

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

B2240/10

INQUIRY HELD UNDER THE FATAL

ACCIDENTS AND

SUDDEN DEATHS

INQUIRY (SCOTLAND)

ACT 1976,

SECTION 1(1)(a)(ii)

DETERMINATION

by

IAN HARPER LAWSON MILLER,

Esquire, Advocate, Sheriff of the

Sheriffdom of Glasgow and

Strathkelvin

following a

Fatal Accident Inquiry

held at Glasgow on 24, 25, 26, 27 and 28

October and 13 December all days of

2011, and on 19, 20, 21 and 22 March,

25, 26, 27 and 28 September 2012, 12,

13, 14, 15, and 16 November and 10, 11,

12, 13 and 14 December all days of 2012

and 15 and 16 April and 16 and 17

September all days of 2013

into the death of

GEORGE PAUL ROONEY RIDDELL

GLASGOW, 11 April 2014.

The sheriff, having resumed consideration of the application, the evidence presented,
the productions and labels used in evidence and the submissions made,

FINDS AND DETERMINES:

- (1) In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, that George Paul Rooney Riddell, whose date of birth was 30 June 1990, and who resided latterly at 34A Pendeen Road, Glasgow died on 15 September 2006 at 01.53 hours within the Royal Infirmary, Castle Street, Glasgow;
- (2) In terms of section 6(1)(b) of the said Act, that the cause of his death was hypoxic brain damage due to cardiac arrest due to cocaine intoxication;
- (3) In terms of section 6(1)(c) of the said Act, that there were no reasonable precautions whereby his death might have been avoided;
- (4) In terms of section 6(1)(d) of the said Act, that there were no defects in any system of working which contributed to his death; and
- (5) In terms of section 6(1)(e) of the said Act, that there were and are no other facts which are relevant to the circumstances of his death.

NOTE/

NOTE

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Part One

The inquiry in context

Introduction

[1] This fatal accident inquiry (“the Inquiry”) has been convened to inquire into the circumstances of the death of George Paul Rooney Riddell (“George”) which occurred on 15 September 2006 within the Royal Infirmary, Castle Street, Glasgow. The Crown have requested the Inquiry under section 1(1)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (“the Act”) because at the time of his death he was in the legal custody of the then Strathclyde Police and therefore there has to be such an inquiry.

The application

[2] The Crown, in the name of the Procurator Fiscal for the District of Glasgow and Strathkelvin at Glasgow, in due course and over four years after George’s death, made application to this Court to hold an inquiry under the Act into the circumstances of his death. In it the Crown, as required, gave a brief narration of the circumstances of his death. They did so in the following terms:

“From information received by the Applicant it appears that GEORGE PAUL ROONEY RIDDELL, born 30 June 1990, formerly residing at 34A Pendeen Road, Glasgow was detained in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of theft at Barlanark Road, Glasgow on 8 September 2006 at approximately 1500 hours. He was given a cursory search. Nothing was found. He was transported to the police office, Glasgow in a marked police van. During the course of the journey to the police office, he consumed a quantity of white powder, later analysed and identified as cocaine. The said George Paul Rooney Riddell arrived at the police office at approximately 1610 hours. He was processed at 1620 hours. He was asked by a police officer if he had taken drugs. He advised a

police officer that he had taken cocaine five minutes previously. At 1632 he became unwell. An ambulance was requested. The ambulance arrived at approximately 1724 hours and transferred him to the Royal Infirmary, Glasgow. He was in cardiac arrest. He was treated at the Royal Infirmary until 13 September 2006 when life support was withdrawn. He died on 15 September 2006 at 0125 hours at the Royal Infirmary, Glasgow.”

The Crown stated that the cause of death was hypoxic brain damage due to cardiac arrest due to cocaine intoxication. This adopted the conclusions of the report dated 28 November 2006 of the post-mortem examination of George carried out on 18 September 2006.

The persons represented at the Inquiry

[3] Other than the Crown the persons represented at the Inquiry and who had an interest in it were: Mr George Rooney, George’s father; Mrs Mary Riddell, his maternal grandmother; the Chief Constable of Strathclyde Police; former Police Sergeant James Campbell; Police Constable Craig Beattie; Police Constable Stuart Morrison; former Police Constable Kenneth Sewell; Police Constable Paul Wilson; and Doctor Andrew McCall.

[4] The Crown were represented by Miss McCaffer, senior procurator fiscal depute, George’s father by Mr Munro, solicitor, his grandmother by Miss McNeill, solicitor, the Chief Constable of Strathclyde Police by Miss Black, solicitor, James Campbell and Police Constables Beattie, Morrison and Wilson by Mr Gillies, solicitor, Kenneth Sewell by Mr Nimmo, solicitor, and Doctor Andrew McColl by Mr Stewart, solicitor and, briefly in his unavoidable absence, Mrs Donald, solicitor.

The witnesses who gave evidence to the Inquiry

[5] The Crown alone led the evidence of witnesses. There were nineteen. In the order in which they gave their evidence they were: Mrs Mary Riddell, Mr Kenneth McAskill, Mr David Gray, Mr Antony Kelly, Mr Ronald McGuinness, Mr Ewan Fitzpatrick, Doctor Andrew McColl, Doctor Richard Stevenson, Mr Kenneth Sewell, Police Constable Paul Wilson, Police Constable Craig Beattie, Ms Lindsey Dempsey, Police Constable Stuart Morrison, Detective Sergeant Michael Miller, Mr James Campbell, Doctor Harry Thanacoody, Mr Angus McIntosh, Mr Grant Sinnerton and Mr Alexander Semple.

The presentation of the Inquiry

[6] The Inquiry started on 24 October 2011 and ended with submissions on 17 September 2013. For unavoidable reasons the Inquiry had to be conducted over eight tranches of days allocated as best and as expeditiously as could be achieved but sometimes there were several months between each.

[7] During the course of the Inquiry the parties presented three Joint Minutes of Agreement signed on behalf of the Crown and all represented parties. The majority of the first and second and all of the third agreed the authenticity of a significant number of the Crown productions whose terms were accepted by all signatories as true and accurate and, where appropriate, that some of them were in force at all material times. That left it to the parties to make such use of those documents as they wished in order to bring them to the attention of the Inquiry and within its ambit. In addition the first agreed the provenance of the majority of the Crown labels, certain facts about the detention of George, his subsequent treatment at hospital and the

cause of his death as determined at post mortem, while the second added more aspects of his care at hospital and the results of certain tests carried out on him.

[8] The last witness gave his evidence on 16 April 2013. Long before then the Crown and all representatives had indicated their wish to present their submissions in writing at the hearing on evidence. They had mooted that the Crown prepare their submissions including proposed findings in fact which all would then use as the basis of their written submissions and would add the particular matters on which they wished to found in so far as they were either different from or absent from what the Crown wished to submit. That is what happened. The written submissions were extensive. A copy of them is lodged in process. At the hearing each representative took the opportunity to comment to a greater or lesser extent on the written submissions of one or more of the other represented parties. I have précised them and placed a copy of that in process.

What each witness spoke to in evidence

[9] *Mrs Mary Riddell.* She is George's maternal grandmother with whom he had lived throughout his life except for a period in excess of two years from the ages of just short of twelve to fourteen. She explained his upbringing and character, his repeated involvement with the police and as a consequence with the Children's Panel, his recurrent use of cannabis since about the age of thirteen, what she knew of his habits in the months leading up to his death, what she was aware of what he did on 8 September 2006 and that she had identified his body after his death.

[10] *Mr Kenneth McAskill, Mr David Gray and Mr Antony Kelly.* They were all friends of George. On 8 September 2006 they were aged 15 years, 15 years and 12

years respectively. Each gave evidence about similar matters: his relationship with George, what he understood of George's involvement with controlled substances, what happened to them all at Barlanark Road, what he knew of what George did in the van while it was taking them to the police station and what he knew of George's condition once placed in a cell there.

[11] *Ms Lindsey Dempsey.* She had been a friend of George since primary school days and had been his girlfriend until about three weeks before his death. She spoke principally about George's background and what she knew of his involvement with controlled drugs with particular reference to the weeks before 8 September 2006.

[12] *Mr Kenneth Sewell.* He was at the material time a constable with Strathclyde Police based at Shettleston Police Office and assigned duties as a community police officer in the Barlanark area. He retired from the police in May 2009 after 32 years of services. He and Constable Paul Wilson came upon the four boys at the rear of the former Barlanark Primary School, Halhill Road, Glasgow ("the school"). They apprehended that the boys might have been involved in the recent theft of power tools. He gave evidence about his prior knowledge of George, what happened when they encountered him and his three friends, his demeanour towards the police at that time, why and how he conducted his search of George at the school and his subsequent involvement with him at London Road Police Station, Glasgow ("the police station").

[13] *Police Constable Paul Wilson.* He was a police constable with Strathclyde Police based at Shettleston police office and as at 8 September 2006 he had slightly less than 2 years police experience and was still on probation. On that day he had

been assigned to work with the community police officer, Constable Sewell. He gave evidence about the same matters as Constable Sewell.

[14] *Mr James Campbell.* In September 2006 he was a Police Sergeant based at Baillieston police office and was a member of a flexible policing unit stationed there. He had then 29 years' police experience and retired from the force in September 2007. He was the senior officer of the unit that was despatched to transport the four boys to the police station in a police personnel carrier ("the van"). He spoke to the prior use of the van on 8 September 2006, what he found when he and Constables Beattie and Morrison arrived at Barlanark Road and what he recalled of the actions of all while there and subsequently when in the van and at the police station.

[15] *Police Constable Craig Beattie.* He was a police constable with Strathclyde Police based at Baillieston police office and a member of the flexible policing unit. At the time he had 4½ years' police service. He spoke to the same matters in general as Mr Campbell.

[16] *Police Constable Stuart Morrison.* He was also a police constable with Strathclyde Police based at Baillieston police office and was the third member of the flexible policing unit. He had approximately 6 years' police service at the time and he also spoke to the same matters as both Mr Campbell and Constable Baillie.

[17] *Mr Angus McIntosh.* In September 2006 he was a Police Inspector with Strathclyde Police based at the police office. He had 28 years' service at the time and retired from the force in January 2008. He was the duty officer when George and his three friends were brought to the police station and he processed George at its charge bar. He explained in general his experience of acting as a duty officer, what he understood to be the duties of a duty officer, how prisoners were processed at the

police station, the system for summoning a police casualty surgeon and for referring a prisoner to the surgeon. He then went on to describe in detail his involvement with George and his state of knowledge about him from his first direct involvement with him and throughout the time that he was processing him and what happened after he had placed George in a cell and up to the time that George was taken from the police station.

[18] *Mr Grant Sinnerton.* He was a police custody security officer employed by Strathclyde Police and based at the police station. As at September 2006 he had about 4 years' experience of that job. He gave evidence about the duties in general of a custody officer, formerly commonly called a "turnkey", and of his direct involvement with George, including his demeanour in his cell when he spoke to him there, and how he was when he and another constable helped to take him to the police casualty surgeon's room, what happened in that room and his summoning of an ambulance.

[19] *Mr Alexander Semple.* He was another police custody security officer based at the police office with about 13 years' experience in September 2006. His contact with George was less than that of Mr Sinnerton but he was able to recall checking George in his cell and being able to assess his demeanour then, how that demeanour had altered by the time that he was being conducted to the police casualty surgeon's room and what he saw while he was in that room.

