action and he made an administrative decision to manage the individual. Mr Campbell had had a number of negative test results which he

considered at the time which gave him the benefit of the doubt on this occasion and he took the decision that Mr Campbell could go out without access to information and he advised that the process was that he had been signed out for weekend access, there would have been an adverse action but he had not challenged the decision for home leave.

He accepted that Mr Campbell had no access to money other than the maximum £50 but that was not joined in with his decision to allow home leave.

Mr Campbell had served the minimum period at Castle Huntly to qualify for home leave, being four weeks, which is still the current period.

The decision process is now changed and from Mr MacKay's perspective the process is now more robust for management of this type of situation.

He accepted the penalties for failing a positive drug test and home leave are still separate but believes that the current process is better and more robust as the new process involves the Management Board who will be aware of any adjudication. Penalties are formal process; the Management Board is an administrative decision.

If currently Mr Campbell had failed a drugs test he would still go through the orderly room, if a voluntary drug test, then management would deal with it, it was only if he failed a mandatory drug test that that would be taken further.

The decision for home leave is now taken by a Board, the Case Work Management Board attended by others, the Depute Governor, social worker, addition worker, health case worker, inclusion manager, chaplain and others as required, but out with the presence of the prisoner. They could discuss community access. The questions for referral, the Board meets every Friday.

If there is a positive drugs test, that triggers an automatic referral so the home leave will stop for a 28 day period, unless there is reason for it not to happen, there have to be exceptional circumstances from leave to be granted during that 28 day period.

There would be reports, two additional drugs test before back on the home leave programme, all within 28 day period.

If the prisoner complies he will be back on the home leave scheme. If he fails he is not automatically returned to the closed estate but goes back to the Board.

The period of home leave in August 2005, was a standard three day period. If someone advised that special measures may be required for integration a report would be made separately, e.g., if mental health made a referral.

He agreed that Mr Campbell was not eligible for parole until 2006 so there was no time limit for home leaves to be introduced.

The short leave period at that time was three days and that has now been extended to seven days, which applies to all home leave prisoners unless there is a specific management plan.

He agreed that the travel arrangements remain the same and that prisoners are taken from Castle Huntly to central points, for Lanarkshire that would be to Buchanan Street bus station in Glasgow, with a warrant for onward travel, and there is no provision, unless on special circumstances, for supervision during the home leave, that the leave is prisoner centred and in effect he is released with no checks. In response to a question from Mr McDonald about exposing public to risk, Mr Mackay advised that it was a period of testing and there is an exposure to risk every time someone is released into the community during the leave period. There can be contact with the social worker, they can go for job interviews, this is now considered by the Case Work Management Board. The questioning of tagging release prisoners has been considered but it is not feasible.

The new process is set in Production 49 which sets out information which is to go before the Case Work Management Board.

There is a social work report which has to be signed by the social worker who would have access to the pre-sentence report. This is in addition to the home background report and looks into other issues.

There would be a report from the wing/Personal officer and Mr Mackay would expect the Personal Officer to have regular points of contact and should comment on general response and attitude which can be gleaned from prison reports, drug tests and other reports.

Part of the Personal Officer's initial training is in report writing, other report will be from the health centre, from work, from EACS – group who provide addiction services.

Mr Mackay accepted that once a prisoner was released into the community he still was on licence and therefore the responsibility of the prison. It may be very difficult to test where a prisoner has gone once out, but do not have resources to tag, prisoner can phone in from anywhere, it may be worth considering but at present it isn't feasible.

Finally, in examination by Mr. MacDonald, Mr Mackay was taken through Production 52 which showed the various establishments where Mr Campbell had been held from 07 August 2002 until 04 August 2005.

Mr Murphy then again went over Production 9 with Mr Mackay.

On the first page he drew attention to the fact that certain boxes were not ticked and Mr Mackay agreed that this would happen on occasion but all reports would be put before the Governor who would make his decision. He accepted from the form it is not clear that all documents were produced but from the experience all would be before the Governor.

He accepted that Production 54 did not correspond with dates of drugs tests as shown on other productions but did not accept Production 9 was incorrect as the last test was negative and only the date was incorrect. The addiction officer would be

responsible for the details in Production 9 and it may be that the last positive, that being 09 August 2004, was not shown or was not put on the system, the Governor would go on the basis of the information before him, the difference in the dates but it is clear that it was negative about that time so the particular dates would make any difference. He accepted the whole system was not as robust as it should be which is why they changed the system.

Mr Mackay was referred to the Personal Officer's report and confirmed that the personal officer would check all paperwork before completing his report.

He was then taken through the trial judge's report – Production 46 – and queried whether the trial judge's report should be considered at each stage.

On Mr Murphy reading part of the trial judge's report, Mr Mackay was again asked if it raised issues, he would not concern himself with the trial judge's report as it had been looked at previously and he wouldn't need to look at it again, the fact that prisoners commit crimes on licence is the nature of offending and they manage the prisoners individually.

Mr Mackay believed it was all about managing the risk which would have been considered earlier in the process, the open estate was an additional risk and closer to the community and there was no evidence that there was any additional risk because the prisoner was in the open estate and the Personal Officer was not reviewing that assessment.

He maintained that all documentation would be available for the Governor in Production 9, the Personal Officer had put in the report that the judge report had been noted, if he had been Personal Officer he may have noted if he had offended on licence before.

Mr Mackay was then asked to comment on the Family Production No 1, a special report by HM Inspector of Prisons into the Open Estate dated 23 September 2005. He accepted the comments made at paragraphs 5.10, 5.11 – that was the system in place when he arrived in May 2005. He would not expect the Sentence

Management Action Plan to be part of Production 9 but to be part of the Progression Planning to the Open Estate and this would probably have been completed in his previous establishment. The tests including psychometric testing would be carried out by trained staff using screening tools but he cannot say what would have been screened for. This would not have been considered as separately to the Community Access Risk Assessment.

He was then asked to contrast Production 54, being drug test results with the details set out in the report – being 24 negatives, the last being 28 June 2005. He accepted that there were variations in dates but not of any significance. During his time in this sentence John Campbell had 24 negative tests, the last being 28 June 2005 and 13 positives – the last being 09 August 2004 before his entry into the Open Estate. He accepted that Production 54 showed a positive on 06 September 2004. The addiction officer is responsible for information which is on Production 9 in relation to drug tests. He agreed he did not expect the Governor to check all the information before his decision but goes on basis of the information before him. He accepted that Production 9 had doubt as to whether the form was completed before seen by the Governor, the wrong dates were shown in it, it had been signed. When asked if this was all acceptable, he advised that this was the process at the time but had since changed and that the home background report would have been present.

He did not think it was possible to remove all errors from the system but certainly the procedure had not been as robust as it should have been; he explained that is why the system changed.

He was then asked why the social enquiry report referred to within the Personal Officer's report was not present. He simply advised that the Personal Officer would have checked it when compiling his report.

Referring back to Production 9 Mr Mackay was then asked about the latest risk and needs assessment which appeared not be available. He confirmed that this related to a risk assessment by a psychologist that was not in Production 9 and not carried out by trained staff, any risk assessment is part of the sentence management scheme

which is carried out by trained staff. He was unaware when this was last carried out; it was carried out in the first six months and then annually thereafter. He accepted that a lot could happen in six months but did not alter the assessment when carried out three six or nine months prior to the consideration of home leave. When considering home leave a risk assessment would not be necessary as any adverse issues would be flagged up for consideration and noted in prisoner's action plan.

It was believed that Mr Campbell was of a low level supervision; Mr Campbell met the criteria for entry into the open estate and thus final signed off by Castle Huntly. Referring to paragraph 8.29 the Family Production, he accepted that no pre-home leave meeting would taken place. This would have been used to discuss problems prior going back in to the community. The prisoner would however been well aware what was required of him on home leave and would in fact take his licence with him. Referring to Production 12, Mr Mackay confirmed that 10% of the population would be tested by the prison service prior to home leave. Production 12 does not say why Mr Campbell was tested.

On Production 54 where the test is for a risk assessment, the staff would nominate additional persons for a test.

Mr Murphy asked why, if the test was positive, what was the point of it if it did not affect home leave? Mr Mackay advised it was to determine the level of substance misuse within the prison; drug tests were not specifically given prior to home leave but are now. He was unable to say why Mr Campbell was in fact tested. He is not aware of what drugs had been taken by Mr Campbell, he thought it likely there it would cannabis and opiates. The type of drug may be relevant to see what action would be taken and should have been noted. The orderly room would have dealt with the offence and he would then deal with home leave based on previous drug test history. He would have taken notes at the time but none are available. He was already signed off for community access and Mr Mackay maintained that he had not committed a criminal offence or he would have contacted the police. It was suggested that if he had consumed drugs he must have held drugs and had committed an offence. He accepted that it was not a great start to Mr Campbell's period in Open Estate but

advised a lot of people who are in the Open Estate face an increase in temptation but they settle down quickly.

Mr Murphy suggested the home leave would be even greater temptation and Mr Mackay advised that each individual was managed individually, different approaches for different men. He considered it was unknown – what would happen to Mr Campbell if he was released, he had had seven negative drugs tests prior to the positive.

Regarding the home leave period itself Mr Mackay would have no knowledge of what Mr Campbell or other prisoners did on the home leave. He is now aware of the commission of the murder and, in response to the question that having shown that he could not be trusted, was it a correct response to allow him home leave? He advised that the man had had a relapse but a reasonable period free of drugs before that, this was a single relapse. He did not re-evaluate Mr Campbell. He sat down with him, discussed position, was satisfied with the explanation that he could continue the home leave programme. The risk to access to more drugs was part of the home leave programme which would have existed even if it had been negative tests. He was not aware that Mr Campbell had taken money from prison to buy drugs for others, there had been no intelligence to that affect and there had been no such assumption.

He advised that he was not dealing Mr Campbell in isolation; very few prisoners go out and result in tragic consequences.

Mr Murphy put to him the circumstances prior to home leave – the positive drug test, throughout his time at Castle Huntly, the temptation, Mr Campbell's previous convictions, offences committed previously on licence and was asked why he was still considered for a home leave. Mr Mackay stated that was the decision he took at the time.

Thereafter he was questioned by Miss Martin-Brown on behalf of the Prison Service. Production 7 and 8 the rules for 2006 and 2002 were looked at and Mr Mackay confirmed these were national standards. Short leave had now been extended from

three to seven day. Supervision levels and reviews – he agreed were all as set out within Production 8.

Production 10 - showed the static and dynamic factors for reviews, 1, 2 and 3 being static, 4 – 10 being dynamic and there had to be a note to each question before progressing.

Production 55 shows the supervision levels, he was high when entered until 06 November 2002.

He was reduced to medium 09 May 2003, low at 03 December 2004. He would then have access to open conditions. The timetable for open estate is set at Parliament and Prison Service Directives.

He was shown Production 47 and confirmed that that was in place in 2005. Again, all criteria required to be met before moving on.

Production 53 – he agreed was showing the movement of Mr Campbell from establishment to establishment.

He was then referred to Production 9.

Mr Mackay confirmed that the admission screen was completed on 15 July and that was to address any immediate concerns. He confirmed that there had been a request for intelligence on 29 July, the report from the health care, a report from education , from the Personnel Officer dated 03 August and all reports were in relation to the Community Access Risk Assessment and were completed and that home leave was granted on 08 August 2005.

The home background report (Production 15) was dated 20 July 2005, intelligence report had been seen, computer records checked, mandatory drug test records checked.

He was referred to Production 11 for the Prison Service, a circular issued by the Scottish Executive Justice Department dated 14 February 2007 in relation to Integrated Practice Guidance for Staff Involved in Home Leave Process. He confirmed that this replace the guidance previously in place. The purpose of home leave was set out at paragraph 13 being –

To assist in the prisoner's preparation for release;
To maintain contact with the family members;
To "test" or assess the prisoner's ability to cope outside the prison environment.

These were explored further particularly in paragraph 19.

He agreed the eligible to criteria were as set out in paragraph 21 and guidance is then given at paragraphs 23 and 24. He confirmed that integrating case management procedures were introduced to strengthen assessment process for home leave.

Assessment for Home Leave is set out, principally in paragraphs 37, 38 and 39 – this document sets out the procedures now to be in place in respect of assessment for home leave. Home leave will not now be considered by the Governor alone but by Integrated Case Management Team incorporating Scottish Prison Service and Criminal Justice Social Work, police and other agencies should also be involved, e.g., housing providers, health services, voluntary work (the process will now involve case conferences which will consider actions/interventions necessary to make the prisoners' stay in custody successful).

He confirmed that a new form of assessment for home leave was under consideration, this in light of comments in the report regarding home background reports at paragraph 60, 61, 62 (the production at paragraphs 64 and 65 sets out decision about the prisoner and comments thereon).

Mr Mackay confirmed that if anyone had thought Mr Campbell had been planning anything on release then home leave would have not been considered.

The conditions for home release are the same as which existed for John Campbell, primarily

- A Good behaviour;
- B Reside at the arranged address;
- C Refrain from consumption of alcohol and non-prescribed drugs;
- D Not attempt to bring prohibited articles back into prison.

These are set out more fully at Appendix B which is similar to conditions for Mr Campbell on his leave.

He was then brought back to the positive drug test of Mr Campbell and confirmed that this was reported on 08 August and that he had been punished on 15 August by loss of earnings and no access to cash.

He was referred to Production 13 and confirmed the loss of his next home leave had been suspended for two months and while accepting there is no evidence as to what was discussed it would have been based on his knowledge of Mr Campbell as to potential risks, this being based on the fact that he was now in the open estate and this was a single relapse.

In relation to drug taking he was referred to the Productions for the Prison Service 5 and 6 particularly the Scottish Prison Service Addiction Policy. He accepted that drug taking was difficult to tackle, that previously it had been a one strike and out policy with a return to the closed estate but that had changed. From his experience in the Prison Service, it is better to work with the drug rehabilitation team. There will always be problems with drugs in prison hence testing but it is better to work with prisoners. The scheme becomes more therapeutic which is more challenging dealing with the drug use.

The position now would be if Mr Campbell failed the drug test he would be suspended from home leave and referred to management team. He would be likely to be suspended from home leave for 28 days but could be allowed out in particular circumstances. The case work management board would review matters before going back on home leave.

He again confirmed that a low proportion of prisoners absconded or committed offences while on leave and stated that he felt that home leaves were useful, of great value to prisoners, to have access to open conditions, to prepare for release. There is less pressure in a closed environment and prisoners have to be tested.

Mr Mackay then spoke to Production 4 for Prison Service. In respect the report by HM Inspectorate of Prisons into the Open Estate dated November 2006, he confirmed the use of Integrated Case Management and Phoenix House was an addiction service provider.

Meetings would now be multi agency meetings and a lot of the processes involved have been improved and have moved on significantly.

On re-examination by Mr McDonald – Mr Mackay did not know when the next review was to be, the last being about September 2006.

Moving back to the failed drug test, Mr Mackay ultimately had to accept that he must have been in a possession of drugs to have had a positive test and the possession of those drugs would have been within the prison.

In respect of assessment of risk thereafter, he advised that he would look at previous tests, weigh that against the fact he was on community access and his motivation to comply with the rules and advised that there was still a risk if the test had been negative.

When being pressed as to what risk he had in fact evaluated, he again maintained that Mr Campbell was on the home leave scheme and the drug taking did not add to the risk. He completed no paperwork.

In respect of the circular Prison Service Production No 11 he couldn't say if this was given to staff although it should have been. It certainly would have been circulated but he did not say if they had read it. He confirmed that he had read the circular himself. In terms of that he agreed that home leave would now be assessed by a board not the Governor; that the forms had changed but it is essentially the same information provided.

