

# **DETERMINATION OF SHERIFF C.N. STODDART IN THE CIRCUMSTANCES OF THE DEATH OF CHRISTINE JANE FOSTER V.**

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**SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH**

**DETERMINATION**

**by**

**CHARLES N STODDART, Sheriff of Lothian and Borders at Edinburgh**

**in Inquiry into the circumstances of the death of**

**CHRISTINE JANE FOSTER, residing latterly at 21 Albion Road, Edinburgh**

**(Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, Section 6)**

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**Parties to the Inquiry:**

The Procurator Fiscal: represented by Mrs L Paton, Procurator Fiscal Depute

The City of Edinburgh Council: represented by Mr G Coll, Advocate, instructed by the Solicitor to the Council

Caledonian Heritable Ltd and Caledonian Property Group: represented by Mr E McHugh, Dundas & Wilson CS

Next of kin: Mr Michael Foster

**Edinburgh, 25 February 2002**

**The Sheriff, having resumed consideration, DETERMINES as follows:**

1.in terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act ("the 1976 Act"), that Christine Jane Foster, Mining Engineer, born 6 March 1974 and resident latterly at 21(3F1) Albion Road, Edinburgh died at around 1725 hours on 29 June 2000 at the Royal Infirmary, Lauriston Place, Edinburgh following an accident which occurred around 1620 hours that day on the pavement outside the premises known as Ryan's Bar, 2-4 Hope Street, Edinburgh, where she was then employed;

2.in terms of section 6(1)(b) of the 1976 Act, that her death was caused by multiple crushing injuries as a result of the impact of masonry which fell from the south-east gable of said premises;

- in terms of section 6(1)(b) of the 1976 Act, that the accident which resulted in her death was caused:

(i) by the failure on 29 June 2000 of the restraining stone, known as the "knee stone" or "skew putt" located at the base of the line of coping stones on the south-east gable, to withstand the downward force exerted by the six coping stones immediately above it which had become detached from the wall head; and

(ii) by the consequent rotation of the restraining stone, whereby it fell out of position to the pavement below, followed by five of the said coping stones.

4. in terms of section 6(1)(c) of the 1976 Act, that her death and the accident which resulted in her death might have been avoided if those renovating the wall head in 1988-90 had used proper workmanship and in particular:

(i) had ensured that a full bed of mortar least 50 mm thick was laid down over it, prior to the fixing of new coping stones;

(ii) had "buttered" the under surface of the coping stones with an appropriate amount of mortar;

(iii) had restricted the overlap of the lead flashing adjoining the wall head to 50 mm or less over the top thereof;

- had avoided the excessive use of slate "packers" and, in some instances, had not laid one slate packer on top of another; and

(v) had ensured that the coping stones were secured to the wall head by secondary mechanical means in addition to the mortar bond, either by the use of metal rods or other restraints fixed directly into the wall head, or by the insertion of metal risers (known as "kneelers") perpendicular to the slope of the wall head at regular intervals thereon.

- in terms of section 6(1)(e) of the 1976 Act that the following facts are relevant to the circumstances of her death:

(i) the renovation works carried on at the wall head of the south east gable of the premises in 1988-90 did not require a Building Warrant;

(ii) for some months prior to 29 June 2000, there existed a gap between the seventh and eighth coping stones on the south east gable (counting downwards from the apex), which gap measured, on 25 June 2000, between 78mm and 117mm. in width;

(iii) there is at present no legal requirement on the Council to establish and maintain a system of regular inspection of old buildings within the city in an effort to discover building defects which may impinge on public safety;

(iv) there is at present no general legal requirement on property owners to give access to their property for the purposes of such a Council inspection in the interests of public safety.

## **and further RECOMMENDS**

1. that the City of Edinburgh Council carries out an immediate audit of those buildings within the city thought to constitute a risk to public safety, insofar as such audit has not yet commenced, so that existing statutory powers to ensure proper standards of safety can be exercised; and

2. that the Council take appropriate steps to remind those responsible for the maintenance of older properties in Edinburgh of the risks to public safety if their property falls into disrepair and of any potential liabilities which they may have in this regard.

## **NOTE**

### **Background to the Inquiry**

The afternoon of Thursday 29 June 2000 was fine and sunny. The streets of Edinburgh city centre were thronged. At the west end of Princes Street adjoining Hope Street the pavement cafe at Ryan's Bar was well patronised. Employed as a waitress there was Christine Foster, then aged 26. She was Australian by birth, a Mining Engineer by profession and working her way round the world. She had been with Ryan's for about two months.

At around 1620 hours Christine was working at a pavement table. Suddenly, there was the sound of cracking or rumbling from above. Without other warning, several pieces of masonry fell from the south-east gable of the building on to Christine's head and body, causing massive crushing injuries. Other patrons of Ryan's Bar were also injured; tables and chairs were scattered; some of the masonry had gone through the canopy adjoining the pavement area; and the scene was one of devastation. The emergency services were called and were at the scene very promptly, but Christine was beyond help and died shortly thereafter at the Royal Infirmary. Her father Michael Foster was contacted and told of the tragedy; he had last seen his daughter at the end of February 2000 when she was in Sydney.