[20] *Dr Andrew McColl.* He was the police casualty surgeon on duty on 8 September 2006. He was a medical general practitioner and had been a police casualty surgeon for some 13 years by then. He gave evidence about his treatment of George from the moment that he was asked to see him in the police station to the

time that the ambulance carrying him arrived at the hospital. That included what he knew about George on his initial presentation before him, what he witnessed of his condition in the police casualty surgeon's room and how he responded to that, and his subsequent treatment of George in the ambulance while on its way to Glasgow Royal Infirmary, Glasgow ("the hospital").

[21] *Dr Richard Stevenson.* In September 2006 he was a police casualty surgeon with about 1½ years' experience of that work but considerable experience of accident and emergency work. He recalled how Dr McColl had asked him to come to the police station in order to help him treat George, what he saw in the police casualty surgeon's room when he arrived there and the treatment he had administered to George. Despite being called as a witness to fact, he was allowed at least for some time to transfer into the role of a skilled witness and give details of which drugs he would like to have had available to him in treating an emergency of the type that faced him.

[22] *Mr Ronald McGuiness.* He was one of the two ambulance technicians called to attend George at the police station. He had some 4 years' experience of that work in September 2006. He spoke to being called to attend, what he found when he got to the police station, what limited treatment he and his colleague could do there and taking the decision to transfer George by ambulance to the hospital. He travelled there in the back of the ambulance and was able to recall the treatment administered to George in the ambulance as it progressed to the hospital.

[23] *Mr Ewan Fitzpatrick.* He was the other ambulance technician. He had about 2½ years' experience of that work in September 2006. He spoke to much the same

material as Mr McGuiness except for what happened in the back of the ambulance on the way to the hospital because he was the driver.

[24] *Detective Sergeant Michael Miller*. He is a police officer with some 23 years' police experience all acquired while serving with the former Strathclyde Police Force and more recently with Police Scotland. He had acquired particular expertise in the nature, supply and use of controlled substances within Glasgow built up over a period of 20 years. In 2006 he was seconded to the Strathclyde Police Statement of Opinion Unit ("the STOP unit"). That unit was created in 1996 to be a central source of information to help in all matters pertaining to controlled drugs. Latterly Sergeant Miller has assumed the responsibility of supervising and directing the force's expert witness unit. He gave evidence as a skilled witness on the subject of controlled substances in Glasgow. In particular he gave evidence about the availability, presentation, price and purity of cocaine in 2006 and which weights of the drug would be dealer quantities rather than for personal use.

[25] *Dr Harry Krishna Ruben Thanacoody*. He is a consultant in acute medicine with an interest in clinical toxicology at the Royal Victoria Infirmary, Newcastle-upon-Tyne. He is also an Honorary Senior Lecturer in Clinical Pharmacology within the University of Newcastle-upon-Tyne. He gave evidence as a skilled witness on the nature of the drug cocaine, its effects on the human body and how intoxication by the drug is treated in the hospital context. He had no involvement in the care of George.

Part Two

The issues raised by the parties to the Inquiry

[26] Turning to the areas of attention with which the representatives wished the Inquiry to concern itself, all parties were agreed that the primary focus was upon the actions and conduct of officers of the then Strathclyde Police. The secondary focus proposed by some, principally the Crown and the representatives of family members, related to the conduct of Dr McColl while acting as a police casualty surgeon. Those were the two areas with which the entire Inquiry was concerned. The procurator fiscal depute confirmed at the preliminary hearing of 1 September 2011 that the Crown did not see that the Inquiry needed to look into any issue in relation to the time that George was in the care and control of the ambulance paramedics or whilst at the hospital in the care and control of the hospital staff there. None of the other parties represented dissented from that. That position did not alter throughout the Inquiry.

The issues raised initially

[27] When the Inquiry began it was concerned with the issues which the Crown had intimated at the preliminary hearing held on 1st September 2011 and which all represented parties had agreed were then understood to be the correct issues. They were:

- “1 Whether the police took reasonable precautions in respect of the deceased whilst he was in the police van and thereafter whilst he was within the police station.
- 2 Whether the police took reasonable precautions whilst the deceased was at the police station to obtain medical treatment for the deceased.

- 3 Whether there were systematic defects in the Strathclyde Police Standing Procedures at the time when the deceased was in the police station.
- 4 Whether the actions of Dr Andrew McColl as Police Casualty Surgeon were reasonable."

The revised note of issues

[28] On the seventh day of the Inquiry I was presented with a revised note of issues ("the issues"). Although headed "for George Rooney, father of deceased" all parties agreed that they expressed better the matters that they wished the Inquiry to investigate. In that revised form they were expressed as follows:

- "(1) The circumstances in which the deceased was in possession of a quantity of cocaine in the rear of the police personnel carrier, including:
 - (a) The provenance of the Drugs;
 - (b) The level of supervision by the police officers of the deceased during the journey;
 - (c) The circumstances in which the police officers became aware of the deceased's possession of the Drugs;
 - (d) The circumstances in which the police officers became aware that the deceased had ingested Drugs;
 - (e) The circumstances in which the information about the events in the personnel carrier was communicated by the officers responsible for transit to the duty officer at The police office.
- (2) The circumstances in which the deceased was processed and held at the police office, including:
 - (a) The extent of the duty officer's knowledge about the deceased's earlier ingestion of Drugs;
 - (b) The extent of the duty officer's enquiries having been informed that the deceased had recently ingested Drugs;
 - (c) The decision of the duty officer not to require the deceased to be seen at that stage by a medical practitioner, whether at the police office or at hospital;
 - (d) The failure to enquire of other detainees about the circumstances in which the deceased had consumed Drugs; and
 - (e) The decision to detain the deceased, standing his age and status and the surrounding circumstances.
- (3) The circumstances in which the deceased was provided with medical treatment at the police office, including:

- (a) The point at which medical attention was considered necessary;
- (b) The manner in which medical attention was summoned;
- (c) The appropriateness or otherwise of treatment provided by Dr McColl, a Police Casualty Surgeon; and
- (d) Whether earlier or more appropriate medical interventions might have improved the deceased's prospects of surviving."

The restriction in the issues post evidence

[29] At the stage of submissions all parties agreed in light of the evidence led that they were no longer insisting in the secondary focus of attention, that upon Dr McColl. There was general acceptance that his conduct was not open to criticism in the particular circumstances in which he was asked to examine George. I agree with that decision. It is supported by the evidence led before the Inquiry. He did the best that he could, or could be expected to do, in the emergency situation into which he was plunged without warning. In giving his evidence he demonstrated clearly that the death of George had affected him greatly. That was to his credit as a caring and compassionate doctor but the totality of the evidence led on which I rely for my determination demonstrates that he had no cause or ground to hold himself responsible in any respect for that death. The effect of the decision of parties was to remove issue 3(c) from the catalogue of issues and the secondary focus of attention in its entirety leaving as the sole focus of attention the several activities of the police.

The scope of the Inquiry

[30] The Inquiry was concerned with the events of a short period of time. From beginning to end it was in the order of two and a half hours, from the time that Police Constables Sewell and Wilson first came upon George and his three friends at the rear of the school until he was transferred from the police station to which he had

been taken into the ambulance waiting to take him to the hospital. As the Inquiry proceeded it became evidence that parties were in agreement on the general course of events and to a significant extent the nature of the involvement of the police officers and support officers who were variously concerned in the apprehension, detention, transport and treatment of George. The differences centred upon the detail of what individual officers did or did not do in relation to George, what each knew or ought to have known about him that was relevant to his standing as a detained person, particularly whether he had ingested any drugs, and the consequences for George of these various actings all assessed under reference to the circumstances of his death with a view to determining, as the Act requires, whether any of the actings of any or all of the officers caused or contributed to his death and whether his death might have been avoided.

Part Three

The function and purpose of a fatal accident inquiry

[31] I think it right to indicate in general terms what is the function and purpose of a fatal accident inquiry and what is meant in this context by an “accident”.

[32] All fatal accident inquiries are brought under, and are governed by the provisions of, the Act. It imposes duties on the Lord Advocate, the procurator fiscal for the district with which the circumstances of the death in question appear to be most closely connected and the sheriff to whom application is made for holding an inquiry. It also makes provision for making rules that govern procedure and the payment of fees, and the procedural rules currently in force are the Fatal Accidents and Sudden Deaths Inquiry Procedure (Scotland) Rules 1977 (“the Rules”). The jurisdiction created by the Act is *sui generis*. How that jurisdiction should be exercised has been defined authoritatively in principle by Lord Justice-Clerk Moncrieff in the course of delivering his opinion in the case of *Magistrates of Portobello v Magistrates of Edinburgh* (1882) 10 R 130: “where a new and special jurisdiction is given to any Court the exercise of it must be regulated entirely by the conditions of the statute under which it is conferred” (at page 137). This was said in the context of a challenge to the competency of taking an appeal to the sheriff from the sheriff-substitute under the Rivers Pollution Prevention Act 1876 but the principle is of general import and application and has been consistently construed as such.

[33] The primary duty on the sheriff is that enjoined by section 6(1) of the Act: to hear all the evidence tendered and any subsequent submissions made on that evidence, and then make (and issue) a determination at or as soon as possible after

the conclusion of the evidence and any submissions thereon setting out the circumstances of the death in question by reference to the five criteria listed in that subsection so far as they have been established to his satisfaction. The scope of all fatal accident inquiries is determined, delineated and circumscribed by this subsection.

[34] Those five criteria are:

- “(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.”

[35] The function of the sheriff at a fatal accident inquiry in making his determination does not include making any finding of fault or apportionment of blame between any persons who might have contributed to the accident. The Act does not empower the sheriff to do that. This was authoritatively stated in the case of *Black v Scott Lithgow Limited* 1990 SC 322; 1990 SLT 612 in which Lord President Hope, in his opinion, took the opportunity to state the function in the following terms:

"There is no power in this section 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, insofar as this can be done to his satisfaction. He has before him no record or other written pleading, there is no claim for damages by anyone and there are no grounds of fault upon which his decision is required. The inquiry is normally held within a relatively short time after the accident ...It provides the first opportunity to canvass matters relating to precautions

which might have avoided the death or any defects in any system of working which contributed to it, at a stage when these issues have not been clearly focused by the parties to any future litigation which may arise. And it is not uncommon ... to find questions being asked about possible precautions or defects which are not the subject of averment in the subsequent action of damages." (p 327 and 615G to H)

[36] As Lord President Hamilton observed in the more recent case of *Global Santa Fe Drilling v Lord Advocate* 2009 SLT 597 under reference to *Black* "[a] fatal accident inquiry is a statutory procedure" .. and "[a]lthough the sheriff presiding at it has judicial duties ...he does not sit to determine the rights or obligations of parties" (paragraph [28] at p 604). It is a fact finding inquiry not a fault finding inquiry. It is inquisitorial in form rather than adversarial. The standard of proof of the circumstances of the death in question is on the balance of probabilities. The onus of proof rests on the Crown because, by virtue of section 1 of the Act, the duty of investigating those circumstances lies on the Crown.

[37] The word "accident" is not defined in the Act. Various views have been expressed in a number of inquiries as to its meaning and scope. In his Determination following an Inquiry into the death of Alexander Cusker, dated 16 December 2008, Sheriff J K Mitchell sitting at Glasgow Sheriff Court expressed the following views:

"[4] In Mr I H B Carmichael's *Sudden Deaths & Fatal Accident Inquiries*, third edition, at para 5.69, the learned author states:- 'Accidents can occur anywhere and in almost any context...If a patient dies...as the result of an error which occurred in a...therapeutic procedure, that death results from an 'accident'. I respectfully accept the learned author's approach to and interpretation of the term 'accident' as it is used in the 1976 Act. In its common usage, an 'accident' is 'an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury': see the *New Oxford Dictionary of English*."