He agreed that basically home leave would be approved from the starting point of the prisoner being of low supervision and therefore in the Open estate, that he would have

been properly assessed elsewhere. He accepted that being of low supervision did not equate with low risk.

He agreed that focus should be on community safety and supervision level did not equate to risk as set out fully at paragraph 53(of SPS Prod. 11). Mr Mackay still thought this was done prior to a move to the Open Estate and this is now considered under the Integrated Case Management Procedure. In respect of Mr Campbell he was assessed in terms of the Community Access Risk Assessment however flawed that was, he believed that some consideration would have been given to risk. However he accepted that Mr Campbell's record and nature of offending behaviour would not have been looked at that time. However he accepted the factor set out in paragraph 39 of Prison Service Production No 11 would not have been looked at but maintained that it would have been considered elsewhere in the sentence management process but not at the time of home leave.

The Inquiry heard evidence from Kim Potter, a social worker with North Lanarkshire Council, Justice ThroughCare Department. She has in excess of twenty years experience in social work.

From Production 46 Miss Potter confirmed a request for a report in respect of home leave for John Paterson Campbell; she obviously held his release date, current release date and licence expiry date. His current release date would have been 26 November 2006 and that would have been halfway through his current sentence and the licence expiry date was 26 February 2011. On conclusion of his sentence the earliest release date is two thirds through the sentence and he would be released on that date if not released previously on parole.

Miss Potter did not meet John Campbell. Her request was obtained from Friarton Hall, HM Prison Perth to consider home leave. This request was communicated by a letter dated 31 May 2005 from Perth and Kinross Council to North Lanarkshire Council, area housing the address for Mr Campbell. Miss Potter then sent a letter to Mr Campbell's mother arranging a visit and visited on 28 June.

The purpose of the home background report is as set out in the letter of 31 May 2005 from Perth and Kinross Council. Miss Potter explained that in respect of the accommodation she would look at the property, make sure it met the needs of the prisoner for home leave, e.g., lack of a bed wouldn't rule out the property but other issues would have to be looked at as well, whether it be long term or short term, hostility in the local community or the victim in the community may have ruled out the accommodation as being suitable.

The attitude of the family would be important: would the prisoner receive support, what would his position be, offending behaviour, what was the long term planning, would the family input be considered positive.

In respect of community attitude, that was based on information from the family and did not include neighbours or others. She would have input from local social work teams.

The reports are still done the same method today.

Information from colleagues would be of assistance for the broad background, e.g., if there are a number of offending individuals in the area, does the victim live in an area, an overview of the offence and has there been any local response to the offence. She accepted that provided a limited overview was not specific.

Her report was at pages 12 – 14 of that production and she confirmed the first page referred to the prisoner and his current offence and sentence. Pages 2 and 3 of the report set out what she gleaned from her visit to Mrs Campbell at home on 28 June 2005. The accommodation provided a bed space and she was advised by Mrs Campbell that she lived alone, the victim of the offence did not live in locality, there was no contact between Mrs Campbell and the victim, that the prisoner, John Campbell, was well known in the area and no reports of any difficulties with any of his neighbours. There was no reason to say the accommodation was not suitable.

In respect of "well known", Miss Potter explained that she had been told that Mr Campbell had many friends who asked after him. The family kept itself to itself,

Mrs Campbell did not share information with others but the neighbours knew of the case history and showed no concern, they were aware that he was an offender.

Mr Campbell's record would play a part as accommodation could affect his history but in itself was not enough to stop a visit. The longer the history offending, the proximity of a victim to the home, it may be unsuitable, there was nothing here to suggest any negative reasons for stopping the visit.

His record of offending was irrelevant as he would return to community at some point. The Parole Board may make a decision that not suitable for release on parole licence but home leave was very different. Mr Campbell would have been assessed at various points in his sentence and a decision would be based on, e.g., how he was coping within his sentence.

If this particular home address was not suitable he would have to provide another address. If he did anything while in prison he should revert to the closed system.

When asked by Mr McDonald if his record was not relevant in respect of the home background report as he had progressed to a suitable level, she replied: "absolutely." The interview was conducted on one day and that is the basis of the report, if there are any changes thereafter she would rely on the Scottish Prison Service to advise her or the family. She would only look at matters if she was notified of any change.

The system itself has now changed.

At that time changes could be intimated by Mrs Campbell or her son or the Prison Service, e.g., a parole clerk or a colleague in the social work who was aware of any change in circumstances there would be sharing information. Other than that there is no further check.

A report is a lifespan of three months.

Now there is more joined up communication between the Prison Service and community based social workers and they have actual contact with the prisoner.

They are notified if someone secures home leave and have contact with the prisoner, and some prisoners with violent history have been asked to make contact during the home visits. They are now notified in writing of home leave being granted, not at the time Mr Campbell had his home leave. They are also requested now to make contact during home leave if they consider it necessary.

At the time of Mr Campbell's home leave there was no contact after the report was completed until the parole report request.

Miss Potter accepted that this lack of any contact was a gap indeed she described as a "high gap", prisoners return to community and the social worker not advised, would now have an opportunity to supervise if they thought it appropriate. Now Mr Campbell would at least have a point of contact on home leave. Also now have annual meetings when they discuss progress on the system so they know how progressing, what issues have arisen. They get to know the prisoner.

If released on parole then there is contact but not if released pre-parole.

The present system allows for fixed appointments to be given out to meet the social worker in the community, possibly the social work office or at the home address. The home leave has been extended from three days to seven days so it gives more opportunity for these visits. Contact at weekends was difficult to arrange and it is more easy now with the longer visits and the new system had been in place for about fourteen months as part of Integrated Case Management. This would be attended by team coordinators from the Scottish Prison Service, prison based social work, and community based social work and any other agencies including drug counsellors, alcohol counsellors, education psychology. There would be an annual review with all persons present although it could be earlier than annual. There would be pre-release integrated case management conference to look at issues affecting the community before home release.

When preparing, she had the report from the trial judge which gives useful background to the offence, particular concerns may be highlighted within a judge's report in respect of the risk in the community.

The Social Work Department appear not to have been aware of the murder until contact with the Procurator Fiscal in connection with a current inquiry. She would have expected community social work to have known of this and the prison based social worker to have advised then.

Miss Potter advised that information is now issued more easily with the Scottish Prison Service particularly with the Integrated Case Management meetings. A meeting takes place before home leave and social work can see the prisoner during the visits, there can also be a risk assessment meeting or an informal meeting if that is thought necessary. In relation to ThroughCare for a prisoner, this should start now when a prisoner is originally brought in to address any issues post-sentence. There will then be annual visits to the prison, allow family contact but there is no requirement about home leave contact. Four years ago there was no requirement for contact during the sentence at all other than a request for a parole report.

In response to a question from Mr Murphy, she wasn't aware of any preparation for weekend leave, by, e.g., day leave but each case would be looked at on an individual basis. She had no personal experience from her own perspective, it may be appropriate in some cases for day leave to be appropriate and there should be an action plan for return of the prisoner into the community.

In respect of acquaintances of the prisoner, this would simply fall within community response and wouldn't be looked at unless there was a co-accused or it came up in discussion with the community social workers. She wouldn't normally go and speak to anyone else.

She confirmed that Craig Campbell had been present when she interviewed Mrs Campbell. She noted the information provided by them, she was aware why Mrs Campbell had not visited personally. She did check that Craig Campbell had been allocated housing elsewhere, and was not aware that that had not been taken up by him.

Miss Martin-Brown was given an opportunity to ask questions of Miss Potter and Miss Potter confirmed for her that, once the report had been completed, it would go to the Governor of the establishment asking for the report. This simply provides and feeds in provision for the home address and identifies concerns, if any.

In respect of contact with the prisoner, for preparing the report, there is no change (other than annual visits) but the new system gives more background, particularly how the prisoner is dealing with custody. It is very difficult to predict how a prisoner will act on home leave.

She believed that the Integrated case management procedure is a definite improvement on the old, particularly with the annual meetings and the individual person being present at the meetings and how the release will have an affect on the community.

The final chapter of evidence was in respect of the home leave period itself. The evidence in connection with John Campbell's behaviour during the period of home leave and the circumstances leading up to and subsequent to the death of Catherine Thomson were not in dispute.

John Campbell arrived at his family home at 9 Deepdene Road, Moodiesburn on Friday 19 August 2005. At that time he had over £200 in his possession, some of which he gave to his brother, Craig, to look after for him. He advised his brother that he had been given money to buy drugs to take back to HM Prison Castle Huntly. John Campbell and his brother, Craig, over that weekend, and with others, indulged in consumption of alcohol and non-prescribed drugs in addition to his methadone prescription.

In the course of that weekend some money was given by John Campbell to Catherine Thomson, which money was used to buy drugs. Towards the end of the weekend John Campbell became increasingly agitated and tried to contact Catherine Thomson to get back money from her to purchase drugs to take back to Castle Huntly. John Campbell stated to Brian White: "Have you seen that wee Catherine bastard" and "I

fuckin' need that because that's me fucked for my parcel for the jail" and "I'm telling you if she disnae come across wae that money, I'm gonna really fuckin' do her in."

On Monday 22 August 2005 Catherine Thomson's mother woke, prepared for work and left her home at approximately 6.25 leaving Catherine Thomson asleep on the couch in the living room. Her brother, Martin, woke and prepared for his work. He found John Campbell within the home sitting with Catherine Thomson. Just before 7.00 am his sister advised him that Mr Campbell had left. He was not seen by Martin Thomson. Martin Thomson left for work just after 7.00 am. Catherine Thomson was on the couch watching television. He noticed a mobile phone and keys within the house at that time. The keys were very distinctive. On leaving he locked the door.

At about 11.45 am on 22 August 2005, Caroline Thomson, Catherine's sister, attended at the house with her four year old daughter, Saffron. She sent her daughter upstairs to look for Catherine. Saffron found Catherine's body. Caroline Thomson went to the front bedroom in the upstairs of the house. She saw her sister lying on the floor fully clothed, face down with a quilt wrapped round her and covered in blood. She ran from the house calling for assistance from neighbours. The police and ambulance were contacted. Police casualty surgeon, Dr Walker, attended at 11 Fernley Place, Moodiesburn and pronounced Catherine Thomson dead. at 1500 hours.

John Campbell was seen at Glenmanor Avenue, Moodiesburn, near to the deceased's home, at 10.25 hours. When running for a bus he dropped a mobile phone which was later found to have belonged to the late Catherine Thomson. He was sweating profusely and looked agitated. When searched at Kirkintilloch Police station on 24 August 2005, John Campbell was found in possession of Catherine Thomson's keys for the house at 11 Fernley Place, Moodiesburn.

DNA Analysis showed semen matching that of John Campbell on the underpants of the late Catherine Thomson. Denim cords were recovered from a laundry basket at 11 Fernley Place at 1640 hours on 24 August 2005. They were extensively blood-stained. Heavy contact and smeared contact blood staining was noted on the upper

front inner thigh area of both legs and the rear of the right leg. Many small splatters were scattered elsewhere. The blood matched the DNA profile of the late Catherine Thomson. DNA tapings from inside the trousers identified the major and regular wear of the garments to be John Campbell. The blood stain was typical of the wearer carrying out an assault. The nature of the blood staining indicated prolonged contact with the late Catherine Thomson while she was bleeding.

A knife with an overall length of 29 centimetres with a single edge serrated blade of 17.5 centimetres in length and a maximum width of 2.3 centimetres was found in the same bedroom as the late Catherine Thomson. It was heavily blood-stained with smeared blood-stains typical of the knife's use as a stabbing weapon. The blade was bent consistent with force being required to create damage. The blood on the knife matched the DNA profile of the late Catherine Thomson.

A piece of handrail was found on the floor at the bottom of the bed in the bedroom where Catherine Thomson was found. It measures 64 centimetres in length and 5 centimetres in diameter. It was heavily blood-stained. The distribution and appearance of the bloodspots was consistent with impacting into wet blood and very quickly, prior to the blood drying, moving, an event having occurred such a swinging or dropping. The blood patterns present were formed as a result of several events. The DNA profile from the blood matched the late Catherine Thomson.

A note was found at the locus in John Campbell's writing which said "Sorry I've fucked up. Look after mum, Craig." A note in similar terms was found in John Campbell's house at 9 Deepdene Road, Moodiesburn.

A post mortem was carried out on Catherine Thomson on 23 August (Production 7). The primary cause of death was confirmed as a stab wound to the neck with death being the result of blood loss from the stab wound to the right hand side of the neck which penetrated the jugular vein. No more than mild to moderate force would be required to inflict that injury. There were also multiple injuries which did not cause death. Other injuries were consistent with significant blunt trauma to the back of the head. Post mortem blood analysis revealed a methadone level higher than would have been anticipated on a regular methadone programme and moderate

level of morphine in the blood in keeping with heroin abuse and therapeutic level of abuse of diazepam. The drugs did not contribute directly to the death.

At 23 August 2005 John Campbell was arrested by officers of “C” Division on an unrelated matter, robbery, having removed a 79 year old from that person’s car and driven off in the car and various road traffic matters following there from. He was arrested and taken to Kirkintilloch Police office where, following a search, Catherine Thomson’s keys were found on his person. He appeared at Glasgow Sheriff Court on 24 August 2005 on petition for various road traffic offences and was committed to HM Prison Brainier. On 26 August 2005, John Campbell was aware that he was considered a suspect in the murder of Catherine Thomson, having made phone calls to his home address the previous day and on that day. He appeared anxious. He was being held in “A” hall. At about 1335 hours on 26 August he climbed over the fort/balustrade, stood on a fire box overhanging the hall floor four levels below. He told a negotiator that he had done something terrible and that he was possessed with the devil and that he was going to jump. He thereafter jumped headfirst from the position he adopted and fell to the concrete floor four levels below, killing himself.

There can be no doubt from the evidence that John Campbell was responsible for the death of Catherine Thomson by inflicting multiple stab wounds, including the stab wound which caused her death and blunt force injuries.

SUBMISSIONS

The submissions made on behalf of the Procurator fiscal, the family, and the SPS were all provided in electronic format and are as follows:

(A) Submissions for the Procurator fiscal

“6(1)(a) The death of Catherine Thomson took place at 11 Fernleigh Place, Moodiesburn between 0700 and 1145 hours on 22 August 2005. A formal declaration of death was made at 1500 hours on 22 August 2005.

6(1)(b) The cause of death was a stab wound to the neck inflicted by John Campbell a serving prisoner at HM Prison, Castle Huntly

6(1) © A reasonable precaution whereby the death might have been avoided was to refuse John Campbell home leave following a failed drug test on 11 August 2005.

6(1) (d) There was no system to assess the risk which John Campbell posed to the community prior to his release on home leave.

6(1) (e) There is sufficient evidence to conclude on the balance of probability that John Campbell murdered Catherine Thomson on 22 August 2005 at 11 Fernleigh Place, Moodiesburn. The evidence of Craig Campbell establishes that from the moment of his release John Campbell spent most of the weekend abusing drugs and alcohol. Although he was only supposed to leave prison with a maximum of £50 of personal money in addition to any money provided by the Scottish Prison Service, he left the prison with approximately £200 in order to buy drugs to take back into the prison for other inmates. He was able to conceal this from the relevant authorities. In fact, it is submitted that John Campbell was adept at ‘playing the system’ to ensure an early release.

For whatever reason John Campbell lost the money and was unable to buy the drugs. When he visited Brian White at about 2145 hours on 21 August 2005, his mood changed drastically. He became aggressive and said, “Have you see that wee Catherine bastard”. He said, “I fucking need that (referring to the money) because that fucks me for my parcel for the jail...Ah cannae go back to the jail without that money....I’m telling you if she doesnae come across with that money, I’m gonnae do her in, I mean it I’m gonnae really fucking do her in”.