The immediate circumstances of Christine's death were not matters of controversy at the Inquiry before me; the place, time and cause of her death were agreed among the parties. Instead, they concentrated on establishing what parts of the roof masonry became detached, what caused the collapse and whether anything could have been done to prevent it. There was no evidence that on the afternoon of 29 June 2000 any distinctive external factor (such as a sudden gust of wind) played in any part in the tragedy; but there was evidence that, for at least some time prior to the accident, some of the coping stones on the south-east gable appeared to have slipped out of position. I begin by examining this evidence.

### **The gap in the line of coping stones**

On Sunday 25 June 2000, Mrs Bertha Brown was looking out of the window of Room 305 of the Rutland Hotel, which is located on the south side of Princes Street as it becomes Shandwick Place and where Mrs Brown was staying on a visit to Edinburgh. Her window looked directly across to Ryan's Bar. She took a series of

photographs of the general area of the West End, including one which depicted most of the building in which the bar was located. Crucially, it depicted the south-east gable and the line of coping stones fixed there. But she thought no more about it until the evening of 29 June, when she saw some of the extensive television coverage of the accident which had occurred that afternoon. She realised then that she had photographed, only days earlier, the area of the roof above that part of the pavement where Christine had been working. She contacted the Police, who put her in immediate touch with George Findlay, a Chartered Civil Engineer and a senior official in the Structure Section of the City of Edinburgh Development Department. From the evening of the accident, he had assumed responsibility on behalf of the City of Edinburgh Council for investigating the causes of the masonry collapse and instituting the necessary statutory procedures. Mrs Brown agreed to send him the negatives of her photograph and a scanned print of the gable area. By the time they arrived, full-scale Council inquiries were underway, both for the purposes of ensuring immediate public safety and (since the accident had occurred at licensed premises) in fulfilment of the Council's statutory duties under the Health and Safety at Work etc. Act 1974.

These prints (Productions Nos. 14, 15 and 16) were spoken to by George Findlay in evidence before me. No. 16 shows the gable, with a line of coping stones resting on the wall head. The first and top group (subsequently to become known during the Inquiry as stones 1-7) began with stone 1 in position at the apex of the gable and stones 2-7 in juxtaposition down the 45° slope facing southwards. But although the stones in the second group (stones 8-13) adjoined each other, there was an apparent gap between the bottom edge of stone 7 and the top edge of stone 8. It also appeared from the photograph that at least some of the bottom group of stones were not lying flush with the wall head, although all of them appeared to be held in place by one large restraining stone (known as the "knee stone" or "skew putt") located at the bottom of the gable. Such was the apparent situation four days before the accident.

Needless to say, the Council inquiry was designed to discover, among other things, how long the apparent gap between stones 7 and 8 had been in existence. George Findlay and Mark Herron, his colleague from the Environmental Health Department, pursued their investigations with vigour; both impressed me greatly with their skill and evident determination. George Findlay had attended the scene of the collapse about an hour after the emergency services arrived. The Police and Fire Service had already secured the scene in anticipation of an evidence-gathering operation; and officers of the latter took an initial set of photographs of all the relevant areas (see Production Nos. 5 and 6). The Council then arranged for scaffolding to be erected around the site and George Findlay served a Dangerous Buildings Notice under section 13 of the Building (Scotland) Act 1959 on Caledonian Heritable Ltd., the owners of Ryan's Bar. Mark Herron attended the site next morning, conducted a number of inquiries, returned on 4 and 7 July to take further still photographs and, on the latter date, a video of the gable area (Productions Nos. 29, 30 and Label 1). Meantime the shattered stones had been recovered from the pavement; stones 1-7 had been removed from their position on the wall head; and stone 8 was removed from the position in which it had come to rest. All of these materials were then taken to the Council stores at Granton, where a reconstruction was carried out of all the broken stones. They were then laid out next to stones 1-7 so that observations and

measurements could be made of the whole length of the coping (see Production No. 39).

Mark Herron was in charge of this operation. His evidence was to the effect that some of the coping stones appeared to have very little mortar attached to them when they fell from the roof. But the stones appeared to be relatively new and not of such an age that would suggest they had been installed when the building was first constructed. By reference to Mrs Brown's photograph Production No. 16, he was able to estimate the extent of the gap shown in the photograph between the bottom of stone 7 and the top of stone 8. He thought the gap was anything between 78mm. and 117mm. in width, but readily conceded that this was only a rough calculation. But it was also apparent from the bottom edge of stone 7 and the top edge of stone 8 that some weathering to those edges had occurred. In an effort to discover how long that weathering had been apparent and, from any relative calculation, how long the gap between stones 7 and 8 had been in existence, Mark Herron commissioned further enquiries at the British Research Establishment in East Kilbride. Two sets of experiments were carried out there on the stones by a Senior Consultant Dr. Carolyn Hales, who spoke to Productions 18 and 19, these being an interim and final report respectively. Her conclusion could not be precise, but she was prepared to say that the gap had been present for "months rather than days" before the accident.