That passage has been adopted and followed in several subsequent fatal accident inquiries and it seems to me to express a sound and accurate definition for the purposes of a fatal accident inquiry.

Part Four

The relevant uncontested facts

[38] At the stage of the hearing on the evidence the Crown included as Section 1 of their written submissions a summary of the evidence. All other representatives worked with that. Two intimated their complete agreement with them and the others their almost general agreement on the accuracy of the facts contained in the summary. Some took the opportunity to criticise the soundness of some of the facts or added detail to one or other of them. In addition there were other agreed facts contained in the first and second joint minutes and the many facts that were not contested by the end of the presentation of evidence. From these sources I have prepared the following narrative of facts set forth in broadly chronological order that by the end of the evidence and in light of the submissions were to my mind uncontested and which I hold have been proved.

George

[39] George was born on 30 June 1990. He resided latterly at 34A Pendeen Road, Barlanark, Glasgow. His father is George Rooney. His mother is Michelle Fitzsimmons. His maternal grandmother is Mrs Mary Riddell. From birth George resided with Mrs Riddell, at 34A Pendeen Road with occasional impermanent exceptions. For approximately two years when he was around the age of 12 years he stayed with his father in the Easterhouse area of Glasgow. In addition he spent some time living with his mother in Duke Street, Glasgow. As at September 2006 he lived with Mrs Riddell. He was unemployed but had applied to join the British Army and

was waiting to see if his application had been successful. Moreover he was the subject of a supervision order made by a Children's Panel under and in terms of section 60 of the Children (Scotland) Act 1995 because of his failure to attend school and also in respect of a charge of breach of the peace for fighting with neighbouring gangs and being cheeky to the police. George was known to local police for involvement in petty theft, vandalism, street drinking and general disorder.

George's use of controlled substances

[40] In the months prior to his death, George ingested several substances controlled under the Misuse of Drugs Act 1971. They were cannabis, ecstasy and cocaine. At all material times cannabis was a Class B controlled substance, and both ecstasy, otherwise known as methylenedioxymethamphetamine (MDMA), and cocaine were Class A controlled substances. George had used cannabis since the age of thirteen. He smoked it frequently. On one occasion police Constable Sewell had found George in possession of it. George had taken both ecstasy and cocaine in the three and a half months prior to his death the latter both in the period of time that was greater than two weeks or so before his death and during those last two weeks. George was unemployed and therefore did not have any income from which to purchase controlled substances. He was not seen in possession of a large amount of money. He borrowed small amounts of money to purchase controlled substances or was able to obtain controlled substances on the system of "get now pay later" called 'tick'.

George's actions before the arrival of the police at the school

[41] At approximately 12:30 hours on the afternoon of 8 September 2006, George attended at the home address of his friend, Kenneth McAskill ("Kenneth"). Kenneth was then aged 15 years. He and George had been friends since they were about 8 years of age. Some ten minutes later George and Kenneth left Kenneth's house and went to the home address of a mutual friend, Brian Ferguson, in order to retrieve cans of Stella lager that he had left there the previous night. George and Kenneth stayed there for anything up to about two hours. During that time all three shared "a joint" containing cannabis. At the end of that time George and Kenneth left that house. George went home to borrow from his grandmother one pound for the purchase of cigarettes. When he left her house he told her that he would return at about 5.00 pm.

[42] George and Kenneth then went to shops on Haghill Road, Barlanark so that George could buy cigarettes. At this time, George had in his possession a bag containing his cans of lager. After leaving the shops George and Kenneth went to an area of waste ground behind the school that was within the grounds of the school. The area was visible from the nearby public road and there was a family learning centre close to it. The boys went there because it was somewhere to sit and George could drink his cans there without the police taking them off him. It was a place where the boys in the Barlanark area were accustomed to congregate and spend time. Once there George and Kenneth were joined by Anthony Kelly ("Anthony"). Anthony was then aged 12 years.

[43] Anthony informed George and Kenneth that he had observed that a van containing power tools was parked close to the grounds of the school. George and Anthony went to the van and removed from it two tool boxes containing Bosch

power tools. They returned to where Kenneth was and hid the two boxes and tools under bushes in nearby waste ground behind the school. Shortly after that David Gray ("David") joined the three boys. David was then 15 years of age. All four sat chatting to each other near to the waste ground. All four boys knew that the power tools were close by, and that they had been removed from the van. During this time at the school George consumed more than one of the cans of lager and an ecstasy tablet.

From the arrival of police officers to the moment of George's detention

[44] While the four boys were at the area of waste ground they were approached by two constables of Strathclyde Police. They were Police Constables Kenneth Sewell and Paul Wilson. Constable Sewell was then an experienced community police officer and Constable Wilson, a considerably more junior constable, had been allocated to work with him. The officers were responding to a report received by Strathclyde Police that there were a number of youths in possession of power tools which might have been stolen and that the youths had placed those power tools within bushes at the waste ground.

[45] Constables Sewell and Wilson arrived at Barlanark Road in a marked police vehicle at approximately 15:00 hours. They parked on Barlanark Road deliberately at a point that was out of sight of the youths and walked to behind the school where they saw George, Kenneth, David and Anthony approximately one hundred to one hundred and fifty yards away from them at the waste ground. Both constables walked towards the boys who, when they became aware of the constables, did not appear to react in any way to their presence. In particular none of the boys made any

attempt to escape by running away. Constable Sewell, in the presence of Constable Wilson, engaged the boys in conversation. Although both constables noted that George and one other of the boys had alcohol in their possession none of them appeared to be under the influence of alcohol or of any other substance and in particular of any controlled substances.

[46] Constable Wilson crossed to the waste ground and recovered from under a bush the two electrical boxes containing the power tools. They were approximately twenty feet from the boys.

[47] At 15:18 hours Constable Sewell, in the presence of Constable Wilson, informed all four boys that he was detaining each of them under section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of having committed the theft of the power tools. None of the boys said anything in response.

From the moment of George's detention to the arrival of the van

[48] On being detained Constable Sewell searched all four boys one after the other in the presence of Constable Wilson. He conducted each of those searches under the powers given him by section 14 and also by section 48 of the Criminal Law (Consolidation) (Scotland) Act 1995. He did not conduct them under section 23 of the Misuse of Drugs Act 1971 because neither constable had at that time any reason to suspect that any of the boys had controlled substances on his person. The purpose of his searches was to recover any item of evidential value in relation to the theft of the power tools but also to check for the presence of offensive weapons that might harm him or the person being searched. Each search was of the kind known as a pat down search. This involved patting the person searched over his clothing on the

upper body the whole of both arms, including under the arms, and both legs. It also involved checking pockets, pulling out the waistband of the trousers at both front and back and checking socks and shoes although not to the extent of removing shoes. When searching George he checked the pockets of his top, his trousers, his shoes, down the back of his trousers, his waistband, his upper arms, down the length of his arms to his wrists, both underarm and outside, then his legs from his waist to his feet, both inside, outside and the back of each leg and up the inner leg to the area of the groin. The search recovered nothing of relevance for its intended purpose from any of the boys.

[49] After he had carried out all four searches of the detainees Constable Sewell radioed for assistance to be provided by other police officers to transport the four boys to the police station. Because the police vehicle that Constables Sewell and Wilson were using was unable to transport the four boys there they requested that a suitable police van be sent to convey them. It took some twenty minutes for the van to arrive.

[50] During that time the Constables did not handcuff the four detainees because they did not have enough handcuffs to do that and in any event none of the boys was causing them any problems. While waiting for the police van to arrive the atmosphere between the constables and the boys was relaxed and friendly. The officers spoke to the boys and while they could smell alcohol on the breath of at least George, none of the three seemed to be under the influence of drink or drugs. None of the boys made any attempt to escape. Before the van arrived George said privately to Kenneth: "I'm sixteen, I'm off to Polmont".

From the arrival of the van to the moment of placing in it George and the other three boys for transportation to the police station

[51] The van arrived at Barlanark Road at approximately 15:40 hours. It had been deployed from Baillieston Police Office. Its driver was Police Constable Stuart Morrison. Also present within the vehicle were Police Sergeant James Campbell and Police Constable Craig Beattie. All three were officers of Strathclyde Police and were members of a flexible policing unit (“the unit”) based at that police office. It was part of the duties of the unit teams to provide additional support to police colleagues in the community. The officer in charge was Sergeant Campbell. All three officers left the van in Barlanark Road and made their way across the school grounds to where the officers and the boys were.

[52] When they reached them, Constables Sewell and Wilson handed over the four boys to the three officers for transportation to the police station. After the handover, all four detainees were escorted to the van, George by Constable Morrison, David by Sergeant Campbell and Kenneth and Anthony by Constable Beattie.

The van

[53] The van was a Ford Transit police personnel carrier with the registration number SA02 GBV. It was clearly marked as a police vehicle. It was one of the two such carriers which the unit had at its disposal. One of them was used as a public disorder vehicle, otherwise known as a riot van, and the other was used as a general purpose vehicle. These vehicles were available for use by all three teams within the unit as and when required.

[54] The make and construction of the van, the configuration and colour of its seating and the colour of its floor are all well seen in the photographs that form all of Crown production number 1 and letters A to K of Crown production number 2. The van had several rows of seat, all facing to the front of the van. In the first row sat the driver with seating for two front seat passengers to his left. The access to those seats was by the two front doors of the van. Access to all other seats was by way of either the side door on the nearside of the van or the two rear doors. The second row of seats consisted of three seats located towards the offside of the van with the row abutting the offside of the van. Behind them the third row comprised two seats similarly located also abutting the offside of the van. There was a single seat located at the nearside of the van, slightly behind the second row and immediately to the rear of the space filled by the side door. The fourth row comprised two double seats similar to and behind the third row on either side of the van. The spacing between the rows of seats meant that a person in one row was only a few feet away from the person in the adjacent row. The floor of the van was black in colour. So were the frames of the seats. All the seats were bolted to the floor of the van. The colour of the upholstery of the seats throughout was mid grey. In the rear of the van there were a number of police riot shields. The seats do not have pockets in their backs.

[55] Access to the second, third and fourth row of seats by way of the side door involved stepping up into the seating area. To aid such access there was a step built into the van behind the side door. The floor of the van was some two feet or thereby above ground level. When the side door was open it was possible to see the second and third rows of seats almost directly in the line of sight. It was also possible to see clearly the area beneath each of those rows of seats.

The disposition of the four boys and the police officers in the van

[56] The officers placed George in the third row on the seat that was next to the offside of the van and David to his left on the other seat in that third row. They placed Kenneth in the single seat aft of the side door and Anthony in the fourth row in the seat directly behind the seat in which Kenneth was sitting.

[57] Sergeant Campbell and Constable Beattie sat in the second row of seats and directly in front of the row of seats in which George and David were sitting. Constable Beattie was sitting directly behind the driver's seat and directly in front of George and Sergeant Campbell directly in front of David. Constable Morrison was the allocated driver.