Detective Inspector Keith Webb confirmed that a witness saw John Campbell running from the locus at about 0700 hours dropping a mobile telephone which was later identified as belonging to Catherine Thomson. It had been in the house that morning. The accused then committed an assault and robbery in Kirkintilloch, stealing a car from a 79 year old woman. Following his arrest for that crime he was found in possession of Catherine Thomson’s house keys. These house keys had also been in the house that morning and would have allowed him access to the property at 11

Fernleigh Place which, prior to the discovery of Catherine Thomson at about 1145 hours on 22 August 2005 was locked and secured. Detective Inspector Keith Webb also confirmed that a note was found at the locus which said, "Sorry I've fucked. Look after mum, Craig". It is reasonable to infer that this note was written by John Campbell following the murder and was addressed to his brother Craig. A note in similar terms was found in John Campbell's house at 9 Deepdene Road. The forensic analysis (production 6) of articles found at the locus and in particular a knife, a piece of banister and a pair of white trousers strongly link the accused to the locus and the crime. The cause of death is described in the post mortem report (production 7) and confirms that Catherine Thomson died of a stab wound to the neck as well as sustaining a number of other injuries.

The prison records (production 1) for John Campbell were incomplete and poorly maintained. For example, there was no documentation from the Supervision Review Board; the Kilmarnock Prison records stopped in December 2004 although John Campbell did not leave the prison until May 2005; there were no records for HM Prison Perth; the Castle Huntly Prison records were produced as a separate document and not as part of John Campbell's main prison file. This means that important decisions particularly in relation to his release may or must have been taken in the absence of relevant information. File integrity is dependant on the various individuals completing paperwork and this paperwork being placed in the prison file. As well as the movement of papers within prison the file also moves between establishments. It is easy to understand why some records go missing. It is essential that the paperwork within a prisoner's file be maintained properly so that appropriate decisions can be made after consulting the relevant documents. It is questionable whether the staff at Castle Huntly had access to all the relevant information in relation to John Campbell. John Campbell was taken from Castle Huntly by Reliance and dropped off at Buchanan Street Bus Station. No checks were, or required, to be made about his whereabouts or movements during the period of his home leave. He was given a travel warrant to get to and from Moodiesburn (although according to Craig Campbell, John Campbell complained that he had to pay £2 for this) and he was trusted to return to Buchanan Street Bus Station on 22 August 2005. The third Inventory of Productions for the SPS (Number 11) contains a circular issued by the Scottish Executive Justice Department dated 14 February 2007 in relation to

integrated practice guidance for staff involved in home leave process. Although this guidance was issued recently Mr McKay the Deputy Governor at Castle Huntly could not state whether the guidance had been issued to his staff or, if the guidance was available in the prison, whether any of his staff had consulted it. This guidance is of little use if those involved in the home leave process do not access it.

At paragraph 37 of that guidance states that the key principles inherent in the assessment process for temporary leave are community service and public protection. At paragraph 38 it states, “in the assessment and management of temporary leave, the principal focus will be on the community safety in general and on victims on particular”. At paragraph 39 it states, “The focus on community safety and public protection is heightened in cases where the prisoner has committed violent or sexual offences: *it should be stressed that this refers to the prisoner’s past offending history as well as the index offence.* A partnership approach to risk assessment and risk management is vital in ensuring that public protection and community safety are kept at the forefront of everyone’s efforts”. It is submitted that there was no system to deal with the practicalities of John Campbell’s release into the community. In fact, the practice which existed at the time of John Campbell’s release, e.g. dropping prisoners off at Buchanan Street Bus Station, persists today and falls far short of the requirement to focus on community safety.

Mr McKay stated in evidence that home leave is an opportunity to test a prisoner like John Campbell and requires trust but not it is submitted, at the expense of public safety. It is submitted that the Scottish Prison Service should assess or appraise the current arrangements for releasing prisoners into the community to create a system which would redress the balance. Prisoners released in to the community are still serving a sentence and as such are still the responsibility of the Scottish Prison Service. At the very least they should know that the prisoner has gone to the required address in the first place.

The purpose of a Fatal Accident Inquiry is not to blame or find fault with an individual. Mr McKay made a decision on 18 August 2005 which allowed John Campbell to go home despite failing a drugs test on 11 August 2005. Mr McKay was new to the post of Deputy Governor and made his decision by applying existing

practices and procedures. No record was kept of the reasons for that decision or the arguments advanced which persuaded or satisfied Mr McKay that home leave was still appropriate. Whilst not describing his decision as “right” or “wrong”, it was fundamentally flawed because it was taken (1) without regard to John Campbell’s prison file; (2) without access the community access risk assessment; (3) without consultation with anybody else who had been involved in that assessment process; and (4) without prior knowledge of John Campbell. There was no system to deal with this. Without access to information the decision to release John Campbell cannot be justified.

Clearly Mr McKay made no assessment of risk. Two days previously (16 August 2005) Colin McShannon, the retiring Deputy Governor had punished John Campbell for failing the drugs test. Part of the penalty was to deny John Campbell access to his personal cash. This decision could have enhanced John Campbell’s risk to the public by denying John Campbell access to essential funds. For example, John Campbell could have left prison with no more than the prison allocation of £7 per day. He left prison with a prescription for Methadone which he required to collect from Airdrie. He had to pay to travel to Airdrie to collect the Methadone at a cost of about £5. If he had been surviving on the allocated prison funds then he would have been left with about £2. Clearly an insufficient amount. It is another illustration of decisions being taken in isolation.

John Campbell had been in Castle Huntly since 15 July 2005. He was not due for parole until November 2006. There was no rush to get John Campbell into the community. He failed a drugs test on 11 August 2005 for two separate substances. There should have been a system in place to review the risk now posed as result of John Campbell abusing drugs. He should not have been released from prison at that time. It is interesting to note that Craig Campbell, himself no stranger to the penal system, was surprised that John Campbell was still getting out having failed a drugs test.

If John Campbell had not been released, a decision which was reasonable in the circumstances, it follows that the death would not have occurred. It might be suggested that the death (and circumstances leading thereto) were not foreseeable and

there is no precaution which could have prevented it. However, using bail as an analogy, if an accused applies for bail with no convictions then he is in a favourable position to be released. If an accused has analogous convictions then his application is less likely to succeed because it shows that the accused might be more likely to re-offend. If an accused also has convictions for breaching bail this will clearly be seen as a reason for not granting bail. The fact that an accused has in the past failed to comply with the conditions of bail is an indication that he will not comply with them in the future. The point is that past offending is used as a means of predicting future behaviour.

In relation to John Campbell, the fact that he would murder Catherine Thomson in the circumstances that he did may not have been foreseen, but the fact that committed an act of violence was readily foreseeable. To put it another way, the violence was foreseeable. It was only the extent of that violence which was unknown. Violence was predictable because his record revealed a history of violent offending particularly following an early release from prison. The chances of re-offending were increased because he was abusing drugs shortly before he left prison and had access to alcohol at home.

Mr McKay stated that a system was now in place to deal with granting and approving home leave. The decision is now taken by a board rather than the Deputy Governor. There is a more “joined up” approach to considering home leave. Anyone who failed a drugs test now would not be eligible for home leave for 28 days although while saying that, Mr McKay also appeared to indicate that in exceptional circumstances someone might still get out. I did not find this part of his evidence particularly clear. It is submitted that these changes are ones of forms and not substance. It is submitted that there is still no risk assessment made of prisoners prior to going on home leave. Low supervision is equated to low risk. Mr Crombie and Mr McKay stated that prisoners are only transferred to Castle Huntly when they are low supervision. They also said that risk had been assessed elsewhere otherwise the prisoner would not have been transferred to Castle Huntly in the first place. This leads inevitably to the conclusion that the process or system in force at Castle Huntly is no more than a rubber-stamping exercise. The question of risk is still not accessed and there is no system in place to adequately do so.

Returning to the guidance mentioned above, at Paragraph 53 it states, “staff attempting staff conferences will need to address the issues of risk. This is crucial in relation to home leave. In the past the home leave process was framed risk primarily in relation the low supervision label categorisation that a prison has attained: low security supervision level equating to a low risk of the prisoner re-offending and/or causing serious harm if released on leave. Albeit the security supervision level is important in terms of managing the prison population, it is imperative that the risk posed by the prisoner being released temporarily on leave be reframed to focus on re-offending and serious harm. Public protection and community safety must be the key consideration for all those involved in the home leave process”. The Scottish Prison Service has rules that allow prisoners to progress. It is clearly in the public interest to prepare prisoners for their release into the community and reduce the likelihood of re-offending. The Scottish Prison Service also has criteria which a prisoner must meet before being able to move to the open estate. Yet, it appears that once the criteria have been met, the prisoner’s previous record and his conduct within the prison is largely ignored.

Prisoners should be treated fairly and equally but that does not mean that the record and conduct of an individual prisoner should be ignored when assessing risk. If two prisoners meet the criteria for movement to the open estate and both have served 3 years, and one has provided no positive drugs test throughout his sentence and the other has provided 12 positive tests, then surely that is a relevant consideration when assessing risk. Similarly, the fact that John Campbell provided a number of positive drugs tests whilst he was in prison and had a record showing that he committed violent offences even though he was on licence must surely be a relevant consideration when assessing what risk he might pose to the community on being allowed home leave. Risk also changes with time. This is where reference to the whole facts and circumstances becomes more important. When John Campbell failed his drugs test it was the first time since he met the criteria for moving to the open estate that he had done so but it was by no means the first time that he had failed a drugs test whilst he was in prison. It was not a one off. Having failed that drugs test on 11 August 2005 there should have been a system in place which looked at his

whole offending behaviour so that an assessment could be made of the risk which he posed at that time, i.e. when he failed a drugs test.

It is submitted that there was no system to allow for the assessment of risk at the time John Campbell was released and there is no adequate system for doing so now. Jim McKay who is on the board for approving home leave kept repeating that risk had been assessed before or elsewhere. It is imperative that risk is assessed at the time the prisoner is being released and it is therefore submitted that the Scottish Prison Service requires to rectify this.

At the time of John Campbell's release there was also a lack of communication. North Lanarkshire Council had accepted through care responsibility for John Campbell but that only applied when he was released on parole or afterwards. It did not apply to home leave. The only role played by the local social worker was in providing a home background report which in itself proved to inaccurate by the time John Campbell actually left prison. There was no reference in the social work file to subsequent events and the social worker, Kim Potter, who prepared the report, was not aware of subsequent events until a few months before the Inquiry in 2007. The system of integrated case management has improved communication and information sharing. However, given the defects highlighted above it may still be the case that there is more supervision and input available to a prisoner on his release on parole or afterwards than there is when he is released on home leave."

(B) Submissions for the Family

"Sections (6) (1) (a) - This deals with where and when the death took place.

The death of Catherine Thomson took place at 11 Fernleigh Place, Moodiesburn on 22 August 2005 at some time between 0700 hours and 1154 hours. A formal declaration of death was made at 1500 hours on 22 August 2005.

Section 6 (1) (b) - This deals with the causes resulting in the death.

The cause of her death was primarily a stab wound to the neck inflicted by John Campbell.

Sections 6 (1) © - Any reasonable precautions that could have been taken to avoid Miss Thomson's death; any defect in the system which may have contributed to her death.

A reasonable precaution whereby the death of Miss Thomson could have been avoided was to refuse John Campbell home leave, following his failed drug test on 11 August 2005.

Section 6(1) (d) - Any defect in the system of working, which may have contributed to her death.

There was no system in place to assess the risk, which John Campbell posed to the community, prior to his release on home leave.

Section 6(1) (e) - Any other facts, which are relevant to the circumstances of death.

The evidence heard during the Fatal Accident Inquiry establishes that John Campbell on the balance of probabilities murdered Catherine Thomson on 22 August 2005 at 11 Fernleigh Place, Moodiesburn.

John Campbell was released on weekend leave on Friday 19 August 2005. It is clear that before he left Castle Huntly, he had already breached the regulations pertaining to the Open Estate. He had on his person the sum of £200 (prisoners are only allowed to be in possession of £50 as highlighted in Production 52, Pg.92).

In addition, it was heard in evidence from Craig Campbell, the brother of John Campbell that following his release and during the course of the weekend leave, John Campbell embarked on a period of intense alcohol and drug consumption. This behaviour was pre-meditated, the plans for which were put in place as soon as he was dropped off by the staff of Reliance Security at Buchanan Bus Station.

When John Campbell arrived at the family home around at 9 Deepdene Drive around 10.30 am, he gave his brother £100 to look after for him. It is believed that the money was to allow him to buy drugs to take with him on his return to prison. It was at this time, that John Campbell began to spend what would be a considerable period of time over the course of the weekend with his brother. During this time the two of them travelled to Blackhill, to purchase cocaine, (despite it being considered worthy of note

by Katherine Potter in the Home Background Report that Craig Campbell stated he would provide his brother with some “inspiration” as he was currently on a methadone programme). The cocaine purchased was consumed by both of them, along with Angie Drummond and Catherine Thomson during the course of the day.

During Saturday 20 August 2005, John Campbell and his brother travelled to Glasgow to purchase further quantities of cocaine, some of it at the request of the deceased Catherine Thomson. They returned to the deceased’s home where all three consumed the cocaine purchased. On leaving the deceased said to John Campbell “that’s a score I owe you”.

On Sunday 21 August 2005 John Campbell and his brother purchased further quantities of drugs whilst at a bookmakers on Larchfield Road in Moodiesburn. They returned home to consume the drugs. It was from this point on that John Campbell made several efforts both directly and indirectly to contact the deceased to obtain return of the £60 he had lent her.

He visited David Cairns at 31 Netherhill Road Moodiesburn, and told him to try and get hold of Catherine Thomson. They went to the home of David Fleming to ask if he had seen her, Fleming attempted to contact the deceased on her mobile, without success.

Around 9.15 pm, John Campbell attended at the home of Brian White, during the course of their conversation John Campbell stated “Have you seen that Catherine bastard?” and “I fucking need that because that’s fucked me for my parcel for the jail”. He continued by saying “I’m telling you if she does nae’ come across wae’ that money, I’m gonna do her in, I mean it I’m gonna fuckin’ do her in”

Further evidence was heard during the Inquiry from Detective Inspector Keith Webb. He stated that during the course of investigating the murder, a witness had stated that he had seen John Campbell drop a mobile phone, which was later identified as belonging to the deceased. On his subsequent arrest, John Campbell was found in possession of the deceased’s house keys. They were easily identified by the key rings attached – a leprechaun and pink spring. These keys were present in the family home

at 11 Fernleigh Place on the morning of 22 August 2005 as confirmed by the deceased's brother Martin Thomson. Said keys would have allowed John Campbell to gain entry to the property at 11 Fernleigh Place, which had been locked by the said Martin Thomson at the request of his sister Catherine on his leaving for work. It was confirmed by her sister, Caroline Thomson that prior to the discovery of Catherine Thomson at about 1145 hours on 22 August 2005 the front door was locked and secured.

Detective Inspector Webb also confirmed whilst giving evidence, that a note was found at the locus, which stated, "Sorry I've fucked. Look after mum, Craig". It is reasonable to infer that this note was written by John Campbell following the murder and was addressed to his brother Craig.

A note similar in content was found at John Campbell's family home at 9 Deepdene Road. The forensic analysis (production 6) of articles found at the locus and in particular a knife, a piece of banister and a pair of white trousers strongly link the accused to the locus and the crime. The cause of death is described in the post-mortem report (production 7) and confirms that Catherine Thomson died of a stab wound to the neck as well as sustaining a number of other injuries.