But this was not the only evidence before the Inquiry as to the length of time during which the gap between the stones may have existed. Christine's father Michael Foster, who represented himself at the Inquiry, gave evidence that, prior to his retirement as a Geologist, he had been the Managing Director of an exploration company based in Perth, Australia. He had considerable experience in preparing prospectuses, mapping and conducting site inspections using aerial photographs. In preparing for the Inquiry, he had obtained from the National Monuments Record of Scotland an aerial photograph of Edinburgh's West End taken on 28 April 1999, from which an enlargement showing the roof of the premises of Ryan's Bar had been made (Productions F2 and F3) This enlargement showed what might be a faint line on the south-east gable between what could be stones 7 and 8, in what appeared to be exactly the same position as that depicted in Mrs Brown's photograph Production No. 16. Mr Foster was however at pains to accept in his evidence before me that there was no certainty about this matter at all; and he also accepted that the quality of Production F3 was poor. He merely advanced it as an adminicle of evidence which I might take into account in assessing the amount of time which the gap had been in existence. But he had gone on, under reference to the measurement carried out by Mark Herron during the reconstruction at the Granton store, to calculate the ratio between the total length of the south-east gable shown in the aerial photograph and the length from the top of the gable to the faint line shown; that ratio was not too far removed from the equivalent ratio which could be calculated by reference to Mark Herron's measurements of the actual stones recovered and re-assembled at Granton (see productions F4 and 17). This at least suggested (but did not prove) that the faint line shown on Production F4 was the same gap as that shown on Production 16; if so, then the gap had existed for over a year before the accident.

Both Mr Coll for the Council and Mr McHugh for the owners of Ryan's Bar suggested that I should hesitate before drawing firm conclusions on this whole matter, but it seems to me that there is an evidential basis for saying that the gap had been

present for "some months" prior to the accident. The Procurator Fiscal Depute invited me to hold that it had been present for "many months" but I am not satisfied that the evidence goes as far as that. In a sense it is an exercise in playing with words, but I am concerned that the evidence should not be pushed further than it really merits. Mr Foster showed admirable restraint in this regard. However I think there is sufficient for me to make a finding on this matter and that it should be included in my Determination under reference to section 6(1)(e) of the 1976 Act. That subsection entitles me, if satisfied on the evidence, to state any other facts which are *relevant* (my emphasis) to the circumstances of the death. The proved presence of the gap in a line of coping stones, some of which fall to the ground some months later causing a fatality, clearly satisfies that test. I am also prepared to accept the evidence of Mark Herron as to the measurements of the gap on 25 June 2000, the date of Mrs Brown's photograph.

### **The mechanism of the collapse**

The next logical step was to discover how, on 29 June 2000, the collapse occurred. Here, there was very little controversy between the parties. As the Inquiry wore on, it became more and more clear that the gap had opened up because stones 8 to 13 inclusive had started to slip down the slope of the gable, having become detached from the wall head. There was abundant evidence (which I accepted as both credible and reliable) that the skew putt failed and was the first stone to fall on the afternoon of Christine's death. Free of restraint by the skew putt, stones 9-13 inclusive followed swiftly. All of the latter, except stone 12, were shattered on impact with the pavement. Stone 8 however merely slipped down the wall head to the bottom of the slope and was trapped there by a combination of twisted lead flashing and the stone which was normally located immediately underneath the skew putt. This had become twisted from its usual position. As for stones 1-7, they remained in position on the wall head. Photographs 1-25 inclusive in Production No. 5 clearly depict the situation on the south east gable some hours after the collapse. I have made appropriate findings under section 6(1)(b) of the 1976 Act.

### **Main causes of the collapse**

Again, the main causes of the collapse turned out to be non-controversial. George Findlay's inquiries (and those of his colleagues) were completed by the end of the summer of 2000 and he prepared a composite report for the Department of Environmental and Consumer Services of the Council (Production no. 12). He took me through this in his evidence, highlighting what he had found. Among other things, it had been discovered that a major refurbishment contract had been completed at 2/4 Hope Street between 1988-90 when the property had been converted from retail premises occupied by Rankin's fruit shop into Ryan's Bar. Part of the works done then included the renovation of the south-east gable and replacement of the coping stones.

In his report and in evidence George Findlay explained what he thought was the "failure mode" and gave his conclusions on the matter. Later in the Inquiry before me, these conclusions were put for comment to two other Consulting Structural Engineers James McColl and Kenneth Donald of Jim McColl Associates, who had been instructed by the owners of Ryan's Bar on the day after the accident to ensure

compliance by the latter with the section 13 notice served on the company by George Findlay. They too had prepared a report on their findings (Production No. 13) and agreed with George Findlay: the cause of the slippage was the gradual detachment of the coping stones from the wall head, in turn caused by inadequate fixings which had deteriorated through time, induced weakness through weathering, an inadequate appreciation of the geometry of the structure, traffic vibration or a combination of all these factors.

I shall deal with the question of vibration separately, but on all the other matters there was substantial agreement between the Engineers. I accept the evidence of all three of them to the effect that those who had been responsible for fixing the coping stones to the wall head during the 1988-90 contract had used shoddy workmanship, something which was evident from various observations and detailed examination of the wall head and the masonry recovered after the accident.