The journey from Barlanark Road to the police station

[58] Constable Morrison drove the vehicle from Barlanark Road to the police station. The route that he chose involved driving out of Barlanark Road, eastwards along Hallhill Road, then westwards along the A8 Edinburgh Road to its junction with Carntyne Hall. He turned south there and drove on that road for a short distance and then westwards along Carntyne Road. He then drove westwards on Duke Street until it met the B763 known at that part of it as Cumbernauld Road leading into Millerston Street. He turned south onto Millerston Street, crossed the Gallowgate and continued south onto the part of the B763 known as Fielden until he reached Barrowfield Street. He turned right into that street and then left into Kirkpatrick Street which gave him access to the back yard of the police station.

[59] Constables Sewell and Wilson remained behind at Barlanark Road and then made their way to the police station in their own police vehicle with the two tool boxes and the power tools. They had no involvement with the detainees during their journey from Barlanark Road to the police station.

[60] During the early part of the journey the four boys were chatting amongst themselves and indulging in bantering talk with the police officers. As the journey continued the general chatter ended for a short period of time then turned into whispering amongst the boys and what sounded like giggling.

[61] Constable Beattie then observed George and David moving their heads forward and down towards the back of the seats in the second row that he and Sergeant Campbell were sitting on. Sergeant Campbell also became aware of this and told George and David to sit back in their seats. George and David complied with that instruction.

[62] At the point in the journey when the van was sitting stationary at traffic lights at the junction of the B763 and Duke Street it was approximately two minutes journey time away from the police station. By then it had become very quiet in the back of the van.

[63] At this time George and David both ingested quantities of cocaine laced with benzocaine ("the cocaine"). The cocaine was contained in a clear polythene bag. The size of the bag was larger than a single golf ball and it was in the shape of a ball. The bag had been knotted to retain its contents within it. The cocaine was in powder form. George took the bag in both hands, raised them to his mouth and bit into the bag. He then took into his mouth as much of the contents of the bag as he could and began to eat it. What he could not get into his mouth was peppered over his person

and onto the seat and the adjacent floor. David tasted some of the cocaine from the bag. When he did so his mouth went numb and he knew then that the powder was cocaine.

[64] It was the sounds of further giggling coming from the back of the van combined with a rustling sound as of fabric being brushed or rubbed that drew the attention of both Sergeant Campbell and Constable Beattie to George and David. Constable Beattie lifted himself up to look up and over the seat on which he was sitting while Sergeant Campbell knelt up on the back of his seat to ask what was happening. Both officers saw white powder on George. It was on the lower half of his top, on the legs of his trousers in the area of his thighs and on the centre of the seat between his legs. In addition there was white powder on one of his index fingers round about its nail, knuckle and tip. Sergeant Campbell saw a polythene bag at on the floor of the vehicle at David's feet.

[65] The immediate conclusion of both officers was that George had burst a bag of cocaine within the van. Sergeant Campbell shouted: "he's just burst a tenner bag". This was a reference to a recognised small quantity of diamorphine. One reason for bursting such a bag was to try to dispose of the drugs. Consistent with that George wiped powder from himself and at the same time David moved his feet backwards and forwards on the floor of the van in an attempt to use his shoes to distribute the residue of the cocaine on the floor of the van. Sergeant Campbell ordered George and David to place their hands on their knees and instructed David to move to the edge of his seat away from where George was sitting. Both George and David complied.

[66] Sergeant Campbell asked George if he had taken any of the drug. George replied in the negative. Sergeant Campbell was concerned regarding cross-contamination of the drug and requested that George remain very still.

The contents of the bag of cocaine

[67] The description of a quantity of cocaine as a golf ball was at all material times a slang term commonly used by drug dealers and users for a one ounce quantity of the drug. In 2006, one ounce of cocaine cost between £700 and £800. An ounce of cocaine is excessive for personal use. It is a quantity that is consistent with being available for onward sale or supply. It is a dealer quantity of the drug.

[68] Police officers subsequently recovered three separate quantities of cocaine from the rear of the van. They weighed 2.332g, 2.72g and 8.102g respectively. The purity of the cocaine varied: for the quantity weighing 2.332g it was 40%, for the quantity weighing 2.72g it was 23% and for the quantity weighing 8.102g it was 27%. A purity of 40% was higher than would be expected for cocaine sold on the street in 2006. The expected purity then was between 25% and 35%. The difference in purity levels could be attributed either to the fact that the cocaine had not been thoroughly processed (called marbleisation) or that it had become mixed with contaminants before or while it was lifted from the floor of the van.

From George's arrival at the police station to his presentation before the duty officer at the charge bar.

[69] The van arrived at the back yard of the police station at 16:05:02 hours and entered it by way of the rear security gate. On arrival Sergeant Campbell instructed

George to remain where he was in the van whilst the other three detainees were removed from it. This was to prevent further contamination of the van. All four detainees were then transferred from the van into the police station by its back gate entrance, David by Sergeant Campbell, Kenneth and Anthony by Constable Morrison and finally George by Constable Beattie.

[70] At 16:05:15 George entered the charge bar area of the police station. At 16:05:24 Constable Beattie placed George in detention room number two within the police station. He was the only occupant of that room. The other three detainees were accommodated together in detention room number one. The rooms were next to each other and their door areas were adjacent to and in full view of the charge bar. Their doors were left open throughout the time that George was in the room. Shortly after this Constables Sewell and Wilson arrived at the police station.

[71] Whilst George was within detention room number two, Constable Beattie, in the presence of Constable Morrison, asked him what the powder was in the plastic bag. George stated that he thought it was coke, by which he meant cocaine. Constable Morrison then asked George if he had taken any of the powder. George never said anything but he did make a gesture. He stretched out his left hand with its palm facing upwards then pressed the index finger of his right hand into his left palm of the left hand and then placed his right index finger into his mouth and onto his tongue. Constable Beattie construed this gesture as being George's way of indicating that he had consumed a fingertip amount of the powder by tasting it.

[72] Whilst within the charge bar area, Sergeant Campbell had a conversation with Constable Sewell. Sergeant Campbell was very annoyed with Constable Sewell because he assumed that the drug in question had come to be in the van because the

detainees had not been searched or had not been searched properly. He instructed Constable Sewell to submit a case against George for the possession and disposal of a controlled substance and a case against David for the attempted disposal of it.

[73] At 16:20:23 hours Constables Sewell and Wilson removed George from detention room number two and presented him at the immediately adjacent charge bar of the police station for processing by the duty officer. He was Inspector Angus McIntosh, an officer of Strathclyde Police.

The duty officer's state of knowledge of George on his presentation at the charge bar

[74] Constable Sewell did not tell Inspector McIntosh that George had tried to swallow drugs in the back of the van because he assumed that Sergeant Campbell, who had arrived at the police station before him, had already done that. When George was presented to him at the charge bar Inspector McIntosh was unaware that any incident had occurred in the van or that George had taken drugs.

What happened at the charge bar

[75] As part of the processing procedure at the charge bar, Inspector McIntosh asked George if he had taken alcohol by saying to him: "You bin drinking?" George replied: "Naw". That was untrue. Inspector McIntosh then asked George if he had taken drugs by saying to him: "Have you taken drugs?" George replied: "Ah took, aye, ah took a bit of wrap that was in the van". Inspector McIntosh's response was to say, "What?" George replied: "A bit of coke, well ah think it's coke [indecipherable] up". Inspector McIntosh then asked him: "Right, when did you have it?" to which

George replied: "About five minutes ago...Ah could spit on ma wee sister's grave that it is under the seat in [indecipherable]". Inspector McIntosh worked out that George would have taken the drug round about 16.00 hours, some twenty minutes earlier. Inspector McIntosh did not asked George how much cocaine he had taken. During this conversation George presented as perfectly normal and perfectly sober. He answered questions put to him clearly and lucidly and gave no cause for concern whatsoever.

[76] At 16:24:30 George was searched at the charge bar area as part of the processing procedure. Constable Sewell carried out this search in the presence of Constable Wilson. The search recovered no items. In the course of the search it was noted that George was wearing three pairs of socks. When he was asked why he said it was because his shoes were too big for him. During the time of the search George exhibited no signs that might cause concern about his state of health. In particular, during the course of the search George had to stand on one leg and he managed this without staggering.

[77] Once Inspector McIntosh had finished processing George he, as the duty officer, took the decision to place him in a cell rather than return him to a detention room and instructed that that be done. He did so in the full knowledge that George had taken cocaine while in the van. At 16:28:39 hours Constables Beattie and Wilson took George to cell 27. Constable Wilson suggested to Constable Beattie that they strip search George but Constable Beattie demurred. The other three detainees, once similarly processed, were each placed in separate cells, Kenneth in one that was two doors along from cell 27 on the same side of the cell suite while David and Antony were placed in cells across the corridor of the suite.

Events within cell 27

[78] At approximately 16:30 hours Alexander Semple, carried out a cell visit. He was a police custody security officer employed by Strathclyde Police to look after the welfare of prisoners in the police station. He conversed with George in cell 27 for approximately two to three minutes. At that time, George was joking with his friends and asked for a drink of water which Mr Semple gave him. George appeared then to be in a normal condition, was coherent and was well aware of his surroundings.

[79] Approximately fifteen to twenty minutes after that first visit to George by Mr Semple, Mr Sinnerton made a second visit to George's cell. He was another police custody security officer employed by Strathclyde Police. During this second visit, George was conscious, speaking and standing. He gave Mr Sinnerton no cause for concern beyond a sign of what Mr Sinnerton understood was normal drug abuse that being that George was grinding his teeth. On seeing this Mr Sinnerton asked George what he had taken and he replied: "a bit of coke". In the course of one of his two cell inspection George asked to be seen by the police casualty surgeon. After making his cell visits, Mr Sinnerton told Inspector McIntosh that George was making "jaw movements", had said he had taken cocaine and had asked to see the police casualty surgeon. In response, Inspector McIntosh told Mr Sinnerton that the police casualty surgeon was on his way. Mr Sinnerton arranged for George to be the first detainee to be seen by the police casualty surgeon because he was a sixteen year old boy who had taken drugs. At that point in time Mr Sinnerton had not seen anything to give him severe concern as to any immediate danger for George's health.

[80] The police casualty surgeon on duty that day was Dr Andrew McColl. He was a medical general practitioner and had been a police casualty surgeon for some twelve years. He had not been asked to attend to see other detainees. He had not been called specifically to deal with George. He arrived at the police station at 16:45:10 hours. On arrival there was no emergency situation for him to attend to. He was ready to start seeing prisoners after 17:00 hours.

[81] Once Dr McColl had arrived, Mr Sinnerton went to George's cell with the intention of taking him to the police casualty surgeon's room for examination. On entering the cell, he found George lying on the bed within the cell. He ordered George to stand up. George responded by lifting his head off the bed and sitting up. He was shaking and appeared to be quite ill. With the assistance of an unnamed police constable Mr Sinnerton assisted George to his feet. George had difficulty standing unaided and was wobbly and jerky. At 17:04:50 hours, Mr Sinnerton and the police constable removed George from his cell. They supported him under his arms because he was struggling to walk. They escorted him to the police casualty surgeon's room. It was situated close to the charge bar, on the other side of the area in front of it. They arrived at the room at 17:05:20 hours. At this time Dr McColl was at the charge bar area collecting his notes. George was the first prisoner that he was asked to see.

From arrival in the room to transfer to an ambulance

[82] On arrival in the room George was placed in a chair by the door. He was unable to speak. Within a few seconds of entering the room his body began to make jerking movements. He flailed his limbs. He also started hitting the rear of his head

off the wall behind his chair and to grind his teeth. Mr Sinnerton put one of his hands behind George's head to try to stop him hitting his head against the wall.