Background to decision to allow Home Leave

John Campbell arrived at HMP Castle Huntly on 13 July 2005 and his application for weekend home leave was approved by the Governor on 8 August 2005. It is unclear whether all the required information was available to him at the time of the signing the weekend leave as approved.

In chronological date order when a prisoner such as John Campbell arrives at Castle Huntly the following forms are completed, thereafter these forms would form the basis of his eligibility for home leave-

- i) Individual Learning Plan - 14 July 2005;
- ii) Admission Screen - 15 July 2005;
- iii) Intelligence Unit - Request for Prisoner Intel Information - 29 July 2005
- iv) Risk Assessment and Progression Report - 1 August 2005
- v) Risk assessment and Progression Report - 3 August 2005

- vi) Risk assessment and Progression Report – 3 August 2005
- vii) Community Risk Assessment - 8 August 2005

i) **Individual Learning Plan**

This addresses the prisoner's educational issues and would appear to have no substantial relevance to the assessment of the prisoner's eligibility for home leave.

ii) **Admission Screen**

This document is contained within Production No.9, and is completed by Jim Robertson, Residential Officer at HMP Huntly.

At Page 1 it asks, "Do you have accommodation to go to on release?"; at page 2 it asks, "What will your family circumstances be on release?". It is normally completed within three days of prisoner arriving and is already asking the prisoner at such an early stage, if he has accommodation to stay at on release or what his family circumstances will be.

It would also appear to be very much lacking in any detail, at page 3 it asks some basic questions in relation to the prisoner's substance misuse, but it is very general in nature, for example it does not ask any details in relation to the prescription amount. Mr Robertson mentioned in evidence, that at the time of completing the form he would not have had reference to the Prisoners Records. He described this as not ideal, and stated that the position had now changed and the Records were on computer. Nonetheless, it clearly he did not have the advantage of being able to peruse vital information relating to John Campbell.

It is of concern that based on the fact the form is completely based on information and answers provided by the prisoner John Campbell, the form was not signed by him. Mr Robertson explained, that he probably signed it prior to sitting down with the prisoner. He could give no explanation why he did this, save from saying that it was not best practise and that everything was now done on computer. The completing of the form on computer still does not address the issue of whether the information

contained therein was an accurate reflection of the information provided by prisoners, such as John Campbell, as it would not be signed.

iii) **Intelligence Unit – Request for Prisoner Intel information**

This Report identified that there were no recent Reports against John Campbell or MDT failures.

iv) **Risk Assessment and Progression Report**

Completed by Mr Gourlay, who has signed the document as the Personal Officer, however we heard in evidence that the Personal Officer of John Campbell was in fact John Crombie.

v) **Risk Assessment and Progression Report**

Completed by Hazel Lynn, and would appear to be of no relevance in relation to assessing John Campbell's eligibility for weekend leave.

vi) **Risk Assessment and Progression Report**

Completed by John Crombie, the designated Personal Officer of John Campbell. In completing this form it states, that the further information contained in the last box of this page was considered by John Crombie. Clearly this document carried considerable weight in assessing whether John Campbell was eligible for weekend leave. It is the only document in the assessment process, apart from the final confirmation from the Governor which provides the option of recommended/not recommended at the end of the page. However in evidence Mr Crombie played down the importance of this document.

Mr Crombie completed this form on the basis that he was the Personal Officer to John Campbell. In his own words he was "the first point of contact" for John Campbell. He stated that 17 prisoners were allocated to him. Yet he gave evidence that although he was deemed to be the Personal Officer of John Campbell, he would not necessarily expect to be in the same wing as him. If a prison officer is a "first point of contact",

he should if possible be readily accessible to prisoners such as John Campbell, subject to holidays and shift patterns.

In page 1 of this document John Crombie was required to read certain papers concerning John Campbell. One such document was the Trial Judge Report, he stated that there was nothing contained within this which gave him cause for concern, in spite of the fact that the Judge commented in detail on the nature of the offence and the violence involved, together with the comments that the offences were committed whilst on licence. In evidence, Mr Crombie stated he had read the Report, but as John Campbell was considered suitable for transfer to the Open Estate, he did not question it.

He was not in possession of the Latest Risks and Needs or Supervisory Release Order. It states the Prisoner Management File was present, although it was not contained within the file of Productions, as a consequence the Inquiry did not have the benefit of considering its contents and whether there was any information contained therein which should have raised any concerns. However, Production No.1 for the family of Catherine Thomson at Page 8, Para 5.11, lists the considerable information that is contained within the Sentence Management File and it would certainly have been of benefit to the Inquiry if this was available.

In Production No1, for the Family, there is a recommendation in Para 5.12 that "The arrangements for Sentence Management at Castle Huntly should be improved", it continues at Para 5.13, "It is recommended that the operation of the Sentence Management Scheme should be nationally reviewed and that resource implications are clearly identified". Para 5.11 clearly identifies that the majority of Sentence Management Files are not completed timeously. In the absence of the file within the Records pertaining to John Campbell, we are unable to identify if this file was completed to a satisfactory standard or if there was any issues within it to cause concern.

In addition, it would appear that the decision by John Crombie to recommend John Campbell for weekend leave was made in the absence of information contained in the Latest Risk and Needs Report as this was not available at the time. However, it is

questionable whether this would in any event have provided any additional worthwhile information.

vii) **Community Access Risk Assessment Form**

This document is contained within Production 9, and would appear to represent final confirmation that weekend leave is to be granted.

It would appear that certain information may have been absent when the document was signed off or at best it was not noted that it was available. At approximately half way down the page in the box headed “Checked”, three of the boxes, which require to be checked, remain blank. It is not clear whether this information was made available to the Governor at the time that he approved the weekend leave.

At the bottom of page 1, in the last box headed “checklist”, the boxes stating whether the Home Background Report and Address are suitable are not checked. The Home Background Report was completed by Karen Potter on 4 July 2005, so clearly it had been completed, but it is unclear whether it was made available to the Governor for his perusal.

Also, in Page 2, of said form the dates when John Campbell last gave a positive/negative drugs test do not appear to correspond correctly with those at Production 54, Page 1. This error would not appear to have any practical consequence, as there would appear to be no dispute that the tests were passed and failed respectively. However, it further enforces the impression the prison file of John Campbell was not managed to a satisfactory standard, and that vital information was not considered or accurately recorded in considering whether John Campbell presented a risk to the local community, as well as satisfying the criteria to allow weekend leave to be granted.

Weekend Leave was subsequently granted following the Governor signing the Community Risk Assessment on 8 August 2005. However, John Campbell subsequently failed a Risk Assessment Drug Test on 11 August 2005. Jim McKay, the Deputy Governor subsequently met with John Campbell to discuss this positive result. The decision was made by Mr McKay on 18 August 2005, to allow John Campbell to have weekend leave despite the failed drugs test. This decision was made without

reference to essential documents such as – the prison file of John Campbell; any Community Risk Assessment; his previous record of committing violent offences; previous instances of committing such offences whilst on licence or parole; or consulting any other member of staff, who may have greater knowledge of John Campbell such as his Personal Officer John Crombie. It is worthy of note that Mr McKay had no knowledge of John Campbell, save for the face to face meeting he had with him to decide whether weekend leave should continue.

In evidence, Mr McKay stated that he had not noted in writing, his reasons for allowing weekend leave to continue. He was also not able to provide the Inquiry with any information in relation to his recollection of the content of their conversation, except for saying that he would have discussed the circumstances of the negative test and then decided that the punishment would be the withdrawal of home leave suspended for 2 months. Also, of concern is that there would not appear to be present within the Records a note of the type of drugs to which John Campbell tested positive for. It is of concern that such an important decision was taken without there being available more detailed information, and thereafter proper recording of the reasons said decision.

It would appear at that time there was no system or procedure in place which would have provided guidance to Mr McKay to deal with such an occurrence. However, in spite of this the decision was made to allow John Campbell to go on weekend leave without even the briefest of references to his file.

Despite John Campbell providing a negative drug test result, no further risk assessment was made. The matter had previously been investigated by the then Deputy Governor Colin McShannon, where it was decided that the prisoners access to his personal cash should be restricted, together with the loss of earnings. It is not clear from the information provided whether in making this decision Mr McShannon was aware that John Campbell was to shortly go on weekend leave. By restricting his access to personal cash he was in theory increasing the likelihood that John Campbell would present a greater risk to the public, as he would be in the community with insufficient funds.

If the decision had been taken to stop John Campbell from going on weekend leave it is clear that the death of Catherine Thomson would not have taken place. It is submitted that on allowing John Campbell to go on weekend leave, Mr McKay could not reasonably foresee that he would have murdered Catherine Thomson during the course of the weekend. However, what would have reasonably foreseeable is that he would be involved in a criminal act such as a crime of violence. Consideration should have been given to his previous record and the nature of his previous convictions, in conjunction with the failed drugs test. You would assume that at the very least the proposed weekend leave could have been postponed, pending further investigation to assess the risk that he may pose to the wider community. To place him in the community so soon after a failed drugs test would only serve increase the temptation for him to continue to take drugs. John Campbell had only just arrived at Castle Huntly and already, he was exhibiting behaviour which should have given cause for concern.

During the course of his evidence Mr McKay made reference to there being a relationship of trust that had to exist between the prisoner and the prison authorities. However, it is clear that John Campbell breached the trust placed in him at such an early stage. John Campbell arrived at Castle Huntly on 15 July 2005, and he failed a drugs test on 11 August 2005, less than 4 weeks after his arrival. Mr McKay had said in evidence that this sometimes happened when a person initially arrived at an open prison, because of the change of environment. However, the correct course of action is not to simply place the person in the local community. The weekend leave should be postponed and a thorough review of the risk which he posed to the local community be instructed following what was described as a double positive drugs test.

Mr McKay stated that a new system now existed which dealt with the monitoring of home leave. The Deputy Governor no longer made such decisions in isolation, it is now referred to a Management Board. Although it is welcomed that this decision is now taken in consultation with other relevant individuals, it remains an issue of concern that the quality and detail of the information placed before the Board remains the same, and is itself lacking in the required detail. There continues to be no adequate risk assessment carried out by Castle Huntly Prison in assessing the potential risk that

prisoners such as John Campbell may present. There is a general assumption within Castle Huntly and with its staff that those prisoners transferred to their establishment have been assessed elsewhere. There is a belief that they would not have been transferred to Castle Huntly, unless they were eligible for the open prison environment and subsequently home leave. Throughout the evidence we heard many witnesses refer to John Campbell being classed as low supervision and it would appear that this was often confused with low risk. This was also a cause for concern as the two terms are not interchangeable.

It is admitted that prior to their release on parole, a system requires to be in place such as weekend leave, to prepare prisoners for their release in the local community. However, of paramount consideration in such a system must be the risk that the individual may pose to the local community. It appears that once a person satisfies the criteria for being transferred to the Open Estate, his previous record and previous convictions are to a large extent considered irrelevant, as they will have been considered elsewhere during the course of his sentence. This requires to be rectified by the Prison Service.

The Third Inventory of Productions for the Scottish Prison Service (14 February 2007)(No.11), contains a circular published by the Scottish Executive Department to provide guidance to staff involved in the home leave process (hereafter described as Practise Guidance Notes).

At Para. 37, of the above document it states that, “Where the current system is most in need of improvement is in relation to the first period of home leave. This is where procedures for risk assessment and information sharing need to be robust. If not problems arise”. Clearly the system itself does not appear to have changed dramatically in relation to the risk assessment carried out, it is simply taken by a group of individuals rather than the Deputy Governor. Crucially the information before them predominantly remains the same. This is an area of concern which should be addressed.

At Para 39, it states, “The focus on community safety and public protection is heightened in cases where the prisoner has committed violent or sexual offences: it

should be stressed that this refers to the prisoners past offending history as well as the index offence. A partnership approach to risk assessment and risk management is vital in ensuring that public protection and community safety are kept at the forefront of everyone's efforts". It is submitted there is currently no adequate system to assess the risk a prisoner may pose if released into the community, and there was certainly no such system in place at the time of John Campbell's release. It is essential that Open Estate Prisons such as Castle Huntly adequately assess the risk that a prisoner may pose prior to their release. It is not acceptable to proceed on the assumption that the prisoner will have been assessed elsewhere. It should not merely be a rubber stamping exercise on their part to simply complete the relevant forms and process the prisoner through the system within a four week period to allow weekend leave to take place, without sufficient assessment of risk to ensure that the individual circumstances of the prisoner both past and present do not pose a risk to the local community.

It is also worthy of note that during the period of time that John Campbell was on weekend leave it would appear that there was no provision in place to monitor his movements, to ensure that he did not become involved in criminal activity, or fall back into his previous habits of drug taking.

It was heard in evidence that Reliance staff dropped him at Buchanan Street Bus Station, as is normal procedure, rather than take him to the designated address. This raises the issue as to whether there is any value in carrying out a Home Background Report, as the prisoner need not reside at the given address as no checks will be made to ensure he is there. This would appear to have changed little since the incident, and would appear to be open to abuse where family members can simply tell the Social Worker what they require to hear, in order to deem the accommodation suitable for the prisoner to stay during their weekend leave. This was illustrated in the information provided by Craig Campbell, he stated that he felt he would act as an "inspiration" to his brother as he would be able to show that he was doing well on a methadone programme. In addition, it is noted that Craig Campbell stated he had his own tenancy in Coatbridge, yet in giving evidence he informed the Inquiry that he lived with his mother at 9 Deepdene Road.

In addition, it is clear that whilst a prisoner is on weekend leave he remains the responsibility of the Prison Service, but there would appear to have been no provision in place to monitor his behaviour, and little seems to have changed in this regard. The Practise Guidance Notes (No.11) appear to do nothing to adequately address this concern. At Pg. 19 at Para.67, it states that there is provision for a specified condition to be added to the weekend leave and if necessary it can be arranged, that the prisoner attends a meeting during the course of the weekend leave. However, there is no provision to make random checks on prisoners, who are as in the case of John Campbell are apparently able “to work the system”.

It is also of considerable concern that the Prison Records for John Campbell were incomplete. There was no information relating to the Sentence Management File which would appear to contain information such Psychometrics, Screening Tools and Action Plans; there were no records from HMP Perth; his prison records stopped at Kilmarnock stopped at December 2004, yet he did not move to another prison until 6 months later. This casts doubt on whether in deciding important matters relating to the progress of John Campbell through the prison system, whether all the required information was made available. Indeed there can little doubt that the staff at Castle Huntly did not have access to crucial information relating to John Campbell prior to his release on weekend leave.”

SUBMISSIONS FOR THE SCOTTISH PRISON SERVICE

“Overview

The legal framework of the Inquiry is entirely straightforward. The Inquiry takes place under the framework provided by the **Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976**. The purpose of the Inquiry is defined in Section 6(1) of the Act which is in the following terms:

“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 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.”

In my submission we have heard no evidence during this Inquiry which would justify anything other than formal findings under the 1976 Act, namely:

date;

time;

place; and

cause of death.

We have heard no evidence of any reasonable precautions whereby the death might have been avoided; no evidence of any system of working which contributed to the death; and there are no other facts which are relevant to the circumstances of the death as far as the Scottish Prison Service are concerned.

It is well settled that it is not the purpose of a fatal accident inquiry to determine any question of civil or criminal fault or liability.

Black v Scott Lithgow Limited 1990 SLT 612, Lord President Hope at page 615 G-H:

“There is no power in this section [s 6(1)] to make a finding as to fault or to apportion blame between any persons who might have contributed to the accident.... It is plain that the function of the sheriff at a fatal accident inquiry is different from that which he is required to perform at a proof in a civil action to recover damages. His examination and analysis of the evidence is conducted with a view only to setting out in his determination the circumstances to which the subsection refers, in so far as this can be done to his satisfaction. He has before him no record or other written pleading, there is no claim of damages by anyone and there are no grounds of fault upon which his decision is required.”