Five particular failings were identified: (a) an insufficient mortar base had been applied to the wall head; it was found to be uneven and did not extend to the necessary thickness of at least 50mm; (b) the base of the stones themselves had not been "buttered" with mortar; Mark Herron had found little signs of mortar on the underside of the stones recovered and, on examining the north-east gable, had been able to lift by hand the top coping stone there (see the video Label1); (c) the lead flashing had been extended too far over the wall head causing a lack of frictional resistance between the flashing and the wall head; the overlap should have been restricted to 50mm. or less; (d) an excessive quantity of slate "packers" had been used in an attempt to build up a level surface on which to lay the coping stones; indeed in some instances packers had been placed on top of other packers, lessening the resistance even more; and (e) there had been a complete lack of secondary fixing such as would be deemed essential in a construction of that size; this could have been achieved either by the insertion of a mechanical restraint or of metal "risers" at intervals up the slope. Because of a failure to assess the strength of the skew putt and because of the lack of frictional resistance, stones 8 to 13 had gradually exerted more and more downward force on the skew putt which, on the afternoon of the accident, finally became rotated out of position, slipped and fell to the pavement. It was followed shortly thereafter by stones 8 to 13.

It seemed to me that these detailed failures were amply proved and I have found accordingly under section 6(1)(c) of the 1976 Act. But there was also evidence from Alan France, a Chartered Quantity Surveyor and the Cost Consultant on the 1988-90 contract that when fixing an excessive amount of the lead flashing on the wall head no proper account was taken of the potential for seasonal expansion and contraction. This might itself have led to a loosening of the mortar bond. Mr Coll for the Council asked me to accept this evidence and to include a finding to that effect; but none of this was put to George Findlay, Kenneth Donald or James McColl, the three engineers who considered in detail the failure mechanism. Without better and stronger evidence, I do not consider this alleged failure to be established, although it is a possibility.

All that remains to be said under this heading is that after the accident, the defects identified by Jim McColl Associates were fully rectified by their clients Caledonian

Heritable Ltd and the Dangerous Buildings Notice under section 13 of the 1959 Act was lifted, following inspection of the repairs on behalf of the Council.

### **Did vibration from traffic or other sources contribute to the collapse?**

Since Ryan's Bar is located at a very busy part of the West End, with heavy traffic passing constantly in both directions to and from Queensferry Street, it was natural that the thoughts of those investigating the collapse would turn to the question of traffic vibration. Indeed, there was reference to it by Caledonian Heritable Ltd in one of their first communications with the Council after the accident. In order to discover whether the collapse might have been triggered by this factor, tests were carried out on site on two separate occasions by Lillianne Lauder, an Environmental Health Officer employed by the Council. She spoke to her report Production No. 20 and its annexation. She had carried out measurements of the peak particle velocity at three different planes: ground level; the window ledge below the location of the skew putt; and a window sill looking down and across the wall head of the south east gable. At all of these locations and in normal traffic conditions, her equipment recorded levels of vibration which were not only below human perception, but also below the level specified in the relative British Standards for both cosmetic and structural damage. Her findings were put to George Findlay and James McColl for their comments, for both had of course suggested in their respective reports that traffic vibration might have had some part to play in the accident; and both came to accept that it was unlikely that it had. I accept this conclusion and have not made any finding under section 6(1)(c) of the 1976 Act in this regard.

There was however another chapter of evidence touching upon the matter of vibration. It appears that in September 1991, some time after the conversion to Ryan's Bar had been completed, some building works were carried out at the basement and ground level of the premises to open up the restaurant area to include a conservatory to the front and east side of the building. This involved the formation of openings through the east gable wall. There was evidence that some of this work was witnessed by chance by Colin Young, now a retired Structural Engineer but who, in 1988-90 had been involved in the original conversion works. He said he thought those who had created the openings had used either sledge hammers or a percussion drill in their work and was so concerned that he took it on himself to contact Building Control. He was told that they would attend to the matter and the work stopped immediately.

The question whether vibration from this work could have weakened the adhesion between individual elements of stone is briefly mentioned in section 6.3.5 of George Findlay's report Production No. 12; and it appears from Mark Herron's researches in the planning files that the work was commenced without a Building Warrant having been granted, although one was later obtained. In evidence before me neither George Findlay nor James McColl could discount the possibility that, if percussion drilling had been carried out at ground or basement level in 1991, the bond between the gable above and the coping stones thereon might have been loosened. This evidence led Mr Foster in the course of his final submissions to invite me to make a finding that the execution of this work in this way may have contributed to the loosening of the mortar bond, suggesting that percussion drilling even at ground level would cause immense vibration throughout the structure. This submission was

however resisted by Mr McHugh on behalf of Caledonian Heritable Ltd, who described the evidence on this point as "speculative" and thus of insufficient weight.

The effect of vibration is a very specialised area, but on the evidence before me it seems that vibration from an isolated instance of drilling works, albeit on the east wall of the premises, is unlikely to have contributed greatly to the collapse. These works appear to have occurred almost nine years before the accident, do not appear to have been sustained and were not repeated. It is also clear from Mr Young's evidence that his principal concern was in relation to load-bearing rather than vibration; and although he conceded that a "shock" at ground level might cause a "shock" to the wall head, the extent thereof could not be determined. In view of this evidence (which I accept) I propose to make no finding under either section 6(1)(c) or (e) of the 1976 Act. Finally under this heading, I should record that in his written submissions Mr Foster suggested that the British Research Establishment might be asked to carry out further studies into the effects of vibration on building sites or existing buildings; however without evidence of the current state of research, I cannot make further comment.