[83] Dr McColl then entered the room. By then he had been told that George was intoxicated but he was not told that he had consumed cocaine. George's behaviour alarmed Dr McColl. He asked Mr Sinnerton and the other officer present to remove George from the chair and to place him on the floor in the recovery position. They did that. Dr McColl examined George. He checked his respiratory and heart rates. His respiratory rate was twelve per minute which Dr McColl considered to be normal. His heart rate was ninety per minute which he considered to be fast. At approximately 17:07 hours George started fitting. Dr McColl immediately asked Mr Sinnerton to summon an ambulance. Mr Sinnerton left the room and went to the charge bar area from where he telephoned the emergency services via the '999' system to request the attendance of an ambulance. He thereafter returned to the room. Dr McColl then telephoned Dr Richard Stevenson, another police casualty surgeon, because he knew that Dr Stevenson had experience of accident and emergency work and was more skilled in the demands of resuscitation than he was and that the situation he found himself in was well beyond his capabilities. Dr Stevenson made arrangements to travel to the police station as quickly as he could.

[84] At 17:07:08 the Scottish Ambulance Service control room received that 999 call. The reason for the call was recorded as being "16YOM with Q Cocaine overdose". This translates as "sixteen year old male with possible cocaine overdose". At 17:07:25 the Control Room established that the patient was a 16 year old male whose consciousness and breathing were unknown and who was suffering from an overdose or poisoning by ingestion. At 17:12:47 the response to the call was

allocated to an ambulance whose crew was Ewan Fitzpatrick and Ronald McGuinness. Both were trained ambulance technicians but neither was trained as a paramedic. Both were employees of the Scottish Ambulance Service. Both technicians understood that the call related to a young male who had collapsed.

[85] While waiting for the arrival of the ambulance and Dr Stevenson, George's fitting became worse, being more violent and longer in duration. Dr McColl checked George's heart and lungs three or four times particularly to see if his heart had stopped. It had not. Dr McColl observed that George's airway was open throughout and was free of foreign bodies. There were some signs of saliva but it was not thick or tenacious. The fits seem to be tonic-clonic in type. All four of George's limbs thrashed quite violently and his body shuddered. Dr McColl observed that George's earlobes and arm appeared cyanosed which suggested to him that George's oxygen levels were being compromised possibly because his breathing was becoming less efficient.

[86] Throughout the time that he was treating him, Dr McColl was not advised that George had consumed cocaine. If Dr McColl had known that he would not have changed what he did which was to summon an ambulance. This was because he could do nothing to ameliorate George's symptoms. Dr McColl did not administer diazepam to George. Diazepam is a classic treatment for tonic-clonic fits and for status epilepticus. He did not administer it because none was available. Even if it had been, it had to be administered posteriorly or by injection and Dr McColl considered it foolhardy to use it in the absence of knowing the full clinical picture. In any event, the severity of George's fits meant that administering the wrong quantity of diazepam brought with it a risk to his health.

[87] At 17:22:25 hours, Mr Fitzpatrick and Mr McGuinness attended at the police station in response to the '999' call. They parked their ambulance in the rear yard of the police station, went from there to the police casualty surgeon's room and attended to George who was still lying on its floor. They checked his vital signs and found him to be conscious, breathing and to have a pulse. His eyes were open and he was breathing shallowly and unaided at a rate of between ten and twelve breaths per minute. He had a carotid pulse which was full but slow. George became recognisably more ill after the technicians arrived. They speedily concluded that they had to take him to hospital as quickly as possible.

[88] At 17:27:05 Dr Stevenson arrived at the police station and went immediately to the room where George was lying on the floor beside the treatment couch in the recovery position and one of the ambulance technicians was strapping on an oxygen mask to his face the purpose of which was to enable the administration of mouth-to-mouth resuscitation which the technicians then commenced. Dr Stevenson did not have the opportunity to carry out a physical examination of George because the technicians wanted to transfer him into the ambulance. To do that one of the technicians retrieved an "Evac" Ibex chair from the ambulance. One of the technicians told Dr Stevenson that he could examine George in the back of the ambulance. The ambulance technicians lifted George into the chair for transfer into the ambulance. They placed a blanket over him to keep him warm. The distance from room to ambulance was short, and took only a matter of seconds to cover. Dr Stevenson was informed that George had been fitting. George was not fitting when he arrived, but his lips were blue and his skin was pale. He was also informed by Inspector McIntosh that George may have taken cocaine.

[89] At 17:29:25 hours, George was transported out of the room. The ambulance was parked in the rear yard of the police station. During the course of being taken from the room to the ambulance and at the point where the chair passed the charge bar George suffered a cardiac arrest. George's head and whole body slumped to the left. One of the technicians pulled him back into the chair.

From George's arrival at the ambulance to his arrival at the hospital

[90] Once within the ambulance, George was transferred from the chair onto its trolley bed. Dr Stevenson examined George and found that he no longer had a carotid pulse, his heart was not beating and he was not breathing. Dr Stevenson concluded that George had suffered a cardiac arrest and immediately began to administer cardiopulmonary resuscitation (CPR). He asked the technicians if they had emergency drugs in the ambulance. They told him they did not because they were a crew of two technicians. In particular they did not carry adrenalin because neither technician was trained as a paramedic. He then asked if they carried an intubation kit. They did. Dr Stevenson used it to intubate George. He used a laryngoscope and inserted a cuffed endotracheal tube. Dr Stevenson asked one of them to take over the work of CPR whilst he intubated and cannulated George. He also attached monitoring leads to George's chest and asked Dr McColl to oxygenate him by bagging his face. Dr McColl did that using a 500ml Ambu bag connected to oxygen to ventilate his chest and force oxygen into his lungs. Dr Stevenson instructed Mr Fitzpatrick to drive the ambulance to the hospital and Mr McGuiness to assist him with CPR, which he did. The CPR that he received in the ambulance was the same treatment that he would have received had he arrested in the hospital.

The ambulance left the police station at 17:35 hours.

[91] The ambulance carried a de-fibrillator but did not carry a supply of adrenalin. Accordingly Dr Stevenson was unable to use that in conjunction with CPR. At some point while in the ambulance the other technician attached a heart monitor to George. Its readings showed a non-shockable rhythm. This indicated that George was asystole. During the journey to the hospital, Dr Stevenson attempted to insert a cannula into George's right arm. He was unable to do so because the veins had collapsed. Instead he managed to insert a cannula into his right femoral vein. No sooner had he done that than the ambulance arrived at the hospital.

At the hospital

[92] At 17:41:04 the ambulance arrived at the accident and emergency department of the hospital where they were met by staff of that department and George was taken to the resuscitation unit. Dr Stevenson gave a brief summary of events to Dr Scott Taylor, a consultant in accident and emergency medicine. At the time of his admission to hospital, the electrical activity in George's heart was found to be slow at ten beats per minute. He was given two milligrammes of adrenalin and three milligrammes of atropine. He was also given a total of six milligrammes of adrenalin during his resuscitation. Blood analysis showed his potassium level to be 7.3 which Dr Taylor considered to be within the range of dangerously high or life threatening and was also indicative of severe metabolic acidosis. George was given sodium bicarbonate, and insulin and calcium were administered during on-going life support. He was also given 2.5 grammes of magnesium and other intravenous fluids. His heart rhythm changed to ventricular fibrillation and once defibrillation

shock was administered, CPR was continued and he had a return of circulation at 18:05 hours. Standard post management was carried out on him. Repeat blood analysis showed his potassium level had reduced to 4.30 which reading was within normal range although the severe acidosis persisted. His electro cardiograph reading showed an abnormal pattern of an uncertain nature. A urine drug screen performed on George showed the presence of opiates, cocaine and benzodiazepines.

[93] At approximately 20:00 hours George was transferred to the Intensive Care Unit of the hospital where he was treated into the next day with ventilation, cardiovascular resuscitation and therapeutic hypothermia. On 13 September 2006, after discussion with George's family, his treatment was stopped and his life support was disconnected. George died on 15 September 2006 at 01:53 hours within the intensive care unit of the hospital.

The findings of the post mortem examination of George

[94] On 18 September 2006 Dr Marjorie Black, Consultant Forensic Pathologist at the University of Glasgow, and Dr Robert Ainsworth, Specialist Registrar in Forensic Pathologist at the University of Glasgow, carried out a post mortem examination on George's body at Glasgow City Mortuary. Upon conclusion of that post mortem examination, the cause of the death of George was determined to be 1a Hypoxic Brain Damage due to 1b Cardiac Arrest due to 1c Cocaine Intoxication.

The findings of the analysis of hair and serum samples

[95] That same day Dr Hazel Torrance and Dr Fiona Mary Wylie forensic toxicologists in the Department of Forensic Medicine and Science of the University of

Glasgow received from Dr Black one sample of George's hair and two samples of serum taken from him while in hospital. On 5 October they received a sample of urine taken from George while in hospital. They analysed the hair and one of the samples of serum and gave their findings in their joint report dated 16 October 2006.

[96] They analysed the hair sample for cocaine and amphetamines. They observed that while the growth rate of hair varied between individuals an average rate of growth was generally accepted to be one centimetre per month. The hair sample was three and a half centimetres in length and reflected hair grown during the period of approximately three and a half months prior to death. The analysis of the hair grown in the period between approximately three and a half months and half a month before George's death showed the presence of cocaine, benzoylecgonine, ecstasy and methylenedioxyamphetamine and for his last half month or so of life of cocaine and benzoylecgonine. Their conclusion was that George had used cocaine and ecstasy during the period of growth of the hair.

[97] The serum sample was analysed for alcohol, amphetamines, basic drugs, benzodiazepines, cocaine and opiates. The results indicated the presence of alcohol, lignocaine, desmethyldiazepam, diazepam, benzoylecgonine, methylecgonine and benzocaine.

[98] Both lignocaine and benzocaine can be used to adulterate and dilute cocaine. The presence of diazepam and its metabolite desmethyldiazepam was all within therapeutic range. Benzoylecgonine and methylecgonine are both metabolites of cocaine. Cocaine breaks down rapidly in the blood, usually within a few hours.

Part Five

The relevant contested facts

[99] The extensive nature and scope of the uncontested facts did not avoid the need to go further into the facts because there were many, usually on points of detail, which were of critical importance and were contested. On such of them as I needed to I had to make a decision in order to address properly the five criteria listed in section 6(1) of the Act and in their light the issues raised by the parties.

[100] In dealing with the contested facts I thought it right to do so chronologically as events unfolded rather than in the way that the evidence at the inquiry was presented. That concentrated upon the actions of police officers both at the rear of the school and at the police station. The greatest emphasis and by far the greatest time was spent on exploring, sometimes recurrently and in minute detail and occasionally exhaustively, what was done and what may be said was not done at the police station. As such it concentrated on what was happening in the midst of events and then looked backwards and forwards as and when it suited the interests of each representative but particularly upon the reaction to the act which lies at the heart of the work of the Inquiry, namely, George's consumption of a quantity of cocaine. It did that by seeking to establish what the various police officers actually did and then contrast that with what it was suggested each ought to have done that he did not do or ought to have done differently or earlier. I could understand readily why the evidence was presented and analysed in this way. George was under the care and control of the police before, during and after he ingested the cocaine and that raises critical questions about the role and the responsibilities of the police service and its

officers to a person in the position that George was in throughout the two and a half hours or so that he was in that care and custody. Many of those questions are set out as propositions in the revised note of issues and were taken up in the submissions both written and oral. As the evidence came out it was easy to see that almost all of the detailed and thorough questioning of police witnesses in particular sought to give a factual basis of substance to those propositions. What that meant however was that the focus on George, the person at the centre of the inquiry, and the consequences of his actions for himself and for others with whom he perforce came into contact became rather blurred and indistinct by the significant amount of attention paid to the multifarious actions of the police. I am in no doubt that this change of focus did not intend on the part of any participant to diminish the central importance of George and his actions to the Inquiry.