FAI into the death of **Steven Alexander Dekker** 2000 SCLR 1087, Sheriff Dickson at page 1093 B-E:

“For the reasons expressed by Sheriff Principal Mowat in the determination following the Lockerbie air disaster and in accordance with the judgement given by Lord President Hope in Black v Scott Lithgow Ltd, it is not appropriate that a sheriff should make findings of fault after an FAI. As Sheriff Principal Mowat pointed out:

‘in an criminal case, or a civil case based on delict, the accused or the defenders is given full notice of the allegations made against him either in the form of a complaint of an indictment or by written pleadings. He is entitled to hear all the evidence against him before putting forward his defence. He is under no obligation to give evidence and may choose not to do so.’

In an FAI no such notice is given and, subject to the provisions of section 5(2) of the Act, a potential defender or accused is not entitled to decline to give evidence. The circumstances between a criminal case or civil action on one hand and a fatal accident inquiry on the other are totally different. In terms of section 6(3) of the Act a sheriff’s determination may not be founded upon in any other judicial proceedings arising out of the death, and by this method Parliament has indicted that the finding of fault is not intended to be a purpose of the inquiry.”

Further in the determination produced by Sheriff Mhairi Stephen into the death of **Lynsy Myles**, dated 27 February 2004 (unreported), it was noted in consideration of section 6 (1) © that:

“the key word must be “reasonable” - in judging what is reasonable and particularly whether the actings of medical professionals or indeed any other professional achieves a certain standard care must be taken by lawyers before we embark on a critique of the treatment carried out by doctors. As lawyers we are no more than tutored laymen who can apply normal analytical skills and common sense. Whereas we may question and indeed criticise medical professionals, lawyers cannot be the arbiters of what is reasonable based upon our examination alone. There is always a risk in Inquiries such as this that emotive issues will arise, perfectly understandably.”

Sheriff Stephen goes on, at page 25 to say

“The view I take of this matter is that for precautions to be reasonable they have to be reasonable given the whole circumstances surrounding the patient and treatment of the patient with particular reference to the treating physician and if appropriate his junior medical staff. Before I can find a precaution to be reasonable in the context of a medical issue, there must either be an admission by the treating doctor that he

failed to take a precaution or course of action which he clearly ought to have taken or took a course of action which, in the exercise of ordinary care, ought not to have been taken.”

At page 29 it is relevant, particularly in the circumstances of this Inquiry into the death of Catherine Thomson, to note that she considered:

“I specifically reject the submission that the nature of a Fatal Accident Inquiry and of the associated statutory requirements is such that I can make findings under section 6 based upon hindsight.

Inquiry into a death whilst undergoing medical treatment is a significantly different concept to an Inquiry into say an catastrophe at work where the facts surrounding the incident are susceptible to inquiry with the use of common sense and logic. Medical issues depend upon the presentation of the patient, and the clinical judgement of those treating the patient, having regard to all the circumstances which prevailed at the time both with regard to the patient and the standing experience and field of expertise of the clinicians.”

Although Sheriff Stephen’s comments were made in relation to a Fatal Accident Inquiry dealing with medical issues, in my submission they are relevant to this Inquiry where decisions have been made by a number of professionals in the Scottish Prison Service and other authorities such as Social Work.

Section 6 (1)

Section 6 (1) (a) of the 1976 Act deals with **when** and **where** the death took place.

Date

This can be taken from the post mortem report (Crown Production 7) which indicates that the date of death was 22 August 2005. This is consistent with the evidence of Caroline Thomson (sister of the deceased).

Place

We heard evidence from Caroline Thomson (sister of the deceased) that she found the deceased’s body at her home at 11 Fernleigh Place, Moodiesburn, Glasgow. This is confirmed in the post mortem report (Crown Production 7).

Time

This aspect is slightly more difficult. The last person to have seen the deceased alive appears to have been Martin Thomson (brother of the deceased). He indicated that he was woken by his alarm at 6.15 am. He saw the deceased sitting in the living room with John Campbell, chatting.

At about 6.55 am he heard the deceased say goodbye to John Campbell. He then had tea and toast, watched television and left for work. The post mortem report (Crown Production 7) refers to Martin Thomson leaving the house to go to work at 7.05 am.

Caroline Thomson (sister of deceased) indicated in her evidence that she went round to the deceased's home at around lunchtime and found her lying dead at that time. The post mortem report (Crown Production 7) indicates Caroline Thomson found her sister at 11.45 am.

Therefore, in my submission the time of death must have been between 7.05 am and 11.45 am but unfortunately, it is not possible to be more specific than that on the basis of the evidence available. Catherine Thomson was declared dead at 3pm according to the post mortem report (Crown Production 7).

Section 6 (1) (b) deals with the **cause** of death.

Cause

This was established in the post mortem report (Crown Production 7) as a stab wound of neck.

Police Officer Keith Webb stated that the evidence was overwhelming to indicate that John Campbell murdered Catherine Thomson. He based his conclusion on DNA evidence (Crown Production 6). John Campbell was identified as the wearer of trousers stained with Catherine Thomson's blood by way of DNA profiling. John Campbell's DNA and semen were also on the deceased's underclothing. Weapons recovered pointed to the involvement of John Campbell. No other person was sought in connection with the deceased's murder.

Therefore, in my submission, on the balance of probabilities Catherine Thomson was murdered by a stab wound to the neck inflicted by John Campbell.

Section 6 (1) © deals with the **reasonable precautions**, if any, whereby the death might have been avoided.

Reasonable Precautions

In my submission we heard no evidence of any reasonable precautions which might have avoided Catherine Thomson's death. Allowing John Campbell home leave cannot properly be said to have a causal connection with Catherine Thomson's death. There was no evidence heard during the inquiry of any steps that the Scottish Prison Service could have taken to prevent Catherine Thomson being murdered by John Campbell. That was a criminal act which he alone decided to carry out.

The evidence from witnesses Craig Campbell and Brian Whyte did not suggest that John Campbell left prison with the specific intention to murder Catherine Thomson. In addition, there was no intelligence obtained prior to his release which suggested he intended to murder the deceased or even to engage in any criminal activity. The deceased's brother saw her speaking with John Campbell in her home on the morning of her death and indicated that she seemed happy. It would therefore appear that the decision to murder Catherine Thomson was spontaneous and in my submission there is nothing that anyone could have done to avoid her death.

I shall address my Lord separately in detail in relation to the decision to allow home leave and whether this was a reasonable precaution which might have avoided the death.

Section 6 (1) (d) deals with the **defect**, if any, in any **system of working** which contributed to the death.

System of Working

In my submission, the system of working within the Scottish Prison Service cannot properly be said to have contributed to Catherine Thomson's death. As already indicated, Catherine Thomson's death arose out of a criminal act which did not appear to have been planned by John Campbell during his time in prison. Instead, a series of events took place during the weekend he was on home leave which led to Catherine Thomson's murder. In my submission, the system of sentence management in place at the time is too remote from the death to be said to have contributed to it in any way. I will address my Lord separately in detail in relation to the sentence management system in place at the time John Campbell was in prison and the system of integrated case management which is now in place in 2007.

Section 6 (1) (e) deals with any other facts which are **relevant to the circumstances of the death.**

Facts Relevant to Circumstances of Death

Whilst I appreciate that there may be issues in relation to the decision made at the time to allow John Campbell to be released on home leave which my Lord may wish to comment upon, in my submission, any such comments should be contained in the Notes section of the Determination and no finding should be made under section 6 (1) (e) in relation to the Scottish Prison Service. The processes within HMP Castle Huntly and Kilmarnock and the actions and decisions taken by individuals working within those establishments cannot properly be said to be relevant to the circumstances of the death which was the result of a spontaneous criminal act. It was the actions of John Campbell and him alone which are relevant to the circumstances of the death.

Decision to Allow Home Leave

In considering the decision to allow home leave, it is helpful to take a chronological view of the assessments which were carried out at Castle Huntly (Crown Production 9).

Admissions Screen

The first assessment was completed by Jim Robertson on 15 July 2005. That was an admissions screen designed to look at any immediate concerns which the prisoner had.

During his discussion with the prisoner, there was nothing of concern which was drawn to Jim Robertson's attention. John Campbell planned to stay with his mother on release. He expected family contact by way of letters and telephone. He was to be referred for benefits and finance information. He was listed for employment training. He was to continue his learning and skills in relation to information technology. His substance misuse was being dealt with and he was stable on a methadone programme. He also wished to see the Chaplain.

In my submission, there was nothing which was presented to Jim Robertson which could have alerted him to any kind of concerns at that point. That is not to say that no risk assessment was carried out. Instead, this is the first stage in a process of risk assessment which began at HMP Kilmarnock at the very start of John Campbell's sentence.

Intelligence Information

The next piece of information provided was in relation to intelligence. This was completed on 29 July 2005.

There was nothing recent on intelligence. There were no recent reports obtained nor any mandatory drug test failures.

In my submission, had there been intelligence, for example suggesting that John Campbell was involved in drug dealing in the prison; that he had been making threats to Catherine Thomson or anyone else in the community; or that he had been intending to abscond then any of these would have been a risk which could have been considered in deciding whether to allow him to have home leave. Jim McKay indicated that most likely the decision would be that John Campbell would not have been allowed home leave and instead he would have been transferred back to the closed estate because he would no longer be considered a low supervision prisoner.

However, in the absence of anything being highlighted by intelligence, in my submission, there was nothing to suggest that he would commit the criminal act that he did on his release on home leave.

Healthcare Assessment

The next piece of information was provided on 1 August 2005 by L. Gourlay. That is input from a healthcare perspective indicating that he was fit for work and on a methadone programme. Had it been the case that, for example, John Campbell was failing to engage with addiction services or was suffering from a mental health condition then those would be risk factors that could have been taken into account in deciding whether to allow home leave.

However, no such issues were identified and at that stage John Campbell was engaging with addiction services.

Education

The report completed by Hazel Lynn on 3 August 2005 is in relation to education and an individual learning plan was drawn up for him.

The bottom box on the form seeks further relevant information such as any issues regarding community access. It is perhaps difficult to envisage where education and learning would present such a risk but in the context of a continuous process of risk assessment it is an opportunity for a further person to provide input into the decision and highlight any adverse factors of which they are aware. Without conducting a full collateral review, it is possible that those involved with learning and education may detect something which would be useful and therefore there is space for that to be factored in to the decision to allow home leave.

However, in the absence of any issues being highlighted by John Campbell's discussions with Hazel Lynn, there were no issues to be drawn to the attention of those considering home leave.

Personal Officer

The next assessment is by the Personal Officer, John Crombie, on 3 August 2005.

Needs

A prisoner's needs can be identified in the top box but we heard from John Crombie that he did not identify any needs for John Campbell. Had John Crombie identified that, for example, John Campbell required to engage with addiction services to deal with an alcohol or drug problem; required to address anger management issues; or required problem solving skills training then such needs would have been highlighted there.

However, we heard from Maureen Brown that such needs would have to be addressed in the closed estate before a prisoner would be able to progress to the open estate. Programmes are provided in the closed estate which are aimed at addressing offending behaviour and are necessary for prisoners to progress through their sentence if they are deemed suitable by appropriately qualified professionals.

Therefore, unless the needs had arisen subsequent to transfer to the Open Estate, there would not normally be any such needs that required to be addressed at that late stage. It is therefore not surprising that no such needs were identified for John Campbell. Had any needs been identified, John Campbell would most likely have been transferred back to the closed estate to complete such programmes or referred to addictions services in the open estate.

Progress

In terms of progress, John Campbell was noted to have been settling in well. All of his recent drug tests had been negative up until that point and I shall address my Lord separately in relation to the subsequent positive drug test of 11 August 2005. He had not incurred any Governor's reports and was progressing through his sentence in a mature way.

It was suggested that the issues considered in the personal officer's report are only concerned with the prisoner and are not concerned with community risk. However, in my submission, these factors are relevant to community risk and it is difficult to know how otherwise to assess community risk other than by reference to these kinds of criteria. If a prisoner is not settling in well into the open estate and is causing trouble then it is reasonable in my submission to consider such a prisoner to be a greater risk to the community than a prisoner who is settling in well. If a prisoner routinely fails drug tests in the open estate, he may not be ready for increased freedoms and may require to be transferred back to the closed estate.

Rather than carrying out a full collateral review on a number of occasions in the open estate, which would require tremendous resources and involve a large amount of repetition of work already carried out in the closed estate, additional follow-on assessments are instead carried out in light of the prisoner's recent behaviour in the open estate in case anything new comes to light which could increase the risk to the community.

Further Relevant Information

In terms of further relevant information, John Crombie checked a Social Enquiry Report, a Trial Judge's report and John Campbell's sentence management file. No issues of concern were identified.

In my submission, this is not unusual given Jim McKay's evidence about the nature of the prison population. Most prisoners have a history of previous offending. Many have committed violent offences and many have also re-offended whilst on licence. These are not factors of themselves which are particularly helpful in assessing risk. However, if there were issues of concern, they would be noted there. Kim Potter indicated in her evidence that Trial Judge Reports tended to contain a paragraph at the end of the report about long term return to the community but there were no such concerns contained in the trial judge's report. The index offence was committed against John Campbell's wife and her partner and there was nothing to suggest he had threatened other members of the community.

Community Access Risk Assessment

Finally, a community access risk assessment was carried out on 8 August 2005 taking into account information the information I have outlined which came from a variety of sources.

It is clear that the Governor was aware that John Campbell's index offence was assault to severe injury with permanent disfigurement as it is written on the form. His previous offences are also listed, including numerous thefts, misuse of drugs, numerous road traffic offences and firearms offences. In my submission, his offending history did not distinguish him from a number of other prisoners and would not help to assess risk particularly.

What would be useful in assessing risk would be the following factors:

he had achieved low security status;

he had provided a series of negative drug tests;

he had remained drug free from 6 August 2004 until 8 August 2005 when the Governor signed the Community Access Risk Assessment;

he was engaging with addictions services;

he was free of Governor's reports;

the absence of any adverse intelligence; and

being free of issues with the police or local community.

Therefore, the documentation has been signed off by the Governor.

Work Placements

A further piece of information was completed by Gordon Robertson but this is in relation to suitability for work placements. In order to consider suitability for work placements, Gordon Robertson spoke of similar criteria which he would need to assess risk going out into the community on a placement.

Drug Test Failure

John Campbell failed a risk assessment drug test on 11 August 2005 (Crown Production 54). He was placed on report on 15 August 2005 and punished on 16 August 2005 (Crown Production 10). Jim McKay explained that he incurred two punishments because two substances tested positive. He suffered a loss of earnings and no access to his personal cash.

On top of the orderly room punishment carried out by Colin McShannon, an administrative decision was taken by Deputy Governor Jim McKay to suspend a loss of home leave for a period of 2 months (Crown Production 13). That decision was taken on 18 August 2005 and John Campbell went on home leave on 19 August 2005. Nicol Welsh explained that John Campbell would have been searched before he left the establishment and provided with a travel warrant.

Although there is no documentation completed at the time to indicate what was discussed with John Campbell, Jim McKay indicated that he would have discussed the reasons for the relapse with John Campbell following a reasonable period of stability. On the basis of his 29 years of experience, Jim McKay was satisfied that John Campbell should be given the opportunity to prove that it was a single relapse and allowed him to go on home leave. The consequences of a further failure were clearly explained to John Campbell. Such decisions are now taken by a multi disciplinary Casework Management Board and are recorded in detail (Crown Production 50).