### **The renovation works 1988-90**

The next stage of the Inquiry was designed to discover, if possible after a gap of over ten years, what had happened during the refurbishment contract. The Council investigation of the planning and other records, along with information provided by Caledonian Heritable Ltd, revealed that the works carried out on the structure of 2/4 Hope Street in 1988-90 had been extensive. For many years previously, the ground and basement floors had been occupied by Rankin's fruit shop, with the upper floors used as offices. The conversion to Ryan's Bar came following a development commissioned by Scarborough & York Property Group, the owners of the site at the time. They appear to have entered into a "design and build" contract with the McLaren Building Group Ltd. as the main contractors. There was considerable evidence at the Inquiry before me as to the composition of the design team and the parts played by each in the operation; copies of the original specifications and plans were produced, along with photographs of the development as it proceeded; and the Minutes of site meetings and various progress reports were keenly scrutinised. Many of the works carried out required Building Control approval; and the planning files revealed the progress of various warrant applications and their results. But it was agreed on all sides that the roof works did not require such approval, since they were regarded simply as renovation. It was also agreed on all sides that in the course of this renovation as it affected the south-east gable, the wall head was stripped of the original coping stones which were then replaced by new stones along with new lead flashing. As for the skew putt, I was satisfied on the evidence that it was not replaced, but simply re-used as the restraint for the new stones placed above it up the 45° incline.

This chapter of evidence also revealed that at some point in the past (certainly many years before this renovation was carried out) the east gable of the building had been extended upwards to an apex, after the removal of a chimney head around two-thirds of the distance up the incline of the south east gable (as it existed in 1988). The faint line of this chimney head is most clearly seen in Production No 16, across the gable below the gap in the coping stones. While the date and details of this

earlier work was unknown, it did appear that originally the skew putt at the base of the incline was required to provide restraint for a lesser number of copes than were present before the works of 1988-90. Whether or not the history of the building and earlier renovations to the east gable was taken into account by the design team in planning the 1988-90 works was not established.

Needless to say, the parties to the Inquiry were of course keen to discover which company or individual had actually carried out the renovation on the wall head during 1988-90. The answer remains unclear; although the evidence clearly disclosed that a company called Stone Features Ltd. was sub-contracted to the main contractors (the McLaren Building Group Ltd.) as specialist stonemasons for some period of the main contract, it was not established that they had actually worked on the roof. Indeed, their former director William Dickson explained how his company had been asked to leave the job before completion; and, although they had clearly carried out substantial works at ground and first floor level, he thought that they had worked at no higher level. The Minutes of various site meetings recorded at various points in time the presence (and absence) on site of stonemasons, but they did not disclose exactly *where* on site, at any given time, those stonemasons were working. Campbell McLaren, the former Chairman of the McLaren Property Group Ltd. could throw no light on the matter; the McLaren Building Group had gone into liquidation in November 1994. But he was clear that the main contractors did not themselves directly employ any stonemasons on this job; this specialist trade was the subject of sub-contract. He even doubted whether they employed their own slaters. The site manager William McLeod could not advance the position; but he thought McLaren's did employ roofers. Finally, Alan France gave evidence that because the works were running late and (he said) financial penalties were being incurred, short cuts may have been taken and the coping stones might simply have been put on by roofers or slaters, rather than any specialist sub-contractors.

But the fact that the evidence did not disclose precisely who was responsible for the shoddy workmanship on the wall head does not prevent me from making findings within the terms of section 6(1)(c) of the 1976 Act. At this point, it is particularly important to bear in mind the purpose and scope of these proceedings. I gratefully adopt the remarks of Sheriff Kearney in the Determination which he issued on 14 November 1985 following his Inquiry into the death of Mildred Allan. Analysing section 6 of the 1976 Act, he observed:

"It seems to me, from the thrust of many of these provisions and from the practice of the courts over the years, that fatal accident inquiries may be regarded as having two essential purposes and one important corollary. The essential purposes are the enlightenment of those legitimately interested in the death, *i.e.* the relatives and dependants of the deceased, as to the cause of death (and of any accident resulting in the death) and the enlightenment of the public at large, including the relatives, as to whether any reasonable steps could or should have been taken whereby the death might have been avoided so that lessons may be learned or, at least, the attention of further inquiries directed into ways whereby practices which may have contributed to the death can be improved. The provision in section 6(1)(c) empowering the sheriff to make determinations as to reasonable precautions whereby the death might have been avoided, and the provision that evidence need not be corroborated, gives the sheriff a very wide power to make determinations, but

the summary nature of the proceedings, including the lack of written pleadings which would give advance notice of any line of criticism, must make the court cautious of drawing too sweeping conclusions from evidence which may be incomplete. The provisions of s. 6(1)(e) are still wider and, in my view, entitle and indeed oblige the court to comment upon, and where appropriate make recommendations in relation to, any matter which has been legitimately examined in the course of the inquiry as a circumstance surrounding the death if it appears to be in the public interest to make such comment or recommendation. The corollary to these procedures is the accessibility to legitimately interested parties of the evidence made available to and adumbrated in the course of the inquiry. The availability of such evidence enables those legitimately interested parties, if so advised, to establish negligence or other culpability in the ordinary courts which, by their procedure of written pleadings which give advance notice of particular allegations, are well suited to dealing fairly and fully with such matters: hence, no doubt, the provision that the sheriff's determination in a fatal accident inquiry may not be founded upon in any such subsequent proceedings."