[101] It seemed to me that I should reinstate George to the central position that he must command and look first and foremost at what he did and its consequences for himself and for others. That necessitated an analysis which was chronological in nature, setting out events as they happened and taking proper account of the states of mind of the various persons involved when that is a relevant consideration. In pursuing this analysis I had to make a decision on certain of the facts that were contested and in turn that required me to make an assessment of the quality of the evidence presented in respect of those facts. Once done, those additional facts, taken together with the uncontested facts provide the whole proven facts on which I have to make my determination. In the course of dealing with the contested facts I had to comment upon some of the issues raised by the parties.

The effect of the passage of time on the quality of the evidence

[102] In making an assessment of the reliability and, if necessary, the credibility of the evidence of a witness a constant element of that assessment has been the effects of the passage of time on the memory of the witness. The first witness, Mrs Riddell, gave her evidence slightly more than sixty one months after George's death and the last, Mr Semple, some seventy nine months. All of the witnesses with the exception of Detective Sergeant Miller and Dr Thanacoody were asked to recall events to which they had been party that had occurred between five and six and a half years or so before and it was entirely to be expected that in giving oral evidence memory had faded, or recollection become confused. For some witnesses these occurrences were more marked than with others and for some it seemed to stem from a genuine difficulty with memory while with others the passage of time served as a useful and ever present excuse for avoiding the consequences of a particularly probing line of questioning which made the witness uncomfortable. I took into account the various ways in which the witnesses responded to the demands of recall of events made on them when assessing their credibility and reliability.

The use of hindsight by certain of the witnesses

[103] One further feature of the evidence of many of the witnesses which I felt it right to take into account and make appropriate allowance for in assessing the quality of evidence was the use of hindsight. All of the witnesses knew that George died and that they were giving their evidence in the shadow of that tragic outcome. That outcome and the extended time for reflection on it affected the way in which some of the witnesses gave evidence, principally and most obviously Kenneth, David

and Anthony but also more subtly Inspector McIntosh, Sergeant Campbell and Constable Sewell and to a lesser extent still most of the other police officers. I was conscious that it imparted to some passages of evidence a content which sought to explain, support or justify after the event a particular action or course of actions or reinforce a particular decision taken at the time.

The use made of statements given to the police and transcripts of police interviews

[104] In order to assist recall and test the quality of the evidence of the majority of the witnesses to fact both Crown and representatives made much use of statements given to the police and transcripts of interviews conducted by the police. For Kenneth, David, Anthony, Dr Stevenson, Police Sergeant Campbell, Police Constables Sewell, Beattie and Mr Sinnerton their statements, or in the case of the three police officers their first statements, were as contemporaneous as they could be, having been given on the same day as and within a matter of hours of George's admission to hospital. Police Constable Wilson gave his on 24 October some six weeks afterwards and Ms Dempsey on 13 November, slightly over two months afterwards. Police Sergeant Campbell gave two further statements, on 19 September and 18 October, Police Constable Sewell one on 22 November and Police Constable Beattie one on 26 October. In addition Dr McColl was referred to his contemporaneous police surgeon's report on his dealings with George. The interviews used were: for Kenneth Crown Production number 41; for David Crown Production number 42; for Anthony Crown Production number 43; and for Ms Dempsey Crown Production number 44.

[105] The use made of these statements and transcripts in examining and in particular cross-examining witnesses merits attention because it raised the concern of what use could competently be made of them both in respect of what evidence of the witness the Inquiry could have regard to and what effect if any that use had on questions of the credibility and reliability of the individual witness.

[106] For Dr Stevenson, Police Sergeant Campbell and Police Constables Sewell, Beattie and Wilson the use of statements was confined to testing the credibility and reliability of their recollection of events. It was otherwise for Kenneth, David, Anthony and Ms Dempsey. For them questioning, almost entirely in the course of cross-examination, went beyond testing credibility and reliability to seeking to have the witness accept that even although he or she could not remember either giving a statement or could so remember but could not remember the content of the statement, that what was contained within it so far as put to the witness was the truth at the time when the statement was given and the same applied to the transcripts. The greatest use of this technique was in respect of the three boys. For much of the considerable time spent on this exercise it seemed as if the Inquiry had been transformed into a criminal trial with recourse being made to some of the features of the ratio of the decision in the case of *Jamieson (No.2) v HM Advocate* 1994 J.C. 251; 1995 S.L.T. 666; 1994 S.C.C.R. 610 and to the provisions of section 260 and section 263(4) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act").

[107] I raised this style of questioning with all parties and invited submissions on its competency within a fatal accident inquiry. The Crown submission was that the statements should be treated in the same way as if the Inquiry were a criminal trial and the Court should assess the evidence as if it were a jury question (the oral

submissions at paragraph [3]). The solicitor for George's father stated as his general position in his written submissions that the normal rules of civil evidence applied to the Inquiry (the written submissions at page 37), but then in his oral submissions said that the statements were of value as an *aide memoire* and that in the situation where a witness departed from what he or she had said in a prior statement it was difficult to know what use could be made of this discrepancy (the oral submissions at paragraph [4]). The solicitor for George's grandmother submitted that she had nothing to add to the Crown position, from which I took that she adopted it (the oral submissions at paragraph [8]). The solicitor for the Chief Constable made no specific submission on the issue but at the beginning of her written submissions said that if she made no specific reference in her submissions to a particular feature then she adopted the submission of the Crown in that regard (the written submissions at page 65). The solicitor for Police Sergeant Campbell and Police Constables Beattie, Morrison and Wilson said in his written submissions and under reference to the Civil Evidence (Scotland) Act 1988 that the use of prior statements and police interviews was entirely appropriate as an aid to assessing the credibility and reliability of witnesses (the written submissions at pages 82 to 84) but then in his oral submissions extended that by saying that the content of the statements could be used for the purpose of saying that it was true but that its greatest use was as a test of credibility and reliability (the oral submissions at paragraph [13]). The solicitor for Police Constable Sewell adopted the submissions of the solicitor for the four police officers (the oral submissions at paragraph [17]). The solicitor for Dr McColl made no submission in law on the use of prior statements, but restricted himself to an

observation of fact affecting the reliability of one single aspect of the evidence of Dr Stevenson.

[108] The 1976 Act created a jurisdiction exercisable by the sheriff that was narrowly and precisely defined. As its long title states, it made provision for holding public inquiries in respect of fatal accidents, the deaths of persons in legal custody, sudden, suspicious and unexplained deaths and deaths occurring in circumstances giving rise to serious public concern. A measure of the intended tightness of this jurisdiction may be inferred from the absence in the long title of the words “and for connected purposes”. As I have already observed, it is a jurisdiction *sui generis* for which the 1976 Act and the relative 1977 Rules which regulate related procedural matters taken together provide what Macphail *Sheriff Court Practice*, third edition (2006), describes at paragraph 27.02 as “the repositories of almost all the law in this field”. It is to them that one must turn for direction and guidance.

[109] Section 4(7) of the 1976 Act provides:

“Subject to the provisions of this Act and any rules made under section 7 of this Act, the rules of evidence, the procedure and the powers of the sheriff to deal with contempt of court and to enforce the attendance of witnesses at the inquiry shall be as nearly as possible those applicable in an ordinary civil cause brought before the sheriff sitting alone.”

Accordingly, the rules of evidence to apply to a fatal accident inquiry are, as nearly as possible, those applicable in an ordinary civil cause and therefore it is the rules of civil evidence that fall to be applied and not the rules of criminal evidence.

[110] The relevant civil rule of evidence is that contained in section 3 of the Civil Evidence (Scotland) Act 1988 (“the 1988 Act”) which provides:

“In any civil proceedings a statement made otherwise than in the course of the proof by a person who at the proof is examined as to the statement shall be

admissible as evidence in so far as it tends to reflect favourably or unfavourably on that person's credibility."

For these purposes the definition of civil proceedings in section 9 of the 1988 Act does not exclude fatal accident inquiries and is broad enough to include them. Moreover, the definition of statement is broadly expressed and for present purposes includes within its ambit the statements used in the course of evidence and also the transcripts of the police interviews. The reference to credibility in section 3 must be held to include implicitly the concept of reliability.

[111] Applying that rule of evidence I conclude that the use that can be made of the statements given to the police and the transcripts of the police interviews is restricted to what is permitted by section 3 of the 1988 Act, namely, that they can be used to test the issues of the credibility and reliability of the evidence given to the Inquiry orally and under oath or affirmation but their use cannot go beyond that. That is the way that I have construed the use of the statements and transcripts when assessing the evidence of the various witnesses to whom such documents were put. To import into an inquiry concepts which are familiarly found in the criminal courts under reference to the ratio of a decision in a criminal case or the evidential provisions of the 1995 Act is to go beyond the use that can properly be made of them. For these reasons I disagree with the submission of the Crown on this matter and agree with the submission of the solicitor for Police Sergeant Campbell and Police Constables Beattie, Morrison and Wilson in his written submission but disagree with his development of it in his oral submission.

The relevant contested facts

[112] Applying that stated approach to the assessment of evidence I now turn to supplementing the narrative of uncontested facts given earlier with such of the contested facts as I consider I require to deal with and where it is required make findings in fact that are relevant for my determination. In carrying out this considerable exercise I will, for the sake of clarity and ease of reference, retain the individual headings of the narrative of uncontested facts for the way in which events unfolded and thereby adopt the same broadly chronological order of events.

George

[113] There were no relevant contested facts that I need deal with that bear upon my determination.

George's use of controlled substances

[114] The contested facts under this head related to: where and from whom he acquired the drugs that he was accustomed to taking; whether as at 8 September 2006 he owed money in respect of drugs purchased by him; and if he did how much did he owe and to whom. Evidence that bore on these matters came from five witnesses: Mrs Riddell, Kenneth, David, Anthony and Ms Dempsey. As given it was far from clear or unambiguous and therefore I must indicate my assessment of the reliability of the evidence of each.

[115] Mrs Riddell I found to be entirely reliable. She answered all questions with quiet dignity and such cross examination as there was continued the theme of examination in chief which was to obtain information about George and his way of life rather than to persuade her to revise what she had already said. Occasionally she

suffered from a lapse of memory but that for her was readily explicable by the passage of years since George's death and did not affect adversely her reliability on what she could recall and spoke to with conviction, clarity and obvious affection for George.

[116] Kenneth was 15 years of age in September 2006. He had been a friend of George since about the age of 8. He assisted the police on three occasions as they investigated the circumstances of George's death. The first was on 8 September 2006 when the police took a statement from him at 2035 hours at London Road Police Station. It was taken by Detective Constable Alan Moir in the presence of a Detective Sergeant. This was the evening of the incident and within a few hours of its occurrence and while he was still detained anent the theft charge. The second was in the course of an interview conducted on 24 September 2006 within the family protection suite at Baird Street Police Office, Glasgow in the presence of his mother. A transcript of it is Crown production number 41. The third was on 29 September 2006 when he gave information while sitting within the van. This information was captured on a video tape recording which was Crown label number 2.