In the past, a “one strike” policy had been adopted by Castle Huntly. However, Jim McKay spoke of a number of prisoners who had worked hard to get to Castle Huntly and then incurred failures due to the temptations of the open estate. However, he also explained that substance misuse is notoriously difficult to tackle in prisons and a shift from a merely punitive response was thought to be required (SPS Production 5, page

4). In order to tackle substance misuse at Castle Huntly, a new addictions strategy was brought into place in 2006 but relapse remains part of the drug treatment cycle (SPS Production 6, page 23).

Under the new addictions policy, Jim McKay explained that if John Campbell failed a drug test prior to home leave now, then he would immediately be unable to go on home leave for a period of 28 days. During that 28 day period he would require to produce two negative drug tests. He would then be considered by the Casework Management Board in order to decide whether he should be allowed to go on home leave. Therefore, clearly the situation would be dealt with differently now.

However, at the time, the decision taken by Jim McKay was in my submission reasonable. With the benefit of hindsight, we know that John Campbell went out on weekend leave and indulged in illegal activities. However, the Inquiry was not presented with any evidence which indicated that the decision taken at the time by Jim McKay on the basis of available information was unreasonable. The fact that John Campbell was a violent offender or that he had offended whilst being out on licence previously would not distinguish him from a high number of any other prisoners and correspondingly would not help to distinguish risk compared to other prisoners. Prisoners need to be managed as individuals and the recent drug test failure requires to be viewed in the context of a number of negative test results; an attempt to give John Campbell an opportunity to show this was a one off occurrence; and the considerable experience of Jim McKay of working with prisoners.

Therefore, whilst I appreciate my Lord may wish to comment upon the decision to allow home leave for John Campbell in the Notes section of the determination, there should not be any finding under section 6 (1) © or (e) of the 1976 Act. In my submission it has not been demonstrated that Jim McKay's decision was unreasonable, nor that a different decision might have prevented the death. Similarly, his decision cannot properly be said to be relevant to the circumstances of Catherine Thomson's death, which was the result of a spontaneous criminal act by John Campbell alone.

Systems of Sentence Management in Place at Time

John Campbell went on home leave in August 2005. It is important to know the prison rules which were applicable to him at that time which were explained by Jim McKay.

Applicable Rules

The 2006 Rules (SPS Production 7) define three supervision levels for prisoners (Rule 16, page 15).

A **high supervision** prisoner is a prisoner for whom all activities and movements require to be authorised, supervised and monitored by an officer.

A **medium supervision** prisoner is a prisoner for whom activities and movements are subject to limited supervision and restrictions.

A **low supervision** prisoner is a prisoner for whom activities and movements are subject to minimum supervision and restrictions, and who may be given the opportunity to participate in supervised or **unsupervised activities in the community**.

In my submission, the key point to take from the definition of a low supervision prisoner is that he is someone who may be given the opportunity to participate in unsupervised activities in the community. It follows that to achieve that security status, a prisoner must be considered suitable for unsupervised activities in the community.

The same definition of supervision levels was in place at the time John Campbell was in prison. This can be seen from the 2002 Amendments to the 2006 Rules (SPS Production 8). Rule 14A (page 2 of SPS Production 8) sets out the same three levels of supervision.

Rule 14B explains the method by which supervision levels are assigned. A prisoner shall be assigned an appropriate supervision level having regard to, as far as applicable, the following criteria:

the seriousness of the offence for which the prisoner has been convicted;

the prisoner's previous convictions;

any outstanding charges;

the length of time that the prisoner has spent in custody;

the prisoner's conduct in custody;

the prisoner's trustworthiness and stability; and

any other criteria as may be specified in a direction made by the Scottish Ministers.

All prisoners on reception are assigned high supervision level. Within 72 hours of reception, the supervision level of all prisoners is reviewed in accordance with the Rules. Following the review of the supervision level, the Governor shall keep under review and shall formally review within 6 months, and thereafter at least once every period of 12 months, the supervision level assigned to each prisoner and may, if appropriate, assign another supervision level to the prisoner.

It can be seen from the letter from SPS Legal Policy (SPS Production 9) that the 2006 Rules mainly consolidate all the amendments that have been made to the 1994 Rules as well as incorporating certain changes highlighted. The change which is relevant to this Inquiry is that short leave has been extended from 3 nights to 7 nights. However, the method of assigning supervision levels remains the same. At Annex 2 of the letter, it can be seen that Rule 14A in the 1994 Rules has become Rule 16 in the 2006 Rules. Similarly, Rule 14B has become Rule 17.

The provisions in the rules dealing with the temporary release were Rule 120 in the 1994 Rules and Rule 140 in the 2006 Rules. Directions with respect to temporary release are covered under Rule 126 of the 1994 Rules and Rule 147 of the 2006 Rules. Short leave means temporary release from a prison of a prisoner for the purpose of enabling the prisoner to visit his home or other approved place for a period not exceeding 3 nights at the time John Campbell was in prison, excluding travelling time.

On the application of an eligible prisoner the Governor may grant the prisoner short leave if the Governor is of the opinion that, having regard to the relevant criteria applicable to the grant of such leave, it is appropriate to do so.

A prisoner is an eligible prisoner only if at the time of the application the prisoner is confined at a prison to which the rule applies; is assigned low supervision level; and is not disqualified for any reason.

Jim McKay explained in his evidence that the first part of the eligibility criteria meant that a prisoner had to be in the open estate, which was Castle Huntly or Noranside. Home leave is not possible from the closed estate, such as HMP Kilmarnock. John Campbell was transferred to Castle Huntly on 13 July 2005 (Crown Production 53).

Secondly, the prisoner must be assigned low supervision level. John Campbell was assigned low supervision level on 3 December 2004 (Crown Production 25).

Disqualification is covered under Rule 124 and applies if a prisoner is an appellant; subject to proceedings under the Extradition Act 1989; suffering from a mental disorder; or medically otherwise unfit. We heard no evidence that any of these criteria disqualified John Campbell at the time of his release.

Under Rule 126, the Scottish Ministers may specify in a Direction:

the prisons which the rules apply to;

the manner in which the Governor shall consider an application for temporary release; relevant criteria about which the Governor must be satisfied before granting any such form of temporary release;

the conditions which may be imposed in relation to any approval of such an application;

the timing and duration of any such form of temporary release and the frequency with which it may be granted to an eligible prisoner; and

the persons who are to be treated as a near relative of the prisoner.

Therefore, it can be seen that eligibility for the open estate is defined in national standards which are laid down by Parliament. In my submission, it is outwith the scope of this Inquiry to criticise the eligibility criteria. In addition, the Scottish Prison Service requires to abide by the eligibility criteria in determining who should be granted home leave.

Assigning Supervision Level

One of the first criteria which a prisoner must obtain in order to be considered suitable for the open estate is a low supervision level. This is dealt with in Rule 14B of the 2002 Rules (SPS Production 8) and Rule 17 of the 2006 Rules (SPS Production 7). As mentioned previously, all prisoners are assigned high supervision on reception. Within 72 hours their supervision level is reviewed and thereafter the supervision level is reviewed every 6 months and at least 12 months thereafter.

Unfortunately, the Inquiry was not presented with the full prison records for John Campbell. We heard evidence from Jim McKay that the prison records would have followed John Campbell as he moved from each establishment. The records for John Campbell would have been sent to the Procurator Fiscal for the purpose of the Fatal Accident Inquiry into John Campbell's death (Crown Production 5).

It was unclear why the prison records had gone missing. Whilst it is possible that the prison records had been lost by one of the various establishments which had dealt

with John Campbell, it is equally possible that they may have been lost by the Procurator Fiscal's Office and in my submission, there was no evidence to justify an adverse finding about the absence of certain records when there was no evidence to indicate how this had happened. Moving forward, we heard from a number of witnesses about increased computerisation of prisoner records, which ought to avoid this problem in future.

It was the evidence of Maureen Brown and George McShane that records would have been completed in relation to sentence management at HMP Kilmarnock. John Crombie's evidence was that he reviewed the sentence management file as HMP Castle Huntly. It would therefore seem that the records have been lost at some point between John Campbell being transferred to Castle Huntly and the investigation of the death of Catherine Thomson.

In any event, we were provided at the Inquiry with sufficient documentation to understand how the prisoner supervision system operated.

Jim McKay and George McShane explained that a continuous process or risk assessment would begin in the closed estate at HMP Kilmarnock. Form PSS1 (SPS Production 10) would be completed within 72 hours of admission. The blank PSS1 form detailed the same supervision levels as are to be found in the 2002 Rules in place at the time John Campbell was in the prison. The form also indicated that in terms of Rule 14B, all prisoners were to be allocated high supervision level on admission.

The first formal assessment is completed by personal officers of all convicted and remand prisoners within 72 hours of the initial allocation. The purpose of the prisoner supervision system as stated on the form is to ensure that prisoners are assigned the lowest appropriate level of supervision within an establishment in accordance with their behaviour and response in custody.

***Static Criteria**

Jim McKay and George McShane referred to **static** criteria used to assess the risk which the prisoner posed to the community as part of the security supervision assessment. If a prisoner is within 12 months of commencing a sentence of 4 years or over for a serious offence then a prisoner is categorised as high supervision. Similarly, if a prisoner has a previous history of serious violent offending within the past 3 years then a prisoner is considered to be high supervision. In addition, if a prisoner has demonstrated a means and willingness to escape now or a history of such behaviour in the past 2 years then a prisoner will be categorised as high supervision.

The prisoner must answer no to all of these criteria in order to be considered medium or low supervision.

Questions were raised during the Inquiry why the static information contained time limits. In my submission, it is necessary for there to be time limits on the static information otherwise certain prisoners would never have the opportunity to be categorised other than high supervision. If it was simply the case that the risk assessment asked whether a prisoner had committed a serious offence then that prisoner would never progress within the prison system. Similarly, if it were simply asked whether there was a previous history of serious violent offending then the prisoner would never progress. If a prisoner was asked if he had ever displayed a means and willingness to escape then similarly the prisoner would never progress.

If the point of prison is rehabilitation then prisoners must necessarily be given the opportunity to progress. The index offence and the prisoner's history are taken into account for a certain period of time. Thereafter, the prisoner is given a chance to change and his behaviour is looked at in order to determine risk going forward. In my submission there was no evidence at the Inquiry of any other criteria which would be more appropriate to use to evaluate risk in the community.

Dynamic Criteria

John Campbell had to serve a certain period of his sentence before it was even possible for him to be considered medium or low supervision. Once that has happened, there are further criteria which are examined in order to consider whether the prisoner poses a risk to the community. These include:

- a means and willingness to organise serious indiscipline, including drug dealing;
- previously involvement in violence or fear inducing behaviour in prison within the last year;
- current substance abuse;
- significant psychiatric or psychological history within the past year;
- serious outstanding charges;
- impulsive behaviour in the past year; and
- indication of vulnerability in present location.

Whilst these criteria are contained on a flow chart which deals with prisoner supervision, in my submission, these are factors which are relevant to the risk in the community. Clearly, if a prisoner is known to have current substance abuse issues then that may factor in to him being a risk in the community. If a prisoner has been involved in drug dealing in prison then that will be an issue which may affect risk in the community. If the prisoner has been involved in violence or impulsive behaviour in prison then those are factors which will increase his risk to the community.

Therefore, although there was reference to prisoner supervision level, in my submission these criteria are relevant to the risk in the community and are understood as such by those completing them. When Jim McKay gave evidence about risk assessments having been completed in the closed estate before a prisoner progresses to the open estate, in my submission he meant these assessments which are risk assessments which are relevant to the risk in the community.

It was suggested that if a prisoner simply “kept his nose clean” and his “head down” then he would progress to low supervision. However, in my submission if a prisoner does keep his head down in prison and his nose clean then there are no indicators of risk to those working within the establishment other than the fact that the prisoner has been convicted of a violent offence or his previous offending history.

Jim McKay explained in his evidence that the majority of prisoners which he dealt with had a history of offending. Many had a history of offending whilst on license and a history of violent offending. These factors of themselves therefore do not assist particularly in determining which prisoners present the greatest risks. Given that resources are finite and have to be targeted at those who present the greatest risk, it is necessary to carry out some form of assessment to try and determine who presents the greatest risk. It is not possible for all risks to be eliminated and risks must instead be managed as best as possible.

It can be seen from John Campbell’s supervision history (Crown Production 55) that he was assessed as high supervision on 1 April 2002. He was reviewed on 14 May 2002, 8 July 2002, 8 November 2002 and his supervision level did not change at any of these reviews.

The blank PSS2 form (Crown Production 48) was explained by Jim McKay and George McShane as the next step in the process. Although it had SERCO branding it was a similar form to the PSS1. However, this form was to be used 6 monthly and thereafter at least annually.

The same supervision levels were detailed and the same criteria for assessment were used. George McShane indicated that there was a mis-print on the form and that a prisoner had to be considered no to all of the criteria in the second box in order to be categorised as low supervision. In my submission, this clearly is the only interpretation of the form which would make sense. If the prisoner has to answer yes to any to be considered medium supervision then it naturally follows that the prisoner has to answer no to all to be considered low supervision.

The supervision history (Crown Production 55) shows that John Campbell was considered to be medium supervision on 9 May 2003, having served over a year of his sentence. It remained medium on 11 November 2003 and 12 May 2004. John Campbell did not achieve low supervision status until having served more than 2½ years of his sentence. In my submission, that is a sufficiently long period of time for the staff at HMP Kilmarnock to consider John Campbell's behaviour in prison and whether he was suitable for unsupervised activities in the community, which he would achieve at HMP Castle Huntly.

Route to Open Estate

Having achieved low supervision status, John Campbell was considered eligible for the open estate. The very fact that he was considered eligible for the open estate meant that he was considered eligible for access to the community. The entire purpose of the open estate is to provide access to the community under the home leave scheme.

If a prisoner was not considered to be suitable for unsupervised activities in the community then he would not be transferred to the open estate. In my submission, this is what Jim McKay was referring to when he indicated that risk assessments would have been done at an earlier stage in the closed estate before prisoners arrived at HMP Castle Huntly.

HMP Kilmarnock does not operate a home leave scheme as it is a closed estate. Only Castle Huntly and Noranside are open estate prisons. Therefore, a prisoner has to be physically transferred to the open estate in order to be given home leave. Once there, he is subject to a further additional period of assessment before being released into the community.

The tariffs for long term prisoners with low supervision assessments are set nationally (Crown Production 16). Annex B made it clear that a prisoner sentenced to 8 years will be eligible for release on parole after serving 4 years of his sentence. If a prisoner can walk out the door of HMP Kilmarnock after having served 4 years of his sentence, in my submission it is important that steps are taken to help prepare him for his release and lessen the risk of re-offending.

Annex B indicated that a maximum of 2 years may be served in the open estate prior to the parole qualifying date. Therefore a prisoner sentenced to 8 years such as John Campbell would be eligible for the open estate after serving 2 years of his sentence provided he achieved low supervision status and fulfilled the other criteria for transfer to the open estate. Although the circular is dated December 2006, Jim McKay confirmed that the same tariffs were in place for long term prisoners and the changes since then were in relation to short term prisoners only.

The criteria in place at the time for admission to open prisons was revised in 2003 (Crown Production 47). Long term prisoners are those serving 4 years or over. In the first instance, a prisoner must qualify for the transfer under the PSS management rule, which means that they must have low supervision status.

As previously indicated, in order to have low supervision status, their index offence previous offending is examined within a certain timescale. These are static criteria which are relevant to community risk. Thereafter, dynamic criteria are examined, which in my submission are also relevant to community risk.

The next criteria look at whether the prisoner is located in a top end prison. At that point, John Campbell was in Kilmarnock and this question was inappropriate.