These observations have been founded on in many subsequent Inquiries and are equally as apt today as they were in 1985. An Inquiry under the 1976 Act is an exercise in fact-finding, not fault-finding; and so it would be quite wrong for me, in the context of these proceedings, to ascribe directly to any one named individual or body the blame for Christine's death. Section 6 of the Act does not permit me to do that; but it does entitle me, *inter alia*, to set out in my Determination the reasonable precautions whereby her death and the accident which resulted in it, might have been avoided. As I have indicated, I have made an appropriate set of findings under section 6(1)(c) of the 1976 Act.

### **Local Authority Inspections**

Evidence was led at the Inquiry that for a number of years prior to the renovation works carried out in 1988/90 officials of the Building Survey Department of the City of Edinburgh District Council (as it was then constituted between 1974 and 1996) and indeed its predecessor authority Edinburgh Corporation, carried out a voluntary inspection scheme in relation to old buildings in Edinburgh. They did so, not under any statutory duty but as a result of concern felt by the local authority for the safety and upkeep of the building stock. It appears that this pro-active approach began around 1963 after the Building (Scotland) Act 1959 and the consequent system of statutory controls was introduced. Such inspections were carried out from street level only and were limited to visual observations of the external walls, the roof, the chimneys and the guttering. By this means, masonry defects such as cracking or settlement might be spotted and remedial action recommended. Records were kept of the frequency and results of these inspections and, in relation to the premises at 2/4 Hope Street, a record card (Production No 54) was maintained. This particular building had been constructed in around 1790; when inspected externally on 16 August 1966 and again on 11 October 1973 the premises were apparently found to be in fair condition; at the next visit on 4 August 1983 an external examination revealed *inter alia* that in relation to the east open gable there was "slight weathering to masonry and flaking render to mutual chimney stalk". In view of this it was apparently decided that a further inspection would be carried out in August 1989;

when that was done, repairs were in progress and no further action was deemed necessary.

The next visit was due in August 1994, but this did not take place because the members of the inspection teams were re-deployed to other duties. There was some suggestion from the witness Robert O'Malley, a Conservation Officer employed by the Council on inspection duties between 1994 and 1996 that this re-deployment was due in part at least to budgetary reasons, but I preferred the evidence of William Ness, the current Head of the Property Management Department of the Council, that the emphasis of the Council's activities in relation to building defects had changed from the early 1990's onwards. A combination of the successive strengthening of statutory controls, which entitled the local authority to intervene and require owners of buildings to maintain and repair them, with the ready availability and take-up of Improvement Grants throughout the 1970's and 1980's had in fact resulted in great improvements in the general building stock in the city. The resources of the relative departments of the Council had then become focused on enforcement of the current regulations; I was told that currently around 10,000 statutory notices are served annually on owners, whereby they are obliged by law to remedy perceived defects in their property which are brought to the Council's attention; I was also told that under the current powers available to the Council, around £6 million of work annually was carried out directly by the Council (using approved contractors) on properties in need of repair but whose owners (or mutual owners) were unable or unwilling to bear the cost, which would then be recouped from them by the Council after the work was done. Sometimes owners could not even be traced. Mr Ness also gave evidence that Edinburgh operated a call-out system in respect of dangerous buildings which was available around the clock on every day of the year; and on 29 June 2000, Council officials had been on site about an hour after the tragedy.

William Ness went on to suggest in his evidence that, in relation to buildings works, the buildings authority ought to have power to inspect at regular stages of the work, rather than at the end as was currently done. Thus, for example, the foundations, overall stability, framework and roof might all be assessed as work on them progressed. He thought this was the position under the equivalent Building Regulations in force in England and Wales, a view which clearly led the Procurator Fiscal Depute to invite me to recommend to the Scottish Executive that the Scottish regulations should be brought into line, so that defects might be picked up during work in progress; and that the local authority should be urged to remind property owners of their responsibilities, perhaps by a city-wide advertising campaign.

But both the Fiscal and the witness William Ness recognised that the fixing of coping stones to a wall head was simply a building detail. Further, the evidence clearly showed that what was later found to be shoddy workmanship would probably not have been apparent to an independent inspection from the roof in 1988-90 due to the newness of the work, even if the works had been covered by a building warrant or even if the local authority had then had a more general statutory power to inspect them.

Without any submissions on the detail of either the Scottish or English building regulations as they presently stand, it is impossible for me to recommend what changes to the Scottish provisions are required in relation to "staged" inspection of

building works. Indeed it does not seem to me on the evidence that if "staged" inspections had been possible and had been carried out during 1988-90, the problem with the coping stones would necessarily have been detected. As I go on to explain later, I approach the issue of inspection from a different angle.