[117] David was 15 years of age in September 2006. He had been a friend of George since the age of about 12 or 13 while he, David, was living in a children's home. He also assisted the police in their investigations. The first occasion was on 8 September 2006 at 2045 hours at London Road Police Office when the police took a statement from him. The statement is dated mistakenly as having been taken on 5 September 2006 but its content clearly shows it was taken during the evening of the eighth, and nothing turns on the mistake. It was taken by D C Douglas Wilson in the presence of D S W Gary Sinclair and David's mother. The second was in the course

of an interview conducted on 3 October 2006 in the presence of his key worker, Robert Paterson. The interview was recorded on both audio and video tape. A transcript of the content of the interview is Crown production number 42. In the course of his evidence he was shown the videos that were Crown Labels numbers 2 and 3, the latter being a video tape recording showing the charge bar area of the police station from 15:59 hours to 18:00 hours on 8 September 2006, and the golf ball production defence label number 1.

[118] Anthony was two days shy of his 13th birthday on the day in question. He had known George for a couple of years before his death and had become friendly with him. The police took a statement from him also on 8 September 2006, at 2245 hours at London Road Police Station. It was taken by D S Kenneth McCartney in the presence of Detective Constable Gordon Sneddon and Anthony's mother. In addition he was interviewed on 29 September 2006 within Baird Street Police Office in the presence of his mother. A true and accurate transcript of that interview is Crown production number 43. On the same day he sat within the van and gave certain information that was captured on video tape. That tape is Crown label number 5.

[119] All three boys who were with George gave their statements within eight hours of being apprehended and taken to London Road Police Office. Kenneth stated in evidence that he could not remember giving it but that what he had said to the police was the truth. When specific sentences from the statement were put to him in broad terms he agreed with those that were uncontentious or would not result in casting either him or his friends in a bad or even criminous light but resorted to a failure in memory when the subject matter became more contentious,

particularly about George and his habits, conduct and actions. David by contrast said that while he could not remember what he had said to the police, because as he said he had been full of drugs at the time, he had lied to them, possibly, as he accepted, because he did not want to be a grass. He also in broad terms agreed with, and answered appropriately, questioning that did not venture into those same contentious areas about George. However when it was put to him that he was lying about saying that George had found the bag of cocaine on the floor of the van he bridled. Anthony took a stance that was broadly similar to that of Kenneth, namely, that he could not remember what he had said to the police but that what he told them was the truth. I say broadly because whenever the facts ventured into areas that might incriminate either George or any of the others in the van he resorted to saying that he had either been misquoted or that he did not think he would have said what was attributed to him. He finished the line of evidence that dealt with the statement by confirming that he had nothing to lie about to the police.

[120] As for the subsequent interviews of the three boys, Kenneth volunteered almost immediately his interview was first raised in cross-examination that he could not remember talking to the police but his recollection, consistent across cross-examination by two representatives, was that he told the police the truth and that his memory then was better than when he came to give his evidence to the inquiry. Whenever the subject matter of the questions about the terms of the interview got onto contentious territory he either lost his memory or simply denied what was put to him. David also stated that he could not remember being interviewed but accepted consistently throughout both examination in chief and cross examination that he had told the police the truth and had no reason to lie to them. When parts of

the interview were put to him he relied in large measure upon his inability to remember when the question required an answer that might implicate him or others, especially George, in any activity that might import criminal liability. At one point in cross-examination he attributed his loss of memory to having “smoked a lot of hash” in the intervening years. When pressed he became heated in response to the point where on one occasion I intervened to warn him as to his conduct. He then relapsed for the most part into a failure to remember. Anthony followed the same pattern as the other two. He could not remember what was attributed to him in the interview but accepted consistently throughout examination in chief and cross-examination that he would have told the truth to the police and that his memory then was fresh.

[121] All three boys were to my mind thoroughly unreliable witnesses in what they said on all matters that were other than uncontentious. At the material time Kenneth, David and Anthony were fifteen, fifteen and twelve years of age respectively. When they came to give their evidence they were twenty, twenty and eighteen their increased ages and the maturity that the passage of time might be expected to have brought with that had not extended to developing their grasp of what is meant by the truth. I cannot attribute the many defects in their responses and their recurrent loss of memory merely to the passage of time or, in the case of David, additionally to what various substances he said he may have ingested since then. I am satisfied that the rigorous questioning of each, in both examination in chief and cross-examination, revealed a common theme of their evidence. That was their desire to avoid landing themselves or their friends, including George, in any trouble. Behind this is the idea that no one grasses on another. The problem that

most obviously faced each of them was the terms of the contemporaneous statement and the almost contemporaneous interview that each had given. Whenever those got into areas of fact that in the mind of the witness ran the risk of landing them in trouble or of grassing, as one of them openly acknowledged, then memory loss took over or a querulous spirit emerged that said the police had misquoted or misconstrued what was said. It also showed itself in a tendency to fence with questions, or on occasions, most particularly with Anthony, to get irritated and argumentative. All these were signs of great unease which sat very uneasily with the general position adopted by each when he said that could not remember what he said to the police. It is difficult to question what was said unless you recall what was said. I could not resist the conclusion that at all stages there was in what they said an element of saying what they thought was best for them at the time, and the problem for each arose when what was attributed to them in a statement or an interview was put to them revealed alterations in facts. That was when each either resorted to a loss of memory or tried to throw the responsibility on the police for misquoting or misconstruing what he had said or, if feeling confident, tried to brazen out the differences. That brazen attitude did not work beyond showing them up, particularly both David and Anthony, as insufficiently skilled to explain away the differences. I concluded that I must treat the evidence of each as unreliable and incredible unless supported by other evidence of whose reliability I was satisfied with the one exception of George's consumption of a valium tablet to which I will come in due course. That conclusion in general left little room for using their evidence at all.

[122] Ms Dempsey began giving her evidence clearly and without reluctance and gave the impression that she had matured considerably since 2006 when she was aged 15 or 16. This was encouraging for her reliability but her demeanour and the style and content of her answers changed when she was asked in examination in chief about what she had said in the statement she had given to the police on 13 November 2006. When parts of it were put to her for her comment, she readily agreed that what was said was what she had said where the statement or passage did not implicate George or anyone else in anything that might be construed as wrong or illegal but as soon as the quotations ventured into those territories her responses changed markedly. Her memory lapsed or she resorted to evasion either by way of an explanation that did not ring true or by saying that she did not say to the police what was attributed to her, or she could not remember saying what was in the statement and occasionally for the same passage relied on both responses. To that extent she mirrored the way in which Kenneth, David and Anthony had sought to deal with the terms of their police statements albeit in a more muted and restricted way. The overall effect of her answers in this part of her evidence was to weaken her reliability significantly overall to the point where I felt that I could rely upon her only where she gave oral evidence that was consistent with other evidence on which I could rely.

[123] The effect of my assessment of the evidence of these five witnesses was that I relied almost entirely upon Mrs Riddell. She said that George had got into trouble for consuming alcohol while underage. He had been known to the police in the area where she and he lived and they had stopped him quite often. On one occasion the police had brought him to her house because he had been caught smoking cannabis.

George had told her that he had started consuming cannabis at the age of thirteen. He had denied to her that he was taking cocaine. She had never found drugs in his room. She had no idea how he had managed to acquire the money to buy drugs beyond his having asked her for a pound now and again or his mother giving him five pounds. Mrs Riddell never had any suspicion that he was dealing in drugs. She was aware that he had owed money for drugs that he had purchased and that when she had been in Canada during August 2006 at a time when George was living with her father people had come to her home to speak to George about that. She had never seen George with lots of money. He had not owned a mobile phone and she had never seen a paper list of names.

[124] Lindsey Dempsey did not add anything on which I could rely to what Mrs Riddell said that was relevant to the disputed matters of fact and could support a finding in fact beyond confirming that George owed money for drugs, and neither did the three boys.

[125] As a consequence I am not in a position to make any finding in fact about the disputed facts under this part of the chronology of events beyond the fact that he did owe money for drugs but whether that was confined to cannabis or extended beyond that to other drugs such as ecstasy and cocaine remains unproven and the sums involved were of modest amount of no more at any one time than £50.00. On the evidence the source of George's drugs must therefore remain unknown, as must to whom he owed money or drugs and for which drugs other than cannabis, if any.

George's actions before the arrival of the police at the school

[126] The only matter that requires clarification is whether George consumed a valium tablet while at the rear of the school in addition to at least one can of Stella lager and an ecstasy tablet. The evidence in respect of this came from the three boys and from Dr Thanacoody. Kenneth said that while all four boys were at the back of the school David offered George a valium tablet and George took it and ate it about five minutes before the police arrived. David denied having any drugs on his person that day and said that he was unaware if any of the other boys had but he then conceded in cross-examination that at the material time he dealt in valium in a small way to his friends. Anthony said that David was then in the practice of giving valium to his friends. Dr Thanacoody under reference to the toxicology report dated 16 October 2006, said that it recorded that George had diazepam in his body but he was not asked if that could be attributable to the single tablet that Kenneth spoke about. The evidence of Dr Thanacoody does not assist in resolving the matter and that leaves the evidence of the three boys. For the reasons that I have already given, that needs to be viewed with considerable caution. Having said that Kenneth was definite in his answer that George had taken the tablet and that it was David who offered it to him, and David accepted that at the time he was dealing in valium in a small way to his friends which Anthony confirmed. George was a friend of David. David was accustomed to dealing valium to his friends at the time. His denial of having any Drugs on him was unconvincing. I am persuaded that on this one matter I can conclude on balance that George did consume one tablet of valium while at the rear of the school in addition to consuming a quantity of lager and an ecstasy tablet.

From the arrival of police officers to the moment of George's detention

[127] There is nothing contested that requires attention.

From the moment of George's detention to the arrival of the van

[128] The focus of attention in this part of the chronology is on the adequacy of the search of George and on what his demeanour throughout that time can say about whether he had on his person the bag of cocaine that he subsequently ruptured in the van and consumed a quantity of its contents. The importance of the search is that if George did have the cocaine secreted somewhere on his person and the search of a kind that could be done in the place where it was done and which limited the areas that could be searched ought to have revealed the presence of the drug with the inevitable consequence that it would be seized by the officer conducting the search, then its seizure would have prevented George from being placed in a position to ingest whatever quantity of the cocaine he did subsequently in the van. The importance of George's demeanour is what it has to say, if anything, about his possession of the bag.

[129] There is no dispute that throughout this period of time which lasted about twenty-two minutes Constable Sewell searched all four boys one after another in the presence of Constable Wilson and found nothing of note and that while waiting for the arrival of the van the boys were not handcuffed, the atmosphere between the officers and the boys was relaxed and friendly and none of the boys made any attempt to escape. That atmosphere and that absence of any attempt to escape is said to support the conclusion that George did not have the bag in his possession at that point in time. An alternative interpretation is that if he did have possession of the

bag he was putting on as brave a face as he could in the circumstances while he tried to work out what to do.