The next question asks whether the most recent risk and needs assessment support allocation of low supervision status.

The prisoner must be free of a high risk of ACT procedure during the last 3 months, which George McShane explained was a risk of suicide or self harm.

The prisoner has to be free of closed visits within the last 3 months, which Maureen Brown explained meant that the prisoner must not be being observed during visits.

The prisoner must also:

- be free from absconding charges in the last 12 months;

- have had at least one negative and no positive drug tests in the last 3 months;

- be free of misconduct reports for 3 months which have attracted a punishment other than a caution; and

be asked and it must be verified whether there are reasons to suspect that their transfer may lead to them absconding.

In my submission, the criteria check for admission to the open estate are questions which have an affect on risk to the community. Although there is not a box saying, “Is this prisoner a risk to the community? – Yes/ No” the risk to the community is instead broken down into several areas.

Clearly all prisoners are a risk to the community of some sort. However, in order to manage that risk and allocate resources appropriately, criteria are examined which may flag up that a prisoner may be a risk to the community as well as to other prisoners. Given that this is a criteria check list for admission to open estate, it naturally follows that this is criteria for admission to the community. The assumption is that if someone is transferred to the open estate, they will go on home leave and the form is therefore not completed in isolation.

There is also information which is completed to assist local management preparing for receiving the prisoner, including reference to methadone programmes, being fit for work and being subject to protection status.

On the final page, there is reference to unnecessarily duplicated questions. For example, it was considered wasteful to ask certain questions again which have already been considered. In my submission, this is what Jim McKay was referring to when he indicated that risk assessments had been carried out at an earlier stage.

Although it is suggested that no actual risk assessment to the community is carried out, that is plainly not the case. The process of a prisoner moving from the closed estate to the open estate is one with a number of steps. At each stage, nationally applied criteria are taken into account in an effort to allocate resources most appropriately. In my submission, it would be inappropriate simply to rely on the index offence and previous offending history as this would not distinguish a prisoner from any other prisoners and would not help to identify what kind of risk the prisoner posed to the public. It would simply indicate that the prisoner was a violent offender with a previous history of offending on licence and would not distinguish him from many others in the same position.

In paragraph 4 of the key features of the check list amendments, it is explained that basis high risk needs should be addressed prior to onward transfer. Maureen Brown

explained that if a prisoner did not address his offending behaviour then he would not be able to progress. This is what is meant by high risk needs. Morven Miller indicated that a prisoner had to do a lot of work in order to move on to each next step. Michelle Gilluley explained in her evidence that programmes were available in the closed estate which address the behaviour that has brought the prisoner to custody. In deciding who was deemed suitable for such programmes, she indicated that she would consider the risks posed by the prisoner to the public and anyone in the establishment. Both of them attend multi-disciplinary risk management groups to provide input in deciding whether a prisoner should be allowed to progress and a full psychiatric assessment can be requested by the risk management group, which includes the risk of re-offending.

At paragraph 5, the guidance indicates prisoners should be discouraged from having a long line of positive drug tests only to be good when the time comes for transfer. A demonstrable negative and no positives over a period of 3 months is considered to be a reasonable signal of intent, especially if the subsequently agreed transfer is tied to routine admission testing.

In my submission, it is unnecessary for a full collateral review to be carried out at every stage of a prisoner's assessment. To do so would be incredibly wasteful and would require much higher resources. Instead, in my submission, those working within the Scottish Prison Service are entitled to rely on their colleagues following national standards. The work done at Castle Huntly follows on from the work done at HMP Kilmarnock rather than starting afresh.

5 System of Integrated Case Management in Place Now

Guidance was issued in February 2007 by the Scottish Executive to a number of agencies, including the Scottish Prison Service, Social Work, police, housing and other agencies (SPS Production 11). It is clear they all have a part to play in integrated case management. Jim McKay and social worker Kim Potter explained that the process has become more integrated over the past few years. Morven Miller similarly spoke of the greater involvement by other agencies.

Jim McKay explained that the purpose of temporary leave is to prepare prisoners for their release, maintain family contact and test the prisoner (page 5, paragraph 13). Temporary leave can help show how a prisoner has managed to comply with his licence conditions and how he responded to potentially destabilising factors such as

drugs and alcohol. It can also inform future decisions and contribute to the risk assessment process (page 7, paragraph 19). Eligibility criteria are as previously discussed (page 8, paragraph 21). However, each prisoner is looked at on his individual merits (page 8, paragraph 22).

Cases appear apparently straightforward if the prisoner has progressed reasonably well, is low supervision, has moved to open conditions and is eligible for home leave (page 9, paragraph 23). If the address is stable, the family supportive, risks manageable and there is no significant community, victim or public protection issues, then home leave would be expected to proceed.

The available resources do not allow for all of those on home leave to be monitored or supported (page 9, paragraph 24). Resources must be targeted at those whose risk and need seems highest. That is where integrated case management comes in now and where sentence management operated at the time John Campbell was in prison. Although the process has become more integrated, there clearly was a system in place at the time in 2005, albeit a process which has been improved upon significantly. Case conferences assess whether the prisoner has made sufficient progress (page 9, paragraph 25). Certain items will make cases more complex (page 9, paragraph 26) and information sharing is imperative (page 10, paragraph 27).

The area judged most in need of improvement was the first period of home leave (page 12, paragraph 37). At that stage, risk assessment procedures and information sharing needs to be robust. The focus must be on community safety and victims (page 12, paragraph 38). The people involved with risk assessment must turn their attention from internal considerations such as progress to external concerns such as the risk of re-offending or harm. Jim McKay indicated that is where the focus is now at Castle Huntly under integrated case management and at Kilmarnock.

The focus on community safety is obviously heightened in cases of violent or sexual offences (page 12, paragraph 39). That means that the past history and index offence must be examined and there must be partnership risk management and risk assessment. Key elements are listed.

Whereas under the sentence management review, the Prison Service and Social Work worked separately, integrated case management brings together sentence management on the part of the Prison Service and the Criminal Justice Social Work into one process (page 13, paragraph 41). Social Work are involved (page 13, paragraph 43) and the police can be involved (page 13, paragraph 44).

The agencies should collaborate in relation to risk assessments, planning and review (page 14, paragraph 47). Case conferences discuss progress to the open conditions **prior** to a prisoner becoming eligible (page 15, paragraph 53). In my submission, this is what was meant by Jim McKay, George McShane and Maureen Brown when they indicated that risk assessments were carried out in the closed estate prior to coming to the open estate.

It is acknowledged that in the past, the sentence management scheme framed risk in relation to security supervision level, equating low supervision level to low risk of re-offending or causing serious harm. Though that is important, the risk has been re-focused now on re-offending and serious harm (page 15, paragraph 53). In order to do so, a multi-disciplinary approach is required. SPS' contribution still involves looking at a prisoner's behaviour in prison and one significant factor out of many in assessing risk to the public. If a prisoner requires high supervision then clearly he is a risk to the public. If a prisoner is low supervision, then it naturally follows that he is of less risk to the public. As we have seen, the criteria for becoming low supervision include the index offence and previous offending within a certain time period. Thereafter, criteria are looked at within prison which have the potential to relate to risk outside in the community. What is different now is that other agencies can more easily contribute and enhance the information SPS has.

A home background is prepared as before (page 18, paragraph 60). There is now a requirement for the author to balance the advantages for the prisoner and the family of leave against the potential risk to the wider community. Therefore, the further factoring in of community risk by the Social Work Department is beneficial to the integrated case management.

However, at the time that John Campbell's home background report was prepared, in my submission the suitability of the address was a consideration relevant to public safety. If the prisoner was returning to an area where the victim of his initial offence resided, then that could be an issue for public safety. Similarly domestic violence issues could be an issue for public safety. If the community were against the prisoner returning on home leave that could have an affect on public safety. The attitude of the family could have an affect on public safety. Kim Potter spoke in her evidence about taking guidance from her colleagues in the local area.

Therefore, although there is better information sharing and a slight shift in focus, the considerations taken into account at the time of John Campbell's release were still

relevant to public safety and were a risk assessment. The fact that the risk assessment procedures have improved does not mean that there were no risk assessments carried out at the time of John Campbell's release.

Lessons have been learned and will continue to be learned. Jim McKay spoke of the home leave working group of which he is part and which continually strives to improve. He also spoke of his involvement with Multi Agency Public Protection Arrangements (MAPPA). The fact that there have been improvements does not mean that the system was wholly inadequate at the time. As Michelle Gilluley explained in her evidence, the system cannot be flawless but it is as robust as it can be. All of those involved in sentence management at the time and now involved in integrated case management do not have crystal balls.

One major area of improvement has been contact with prisoners during temporary release. Nicol Welsh explained that in the past, spot checks were carried out at home leave addresses. Under integrated case management, a supervising officer and the police may be requested by the Prison Service to provide additional support (page 19, paragraph 67). The licences have conditions (page 20, paragraph 70) which are the same as at the time John Campbell was in prison. Example licence conditions are provided (paragraph 32).

The roles and responsibilities of the Scottish Prison Service, Social Work, police and others are clearly outlined (page 22). Although it would not be possible for Jim McKay to categorically state that every single member of staff has read every word of this guidance, it is clearly relevant to their daily work. Jim McKay did state that the guidance was made available to all members of staff and would have been issued in the areas where staff were working. All of the witnesses from HMP Kilmarnock and HMP Castle Huntly spoke positively of the new system of integrated case management. In my submission, there is no evidence that those who worked in the closed estate or the open estate were unaware of integrated case management or their role to play in it.

Success of Open Estate

In my submission, the evidence the Inquiry heard is that the open estate is working well. The abscond statistics are very low in proportion to the population (Crown Production 44). Jim McKay and Nicol Welsh told us that it is extremely rare for a

prisoner to offend whilst on home leave. Nicol Welsh also explained how the extended home leave of 7 days rather than 3 days had been shown to be beneficial in helping to prepare prisoners for release back into the community and for re-integration and prisoners were more compliant. Research showed prisoners were less likely to re-offend having served part of their sentence in the open estate. There was no evidence from anyone from the Scottish Prison Service that home leave was not beneficial for the prisoners and for the community.

It was acknowledged that the sentence management scheme needed to be reviewed nationally (Family Production 1). That need was identified in 2005. In the 2006 inspection report (SPS Production 4) it was commented that integrated case management had replaced sentence management and had led to a clearer structure and closer working between Social Work, addictions and uniformed staff. The inspection report also commented that a comprehensive strategy was in place for addictions (paragraph 4.1.0, pages 16 – 17).

In my submission, the inspection report, which is an in depth investigation completed over a number of days and by the independent prison inspectorate is an objective and reasonable opinion as to the success of the open estate and the integrated case management procedure. We have merely been exposed to a snapshot during the course of this Inquiry. As Jim McKay explained, there is always room for improvement and he is part of the home leave working group seeking to continuously improve. However, there was no evidence presented to this Inquiry that the current integrated case management system is not working well. It was suggested that integrated case management does not include community risk assessments but in my submission, that is clearly not the case.

7 Conclusion

In my submission, it is clear that a system for evaluating risk to the community was in place at the time John Campbell was in prison. The terminology of sentence management review, community access risk assessment and various other terms may be slightly confusing. However, it is clear that in assigning supervision level and looking at criteria for admission to the open estate, matters are looked at which are relevant to community safety.

These risks are looked at in the closed estate prior to Castle Huntly. By the time the prisoner has reached Castle Huntly, he has been deemed suitable for community access. The checks carried out at Castle Huntly cover a further period of 4 weeks. In the absence of anything during those 4 weeks to flag up something new to HMP Castle Huntly which had not previously been considered, in my submission, there is nothing to suggest that a prisoner is not suitable for home leave.

The fact that a prisoner has committed a violent offence or that he has offended whilst on licence previously, in my submission, does not help to identify whether that particular prisoner is of greater or less risk than any other prisoner who is convicted of violent offending and offending whilst on licence. Since these are a significant amount of the prison population, further criteria are needed to try and more closely consider risk.

In any event, the system has now improved significantly in terms of integrated case management. In my submission, there is no need for any recommendations in my Lord's Determination in terms of integrated case management, which has been shown to be working well by those involved in it and by an independent inspection report. In my submission, there was no evidence at this Inquiry that integrated case management was not working well, despite suggestions made by the Procurator Fiscal and the family.

Ultimately, the sole person responsible for Catherine Thomson's death was John Campbell. No one could have predicted the tragic events which took place. In my submission, no one could have prevented the tragic events that took place and certainly nothing on the part of the Scottish Prison Service contributed to the tragic events which took place.

Therefore, although I appreciate my Lord may wish to comment on the decision made at the time to allow home leave, in my submission we have heard no evidence during this Inquiry which would justify anything other than formal findings under sections 6 (1) (a) and (b) of the 1976 Act. There should be no findings under sections 6 (1) (c), (d) or (e) of the 1976 Act. Any comments my Lord may wish to make should be confined to the Notes section of the Determination and any criticisms of the system in

place at the time should be made within the context of improvements having been made by way of integrated case management and an absence of any evidence of any failings in the current system.”

SUPPLEMENTARY SUBMISSIONS FOR SPS

1994 Rules

I understand my Lord wished sight of the original 1994 Rules, which were amended by the 2002 Rules and subsequently replaced by the 2006 Rules. I have produced a Fourth Inventory of Productions which has been intimated to all parties, which consists of the 1994 Rules.

My Lord will see at page 55 of the 1994 Rules (SPS Production 12) a schedule of four security categories which was replaced by three security categories in the 2002 Amendments (SPS Production 8). At page 9 of the 2002 Amendments it can be seen that a “category D” prisoner was replaced by a “low supervision” prisoner.

Rule 120 dealt with temporary release in the 1994 Rules. The 2002 Amendments increased the period of short leave from 48 hours to 3 days and updated the reference to security categorisation from category D to low supervision.

Prisoner Supervision System Flowchart

I understand my Lord wishes me to address the prisoner supervision system flowchart in more detail.

The first box on the flowchart (SPS Production 10) asks whether a prisoner is **within 12 months of commencing a sentence of 4 years or over for serious violence**. It can be seen from the Social Work file (Crown Production 46) that John Campbell was sentenced to 8 years and 6 months on 27 August 2002. However, John Campbell achieved medium supervision status in May 2003, 3 months earlier than might be expected under this flowchart. It can be seen from the Trial Judge report that John Campbell had already served 120 days on remand when he was sentenced, which may explain the discrepancy but that is pure speculation on my part as there was no evidence during the Inquiry on this point. It may equally have been an error.

In any event, John Campbell did not achieve low supervision status until 3 December 2004, over 2 years into his sentence. There is no requirement for a prisoner to be held at medium supervision for a specified period of time and therefore in my submission the fact that John Campbell achieved medium supervision status earlier than might be expected in terms of the flow chart is irrelevant to him subsequently achieving low supervision status and becoming eligible for the open estate.

The second box asks whether a prisoner has a **previous history of serious violent offending within the part 3 years**. Crown Production 2 shows John Campbell was convicted of a violent offence on 20 January 1998. By the time John Campbell was sentenced on 27 August 2002, this offence was already more than three years ago.

Crown Production 3 shows John Campbell was convicted of breach of the peace and possession of a lock knife in a public place on 6 July 2001. The charges indicate that John Campbell was disorderly, shouted and swore but they do not indicate serious violent behaviour. That is reflected in the relatively short sentences of 30 days for breach of the peace and 60 days for possession of a knife. These offences would not therefore keep John Campbell at high supervision for a period of three years.

Crown Production 4 was John Campbell's most recent or "index" offence. It is self evident from the form that this offence is not covered by the reference to previous history of violent behaviour, otherwise the first box would be pointless. The first box asks whether a prisoner is within 12 months of commencing a sentence of 4 years or over for serious violence. If the intention was that the previous history of serious violent offending in the past 3 years included the index offence then the first question would therefore be whether the prisoner was within 3 years of commencing a sentence of 4 years or over for serious violence.