Mr Foster, while accepting that even if an inspection had been carried out from ground level in the period prior to the accident the developing gap between stones 7 and 8 would not have been readily apparent, urged me to recommend:

(1) that in view of the deteriorating condition of the Edinburgh Georgian building stock with time, a pro-active campaign of thorough, regular inspections of potential hazards to the public at large should be instituted; and

(2) that buildings of Georgian, or older age, be subject to a vetting similar to an MOT licence system whereby the collective occupants of the structure/building be required to carry out a comprehensive inspection of their property on a regular basis, frequency to be determined.

These suggestions were opposed on behalf of the Council, not because they were wrong in principle, but because they raised (in part at least) matters of national concern on which detailed research was necessary and about which very little evidence had been led. Put simply, they were beyond the remit of an Inquiry under the 1976 Act and in particular section 6(1) thereof, the preamble of which restricts the sheriff to making a determination only on certain circumstances " ... so far as they have been established to his satisfaction ..... ".

It has been repeatedly recognised that a determination under any of the sub-heads of that section can only be justified if the evidence satisfies the sheriff that it should be made. While I recognise the concerns expressed by Mr Foster I do however have difficulty in fitting either of his proposed suggestions into any of the statutory framework in subsections 6(1)(c) or (d). There is indeed no evidence to suggest that the City of Edinburgh Council (or its predecessors) failed in any duty of inspection, for there was no evidence that any such duty existed. I have already indicated that it is not my function under the 1976 Act to make findings of fault. There was no evidence to suggest the existence of any reasonable precautions which the Council could have taken which might have prevented the death, nor any defect in any of their systems of work; indeed, Mr Foster expressly departed from any suggestion that financial constraints had prevented the Council from exercising its statutory powers to the fullest extent.

But I am satisfied, in terms of section 6(1)(e) of the 1976 Act, that certain facts relating to this matter are established and are relevant to the circumstances of the death. In coming to this conclusion however, it is as well to emphasise three important points at the outset, upon all of which I am satisfied. Firstly, the renovation works carried on in 1988-90 in respect of the wall head on the south-east gable of the premises did not require a Building Warrant. The Council therefore had no statutory duty to inspect those works. Secondly, the gap between stones 7 and 8 on the south-east gable wall head which was photographed by Mrs Brown from her upstairs room in the Rutland Hotel may not have been visible from ground level; so a visual inspection from pavement level, whether such inspection had been made on

behalf of the Council or anyone else, might not have revealed the problem. Depending on the vigilance of the inspector, it possibly could have been detected, but all the other deficiencies which were later identified on close inspection would not have been apparent from the ground. Lastly, although from time to time during the period of ownership of 2-4 Hope Street by Caledonian Heritable Ltd. a number of roofing maintenance works were carried out on their behalf by the Caledonian Roofing Company, neither any of their staff nor anyone else reported any other instances of loose or falling masonry from the wall head. Mark Herron even tried to trace other persons who were resident at the Rutland Hotel in June 2000 to see if anyone else had noticed any problems, but received a negative response. I am satisfied that if such instances had occurred, evidence would have been led about them. It follows that in the period up to 25 June 2000 there was probably nothing to alert anyone at ground level to any problems with the bonding of the coping stones.

I regard it as of relevance to the circumstances of Christine's death that the City of Edinburgh Council is not required by law to establish and maintain a system of regular inspection of older properties in an effort to *discover* building defects which may impinge on public safety, rather than simply *reacting* when defects are brought to its attention. The absence of such a system is relevant, not because I think that if one had been in existence Christine's death would certainly have been avoided, but because the circumstances of her death point to a general need to ensure, as far as possible, that the public streets remain safe to use. It is clear to me that when building defects are brought to its attention, the Council is currently very quick to react, but it has no power to go further. Everyone recognises that Edinburgh is a city rich in historical and other old buildings of all ages and kinds; many of them are rightly regarded as part of our national heritage. Many are owned or administered by public or charitable bodies such as the National Trust for Scotland; many are subject to a variety of planning controls and conservation protections; but generally no independent controls exist, leaving the issue of regular inspection and what I might call "preventative maintenance" solely to property owners or occupiers. In Edinburgh (and, no doubt, our other major cities) the density of construction adds to the risks to public safety if such maintenance is neglected.

As I have indicated, the evidence before me was to the effect that the premises at 2-4 Hope Street were constructed around 1790 and were currently Grade B listed; and yet Sean Doyle, a Director of the present owners was able to tell the Inquiry that to his knowledge his company had not inspected the roof of the premises either annually or at other regular intervals during their period of ownership, but had simply reacted when repairs, such as replacing broken or slipped slates, were found necessary. I suspect that many owners might proceed on a similar basis, whatever might be the maintenance conditions (if any) in their title deeds, leases or contracts of insurance. Even in the case where an owner is alive to risks to the public and does inspect his property regularly for structural problems, no independent checks are at present required by law.