The supervision history (Crown Production 55) shows that John Campbell was considered to be high supervision until 9 May 2003, when he was reduced to medium having served over a year of his sentence. He remained medium until 3 December 2004, having served more than 2½ years of his sentence.

Assessment of Community Risk Prior to HMP Castle Huntly

Finally, I understand my Lord wishes me to address whether risk in the community is assessed elsewhere than at Castle Huntly.

Social Work

Criminal Justice Manager Morven Millar is responsible for the social work department at HMP Kilmarnock and spends 50% of her time in the prison and 50% of the her time in the community.

She explained that prisoners have to work towards open conditions and part of home leave is taking responsibility. She spoke of risk assessments having been done in the prison and the community. With the benefit of integrated case management, there was more involvement with other agencies now, including prison based social workers, criminal justice officers, community based social workers, custodial staff, psychologists, health centre staff, housing, etc. who were involved in a round table discussion.

Morven Millar spoke of her experience of many prisoners not being interested at the start of their sentence in engaging pro-actively with group work and education. When risks and needs are assessed, prisoners then have to engage pro-actively or they will be unable to progress to the open estate. She thought that whilst social work had always been an integral part of progression through prison, with ICM social work now takes shared responsibility with the prison and other agencies for progression. She thought prisoners had to work hard to be assessed as suitable for the open estate.

Social Worker Kim Potter gave evidence that John Campbell was assessed at various points throughout his sentence and was assessed suitable for home leave on the basis of how he had coped with his sentence at HMP Kilmarnock. If the home leave accommodation was unsuitable or an adverse occurrence took place during his prison sentence then a prisoner would be downgraded to the closed estate.

As a social worker, factors she looked at included whether the accommodation had enough physical space; whether the family were hostile to the prisoner's return; whether the family were pro or anti offending behaviour; whether the victim lived in the area; local response; media coverage; overall supports; and long terms plans. She would gather this information by looking at her own records and taking guidance from colleagues in the local area.

There was nothing to suggest to her that the address was unsuitable. She was aware of John Campbell's previous offending history, which of itself was not enough to made the address unsuitable. There was no history of him committing offences in that

area or against local people and so there was nothing to suggest a negative return to that community. Her report has a limited life span of just three months.

Whilst at the time John Campbell was in HMP Kilmarnock the home background report was simply sent to the Governor of Castle Huntly, Kim Potter explained that a far more joined up service is in place now between community based social workers and the prison service. She and her colleagues have at least annual case management meetings at HMP Kilmarnock which enables them to know the prisoner and the stage he has reached in his sentence.

Once a prisoner is approved for home leave, she and her colleagues can be asked to make contact with the prisoner. Kim Potter has worked in social work for 20 years and in her opinion, integrated case management had plugged a gap in terms of community safety and risk management and also provided opportunities for supervision in the community. She explained that integrated case management brought together named co-ordinators, prison based social workers, community based social workers and any other relevant agencies such as addictions, mental health, education, etc. to consider issues relevant to release in the community.

In my submission, input from social work was required at the time John Campbell was in prison for the purposes of home leave. With the benefits of integrated case management, the difference now is that community based social workers are involved right from the beginning of the prisoner's sentence whilst in the closed estate.

Psychology

Michelle Gilluley is a senior psychologist at HMP Kilmarnock. Her team offer offence based programmes to sentenced prisoners and look at the behaviour in the community which has brought the prisoner to custody as well as behaviour exhibited in custody. Programmes offered include anger management, problem solving skills training and drug / alcohol issues. Independent panels assess whether these programmes sufficiently address the offending behaviour. The programmes themselves can last for a number of months.

Those deemed suitable are discussed by a group of psychologists who evaluate the risks posed by the prisoner to the public or anyone in the establishment in deciding whether a course is suitable. However, not all prisoners are deemed suitable for such programmes at a particular time. If a prisoner has an identified need to attend such a

programme, he is unable to progress to the open estate without having first attended such a programme and thereafter being deemed to have addressed his offending behaviour and have no outstanding needs identified. Evidence of psychometric testing of John Campbell can be found in his prison records at Kilmarnock.

Whilst at the time John Campbell was in prison, Michelle Gilluley explained that psychologists did not specifically assess the risk posed by every prisoner to the community at large, in my submission it is clear that if a prisoner had an identified need to address anger management issues, that would be relevant to community risk.

With the benefit of integrated case management, psychologists now attend supervision level review boards to discuss how well a prisoner is progressing and his appropriate supervision level. Risk management groups can also be set up to consider risks to the public in future as well as risks to other prisoners or the prisoner himself. In doing so, they can consider areas a prisoner requires to address and can request a full psychological assessment including the risk of reoffending.

Although risk management groups are not likely to be triggered if a prisoner “behaves” whilst in prison, in my submission that is entirely appropriate. If a prisoner is struggling to change his behaviour in prison then it makes sense that further efforts at rehabilitation are made with that prisoner. However, if someone has been deemed by qualified and experienced psychologists to have addressed his offending behaviour and is progressing through his sentence in a mature way then it is unreasonable for that prisoner to be forced to attend programmes for which psychologists have assessed him as unsuitable. Resources are finite and the input of psychologists is quite rightly in my submission targeted to those who are deemed to have offending behaviour issues to address.

Sentence Planning

Maureen Brown explained in her evidence that as soon as a prisoner comes into HMP Kilmarnock, staff begin planning with a prisoner how he will progress through the system to semi open conditions, open conditions and eventual release. In my submission it is appropriate that there is an emphasis on opportunity for rehabilitation at an early stage in order to motivate prisoners to change their behaviour with a view to reintegration into the community.

Sentence planning is different to assessing supervision level. The sentence planner for John Campbell was Gail Benzie. She would assess John Campbell's risks and needs and complete Prisoner Development Plans (PDPs) suggesting possible psychological programmes. Evidence of sentence planning can be found in John Campbell's prison records at Kilmarnock. Psychologists then decided whether John Campbell was suitable for such programmes.

- Supervision Level

George McShane explained in detail the operation of the PSS flowchart. He confirmed that a prisoner's record could be significant and at the time John Campbell was in prison, if he was uncomfortable reducing a prisoner's supervision level despite meeting the criteria on the flowchart, he would recommend that a risk management group consider matters. He had done so several times and if he had any doubts normally keep a prisoner on high supervision.

George McShane indicated that the prison rules on supervision levels are set by Parliament and his decision could be challenged by judicial review. He therefore needed to have a good reason to refuse a lowering of a supervision level, the practical effect of which would be to block progression to the open estate.

If an adverse development took place Maureen Brown explained a PSS3 form would be completed and the prisoner's supervision level would increase. Whilst there may be records of John Campbell possibly being involved in some indiscipline, there were no records of him having been found guilty of a breach of prison rules and no evidence of his security level having been increased. In my submission we can therefore take it that he was not found guilty of any breach of the rules as a result of this incident.

Summary

Therefore, in my submission, there are four different types of risk assessment which take place outwith Castle Huntly. Each of these is relevant to community risk. It is not possible to know how a prisoner will act on temporary release into the community and it is reasonable that past offending behaviour is taken into account for a certain period of time. Thereafter, it is important that the prisoner is given a chance to

change his behaviour and therefore HMP Kilmarnock look at behaviour in prison to assess whether he should progress to the home leave scheme in the open estate after having served a certain period of his sentence.

Greater involvement by social work and other community based agencies means that there is now more emphasis on risk in the community than behaviour in custody but in my submission behaviour in custody is relevant to community risk. It is difficult to know how prison based staff could otherwise assess the risks posed to the community by a prisoner. What is different and more beneficial now is the multi disciplinary round table discussion and involvement by social work right from the beginning of a prisoner's sentence which ought to assist in considering community risk.

RESPONSE TO SUBMISSIONS

There is no dispute, and, on the evidence, nor could there be, in respect of the tragic death of Catherine Thomson.

I am therefore able to adopt the submissions of all parties in respect of my determination under S.6(1)(a) and (b) of the Act in respect of where and when the death took place and the cause of death.

Thereafter, while no issue of credibility of witnesses arises, the submissions on behalf of the Procurator fiscal and the family on one hand, and the Scottish Prison Service, on the other, differ significantly.

In respect of S.6(1)(c), I differ from all parties.

Having regard to Mr. Campbell's record, including the nature and timing of the offences, it was reasonably foreseeable that he would be involved in further violent offending on his release.

I accept that the extent of that violent offending may not have been predicted, but that is not relevant being the degree of violence and, even if not intended by Mr. Campbell, his violent behaviour, which was predictable, was the cause of Catherine Thomson's death.

The reasonable precaution which could have been taken, whereby the death may have been avoided, would have been to carry out a risk assessment regarding risk to the community, and to put in place measures to minimise the potential risk to the community. If no such measures were possible, then Mr. Campbell should not have been released.

In respect of S.6 (1)(d), again I disagree with the parties.

A great deal of evidence was led at the Enquiry regarding systems in place, both in Kilmarnock and Castle Huntly.

The procedures in Kilmarnock were predominately directed to management of the prisoner while in that establishment. That is the purpose of the various Supervision Levels, which have nothing to do with risk to the community. Various witnesses from Kilmarnock confirmed that their procedures were not assessments of risk to the community.

Courses are offered which can address the behaviour which brought the offender to custody but, again these were not said to relate to any risk assessment.

The procedures are, of course, relevant as they lead to entry into the Open Estate. It is a matter of concern that substantial portion of the records from Kilmarnock are missing. It was suggested during her submissions by Miss Martin-Brown that these could have been used in connection with the Enquiry into John Campbell's death and thereafter misplaced, but there was simply no evidence of that, nor was it suggested by any of the witnesses from Kilmarnock.

The failure to maintain proper records lies with the Scottish Prison Service.

From the records which were available, the procedures in relation to Supervision Levels does not appear to have been followed. Witnesses advised that a prisoner would not progress through the system until he had been assessed for programmes and then completed those which applied to him. Further, High Supervision is applicable for a period after sentence for various offences.

In respect of John Campbell, his conviction and sentence rendered him subject to high supervision for twelve months from 27 August 2002. He was, however, reduced to Medium Supervision on 9 May 2003, despite this requirement and the terms of the reports for the Sentence Management Review Board

His reduction to Medium was in breach of the procedures.

This fault carries through the reviews in November 2003 and May 2004. The terms of the reports for these reviews showed that he did not meet the criteria for reduction in the supervision level.

The Sentence Management Review documents show that at that time, and for the first time, John Campbell met the criteria for review of his supervision level.

It was never suggested in evidence that a reduction from High to Low was ever done, and it is likely that only one level of reduction would be allowed.

John Campbell could then have been reduced to Medium Supervision.

He would not have been eligible for transfer to the Open Estate at that time.

Again, there is an apparent gap in the records maintained by the Scottish Prison Service, so that there are no records from the review in December 2004 and June 2005.

Once transferred to Castle Huntly, John Campbell was eligible for, among other things, unsupervised home leave.

Before this can be granted, the system required the preparation of a Community Access Risk Assessment.

In terms of a Direction under R.126 of the Prisons and Young Offenders Institutions (Scotland) Rules 1994, the Governor has certain duties to discharge following an

application. In particular he has to obtain various reports and, under para.3(e): “assess the risk that the prisoner may abscond and/or present a danger to the public”.

There was no evidence that any party, the governor or any other officer, carried out that assessment.

One of the most important reports in the CARA was that of the Personal Officer. He had no regard to risk to the community, wrongly believing that had been done elsewhere .Further, he has no training for this task. He does not know the prisoner and has little or no contact with him.

Low supervision was taken to equate with low risk. Worryingly, that attitude was held by more senior staff at Castle Huntly.

There was no real attempt at any form of risk assessment and the process was, as suggested by Mr. Macdonald, no more than a rubber stamping exercise.

That failure is further compounded in this case.

Having been granted his leave, John Campbell then had a positive drugs test for two substances.

Yet again the records are incomplete so their nature is not known.

He was subject to discipline in the orderly room and then his leave was reviewed by the deputy governor. These two matters were dealt with separately with no regard as to whether one had an impact on the other.

The penalties for each are recorded but not any explanation of Mr. Campbell. It is therefore difficult to understand, or assess, the failure to take any immediate action in respect of home leave.

No fresh assessment of risk was carried out.

Yet again, the fact that the prisoner was in the Open estate was presumed to mean that he was of low risk to the community and that early release was automatic.

No guidelines appear to have existed at that time and the matter was left to the discretion of an officer with no knowledge of the prisoner, little experience at Castle Huntly and who did not read his prison records before dealing with Mr. Campbell.

The final system failure at Castle Huntly was in respect of the search prior to leaving with Reliance for Glasgow.

This was described as a pat down and search of baggage.

Clearly it failed to detect the large sum of money held by Mr. Campbell.

It was stated that drugs were a problem in both the Closed and Open Estates. John Campbell had recently had drugs in his possession at Castle Huntly.

It must be a real risk that prisoners will buy drugs during their leave period, either for immediate consumption or to take into prison and one would expect the Scottish Prison Service to do all possible to minimise that possibility. A thorough search, not a body search, would have been reasonable.

I do not consider the travel arrangements, or checks during a home leave, to be faults in the system.

The systems for assessment of risk and in respect of positive drugs tests have altered since August 2005.

Everyone described these as better or more robust procedures. The changes, particularly the emphasis on community safety, are welcome.

However, it appeared that not all staff were aware of the nature of the changes. While the guidelines may have been circulated, no check has been made to ensure that all staff have taken the changes on board.

Further, Personal Officers still have a major role, although now as part of progression.

The Officers may now have responsibility for twice as many prisoners compared to when John Campbell was in custody.

They still may have little contact or knowledge of individual prisoners. No additional training was spoken to by any witness.

In respect of S.6(1)(e), the submissions for the Procurator Fiscal and the Family summarised the evidence without suggesting any particular determination. The submissions for the Scottish Prison Service suggested that I make no determination under this heading.

Having already dealt with the risk assessment, or lack thereof, and defects in the system of working, the only other matter relevant to Catherine Thomson's death was the drink and drug abuse by John Campbell during his period of leave.

It was apparent to his family, and a number of others, that John Campbell had taken drink and drugs. This was in breach of his licence and should have led to his immediate recall to prison.

. It may be expecting too much to anticipate that family members will report any such breach, particularly in a case such as this where Mr. Campbell's mother and brother, Craig, had already misled the social worker preparing the Home Background report. Neighbours and others who are aware of his background may report if aware of the terms of licence. These are not currently widely known by the public. It is also likely that they would not know to whom to report any such breach.

In general, it was clear from the evidence of the management of John Campbell that the systems in place during his time in custody were entirely prisoner focused.

Where an offender is detected, convicted by the Court and sentenced, the public have a right to expect that that offender will remain in custody for the period of his

sentence unless the risk to the community by his early release has been properly assessed and the offender will be effectively supervised upon his release.

This is not necessarily in conflict with the rehabilitation of the offender. Preparation for release, vocational training, programmes to manage behaviour and addictions are all very worthy and are to be encouraged, but they should only be utilised when balanced against the risk factor to the community each may raise.

The protection of the public against reasonably apprehended risk should be paramount.

This has already been recognised and steps taken to minimise risk to the community.

Integrated Case Management involves interaction between the various agencies and the prisoner so a more rounded and balanced approach is taken.

The Guidelines introduced earlier this year are at pains to stress that assessment of risk to the community, and the management of that risk, are paramount considerations.

If implemented fully, these should minimise the risk of a repeat of these tragic events.