In the case of Edinburgh's old buildings, I do not think that to proceed in this way is any longer a sufficient protection for members of the public. In particular, in Edinburgh city centre some older properties have been converted into licensed premises, some of which have Consent from the Council to operate a pavement café: those operating Ryan's Bar fell within that category (see Production No.2). The

terms of such Consents go some way to recognising health and safety concerns, but both in the case of licensed and other premises comprising or forming part of old buildings, I think the Council should be empowered to obtain regular and adequate access to the property for the purpose of structural inspection and risk assessment. In my view the matter goes further than a simple re-instatement of the previous Council scheme; as I have said, I have grave doubts whether, had that scheme been in operation in June 2000, a visual inspection from ground level would have revealed anything amiss with the wall head. The provision of access to roof structures and other areas of potential danger should be mandatory. In the event that remedial works are found to be necessary, then existing procedures under current legislation can be invoked. In evidence before me George Findlay said that this topic was already the subject of national as well as local debate, involving detailed research and possible legislation. For my own part, I have little doubt that statutory control through the local authority will be the only effective means of enforcement; leaving inspections to owners is unlikely to have the same results.

I accept that it will be impractical to "police" the whole city and that, whatever is done, issues of funding will arise sharply. But the details of any new system, including the decisions on what classes and ages of buildings should come within any regulatory scheme and the frequency of inspections will of course have to be addressed in the current debate. The foregoing observations should be taken only as a contribution thereto in the public interest, rather than formal recommendations for detailed legislative change. The circumstances of Christine's death as disclosed in this Inquiry ought to hasten the conclusion of the debate, but I should make it clear that for present purposes I have determined under reference to section 6(1)(e) of the 1976 Act *only* the relevant facts which I found established.

Such a scheme of regulation cannot be set up overnight, especially if legislation is required; and of course any national legislation will have to address the extent of the national problem. In the meantime, I think that the Council in conjunction with other interested parties should immediately carry out an audit of buildings thought to be at risk, if indeed this audit process has not already started. The Council should vigorously use all its available existing powers to ensure that proper maintenance and renovation is pursued; once again, preventative measures may preclude other incidents from becoming part of what George Findlay described as a "history of falling masonry in the city". There would also appear to be merit in the suggestion by the Procurator Fiscal Depute that the Council should take steps to remind those responsible for the maintenance of old properties in Edinburgh of the risks to public safety if their buildings fall into disrepair any their potential liabilities in this regard; an appeal for civic responsibility can do no harm. I recommend accordingly; and I am content to leave to the Council the mechanics of how this is may be done.

### **Accreditation of Building contractors**

In light of the fact that the evidence disclosed shoddy workmanship on the part of those renovating the roof during the earlier contract, Mr Foster raised the question of whether there ought to be in place some kind of regulatory scheme whereby building owners would be compelled to employ for building works in hazardous situations only a contractor independently recognised and approved as having the necessary skills in the particular trade concerned; and he suggested further that a register of

such contractors should be set up and maintained annually by the City of Edinburgh Council. He suggested in cross-examination of both George Findlay and William Ness (and in final submissions to me) that because an owner was at present entirely free to select a contractor of his choice without any independent check on whether or not that contractor professed or indeed exercised any particular skills, there were substantial risks to the public at large in the event that things went wrong. He regarded the current position as very unsatisfactory, since the Council would only become involved if the building works required a Building Warrant and had no power to exercise any other controls. The matter of public safety should not be left simply to property owners and the contractors they chose to employ.

In evidence, William Ness recognised these concerns and indicated that there was a national problem for property owners in selecting contractors. He told me that the Government was looking at national and local accreditation schemes and that pilot projects were underway in England. At present, any property owner in Scotland could get advice from various agencies, but that was as far as it went. It was also a matter of common knowledge that certain trades, or groups of trades, had set up self-regulation schemes; and contractors' federations could (and did) assist the public. In around 1998, the Council had circulated a questionnaire to those owners for whom the Council had carried out building works, seeking views on the quality of the contractors employed: no adverse comments had been received.

This is a vast area of controversy, involving an assessment of the intrinsic merits or demerits of regulatory regimes of different types. As well as raising acute issues of public safety, it exposes questions such as identifying and agreeing upon good working practices; training; accreditation; and continuing assessment. Issues also arise in relation to commercial competition and the restriction of personal choice. Hardly any of these or related questions were explored or made the subject of evidence before me. In the absence of such evidence I cannot make any detailed finding on these points, although I agree with Mr Foster that they are important and deserve thorough scrutiny. I was glad to learn from William Ness that this process too has already begun on a national basis and I can only hope that Christine's death will serve once again to highlight the safety aspects of this complex issue.

### **Defects in system of working**

Only Mr McHugh for Caledonian Heritable Ltd. suggested that I might make a finding under section 6(1)(d) of the 1976 Act and hold that lack of supervision of those who replaced the coping stones during the 1988-90 renovation was a "defect in a system of working" which contributed to the death or the accident which caused it. I do not propose to accede to this suggestion; it seems to add little, to what I have already said in relation section 6(1)(c).

### **Conclusion**

Christine's death was a tragic accident. Every sympathy must be extended to her parents, family and friends. The evidence before the Inquiry clearly disclosed that although a collapse of masonry is often unexpected and unpredictable, her death might have been avoided; the fact that it was not must be a matter of great public concern. She died at a busy location in the centre of a capital city famed world-wide

for its architecture and historic buildings. I was told that this was the first occasion in recent memory where someone had been killed in a public street in central Edinburgh as a result of such a collapse of masonry. If this is so, then I trust that the foregoing observations will help to ensure that Christine's death will be the last to occur in such appalling circumstances.