[130] The evidence for what happened during this period from detention to the arrival of the van came from the five who were present throughout: Kenneth, David, Anthony and Constables Sewell and Wilson. I continue to apply to this period my assessment of the evidence of the three boys. Constable Sewell was a senior and highly experienced officer with some twenty nine years' police experience at the material time. He knew well the Barlanark area of Glasgow and its inhabitants because by September 2006 he had been a community police officer there for nine years. I considered him to be fundamentally reliable but the passage of time had affected his memory for the sort of particular detail of what exactly it was that he said or did and in what order he did it and it was in these sort of details that much of the questioning had to concentrate. Moreover on occasion he seemed to shade over into a slight degree of self-justification particularly on what he said about how extensive and thorough was his search of George and what it ought to have revealed and I attributed this to his use of hindsight. Constable Wilson was a junior officer still serving a period of probation. He too was at root reliable subject to the same occasional difficulty with points of detail which was readily explicable by the passage of time since the events to which he was speaking from memory. He supported Constable Sewell's account of what the officers did and how they did it in relation to the search of the boys.

[131] The three boys and Constable Wilson all described the search conducted by Constable Sewell on each boy in similar terms, as being a pat down search. Kenneth also described it as basic and David as normal. Constable Sewell described it

repeatedly as cursory and also as an exercise in frisking. He and Constable Wilson were asked of what a pat down search ought to consist and what it ought to find and I work with what was said about these particular searches as to whether in the case of George it ought to have revealed the presence of the bag of cocaine on the assumption that he had it somewhere on his person. In addressing that matter it is important to be aware of the context of the search, its intended purpose and the place where it had to be conducted.

[132] The context was that all four boys were under suspicion of having stolen the power tools. The constables had asked them who was involved in that theft and none had admitted responsibility. In the wake of that the searches were conducted under section 14 of the Criminal Procedure (Scotland) Act 1995 in so far as the suspicion of dishonesty fell on all four boys and also under section 48 of the Criminal Law (Consolidation) (Scotland) Act 1995 in order to check whether any of the four had in his possession an offensive weapon. As a concomitant of these grounds of search there were also the issues of officer safety and the safety of persons who were now detainees. That is where Constable Sewell's attention was directed. He was not searching the boys in the expectation of finding a controlled substance and the search was not conducted under the statutory power of search granted by section 23 of the Misuse of Drugs Act 1971. Nothing that the boys had done or were doing in his presence on that afternoon raised in his mind even the suspicion of the presence or involvement of a controlled substance. That is the context in which he said in evidence that he was looking for bumps or an object that was unusual and its intended purpose was directed to such irregularities in clothing. They were not body or intimate searches as such and they were certainly not the much more

invasive strip searches. They could not be because the circumstances did not demand it and the place where they were conducted would not permit it. The searches were conducted in broad daylight in the open air and on a piece of waste ground within the bounds of the school and visible from places to which the public had ready access and from a nearby family learning centre. That location necessarily imposed limits to what could be done irrespective of any other considerations. A further relevant consideration, as mentioned by Constable Wilson, is that the way in which such a search should be conducted was that it be consistent with a general policy of policing by consent included in which was a wish to maintain a reasonable rapport with the person being searched.

[133] For these reasons and in the particular circumstances there were two areas of George's body that could not be searched thoroughly: the groin and the buttocks. I accept the force and accuracy of Constable Sewell's stated concern that to go beyond a pat down search in the circumstances that pertained would be to run the risk of a charge of assault. A check of the waistband as was done did not include the areas of the groin or buttocks and as David stated in the course of his cross-examination it is not unknown for a person in possession of a controlled substance to hide it in the area of the groin.

[134] Another part of the body that evidence suggested is sometimes used for that purpose is the feet. Constable Sewell accepted that he might not have checked George's shoes at the school. He did recall doing so at one point and finding that George was wearing three pairs of socks, his explanation for this being that his shoes were too big for him, but he could not recall where he did that. In the video footage of events at the charge bar of the police station Constable Sewell is seen checking

George's shoes and socks. I am satisfied that that was the time and place at which he did that rather than at the school. That conclusion is consistent with the evidence of Anthony that he was not asked to take off his training shoes in the course of his search at the school.

[135] Where all this leads to is the conclusions I think it right to make in respect of the two areas of attention. For the first, the adequacy of the search of George by Constable Sewell, I conclude that it was appropriate in the circumstances in which it was done and was the most extensive search that could be done in those circumstances. While the search did not find anything of note and certainly not any controlled substance, its nature was cursory and its intended purpose in context was confined to most but not all parts of his clothing and could not be so thorough or invasive as to include all parts of his body. Accordingly, it left areas unchecked and as a consequence, on the as yet unproven assumption that George was in possession of the bag of cocaine, I conclude that it cannot be said that it ought to have revealed the presence of the bag of cocaine as for example a strip search or intimate search would.

[136] For the second, George's demeanour throughout this period, there is nothing in what was said to suggest that he was showing signs of being uneasy in the presence of the officers. He did remark to Kenneth while awaiting the arrival of the van that now he was sixteen he would be off to Polmont (the young offenders' institution) but Kenneth said that that was in the context of being involved in the theft of the power tools. In any event that remark is equivocal and could not necessarily indicate that he knew that was where he would go if found in possession of the bag of cocaine although it could easily carry that connotation. Moreover, the

officers and the three boys all said that George made no attempt to run away from the police at any point in time while waiting for the van to arrive although he had opportunities to do that and it was said that he had run away from the police before. Furthermore there was general agreement that he had opportunities to dispose of the bag of cocaine during that wait for the van. All these adminicles of evidence are said to point in the direction of George not being in possession of the bag. I agree with that. But they cannot be viewed without taking into account the whole context of the time spent at the school. My conclusion is that these adminicles taken together with my conclusion in respect of the search do not persuade me that I could make a finding in fact that George did not have the bag of cocaine on his person throughout this time. That matter at this particular point in time in the passage of events remains open on the available evidence.

From the arrival of the van to the moment of placing in it George and the other three boys for transportation to the police station

[137] The matters that required clarification during this brief period were whether Constable Sewell informed Sergeant Campbell that the four boys had already been searched, whether the boys were searched again before they were placed in the van and if so what type of search was adopted particularly for George. The sources of evidence for this period were the three boys, Sergeant Campbell and Constables Sewell, Wilson, Beattie and Morrison.

[138] Sergeant Campbell was a sound witness. He gave his evidence clearly, without hesitation and with an air of authority which had not left him since his retirement from the police. He described himself as a man who ran a tight ship and

that was evident from his demeanour while giving evidence and from what he said about his actions and responses for as long as George and the other three boys were under his care and control. He demanded a high standard from his officers, a fact acknowledged by several of them, and from himself. I had no difficulty in concluding that he was a reliable witness. Constables Beattie and Morrison I also considered reliable, clear and direct and unhesitating in response to questioning. This was particularly so with Constable Morrison who gave his evidence in a particularly measured and calm manner.

[139] Constable Sewell said that when he and Constable Wilson handed over the four boys to the three officers for transportation to the police station he explained to Sergeant Campbell the circumstances and reason for the detention which was the suspected theft of the power tools. He was clear in his evidence that he told Sergeant Campbell that he had searched all four boys using a cursory or pat down search. When Sergeant Campbell gave his evidence he could not recall this conversation taking place or specifically being told that the detainees had been searched but accepted that information about their detention would have been divulged to him by Constable Sewell and that Constable Sewell may well have told him that the boys had been searched for this would be normal procedure. I accept the evidence of Constable Sewell that he did tell him and am satisfied on balance that the evidence of Sergeant Campbell supports that by reference to his expectation that normal practice would have him receive such a report.

[140] Sergeant Campbell, Constables Beattie and Morrison all gave evidence that the four boys were searched again when they reached the van but before being allowed into it. The others present, with the exception of Kenneth, were not asked to

confirm the fact of this second search and while Kenneth first said it took place he then in cross-examination agreed with the suggestion that he might be mistaken about. I did not find that assent convincing. Constable Morrison searched George, Sergeant Campbell searched David and Constable Beattie Kenneth and Anthony.

[141] As for the type of search by the van all three officers who spoke to it concurred in describing each as a pat down search and the evidence of it for each boy accorded with what each had undergone earlier. The purpose of each search was also the same. Each search recovered nothing.

[142] As a result of my findings I have to reach the same conclusion about the efficacy of the second search of George as I did for the first search, namely, that I can make no finding of fact that the search ought to have found the bag of cocaine on George's person if he were then in possession of it. Similarly the second search by the van neither adds anything to nor detracts from my conclusion stated above in respect of the first search, that it does not exclude George's possession of the bag of cocaine, and carries that conclusion forward to this point in time.

The van

[143] There are no relevant contested facts that require examination.

The disposition of the four boys and the police officers in the van

[144] There are no contested facts about the disposition but arising from the choice of seating was questioning about whether a different disposition was prescribed, and if not whether on the unasked assumption that a different disposition would have reduced the risk of George having the opportunity to consume what he did in the

van, why it was not chosen, which was asked. The four police officers in the van were asked about the disposition but the evidence for a different disposition came almost entirely from Sergeant Campbell.

[145] There was general acceptance that the responsibility for organising where persons sat in the van lay with the officer in charge who was Sergeant Campbell and that he did not discuss with his fellow officers in which seat to put which boy. He said that he placed them in their seats in the order in which they were ready to go into the van after being searched. In making that decision he took account of officer safety and in particular the general rule that no prisoner or detainee should be seated behind the driver of a police vehicle, the available accommodation within the van, the calm and resigned demeanour of the boys and the need to guard the side door of the van during the journey to prevent any attempt at escape by that route. None of these reasons was challenged but his decision as to where the police officers and therefore the boys sat was.

[146] The challenge over whether any particular disposition was prescribed was founded in the terms of the Strathclyde Police Force Generic Risk Assessment dated May 2002, Crown production number 17, which parties agreed was in force on 8 September 2006. The Risk Assessment describes an anticipated hazard and then the control measures that are required to meet the hazard. Part 2 deals with the transportation of prisoners or detainees and the hazard is said to be attack and injury with the measures set out in twelve paragraphs of which the first five were used in evidence. Sergeant Campbell admitted that he had not seen it to his recollection and was not too intimately aware of what it said. From this I took it that its terms were in effect unknown to him at the time with which the Inquiry is concerned. The question

arises whether he ought to have been, but since no evidence was led to that effect I cannot provide an answer although I would hazard that if Strathclyde Police laid down an Assessment that amounted to an operating procedure it would be incumbent upon the force to require that all officers who would have to make decisions falling within the scope of the Assessment ought to be made aware not only of its existence but also of the need to implement its terms in so far as they applied to particular circumstances in which it had to be invoked. Irrespective of that Sergeant Campbell conceded that the Assessment “pretty much sets out what you do”. The question then is whether it had any application to the disposition of the boys in the van. The Assessment gives no clear guidance about which class or classes of vehicle it relates to. The only direct reference to vehicles in Part 2 is to cars and there is no indication that it applies to vans at all. What it does do is refer specifically in paragraph 2 to cars.

[147] I am sure that the intention was that the Risk Assessment should be operative for all occasions when a prisoner or detainee had to be transported but the way that it has been drafted makes it difficult to apply to a van of the kind used in the journey to the police station. The thinking appears to relate to cars only. The importance of that for the present situation is that paragraph three of Part 2 states that where more than one police officer is available, one officer should remain beside the prisoner during a journey in order to ensure control. I have to say that this accords ill with the available seating arrangements of a van but well with those of a car. I cannot conclude that the way it was drafted means that the Risk Assessment does not apply to the present situation but I can say that if it does it does not give appropriate guidance where the officer needs to take account of the seating arrangement of a van.

It seems to me that the way to interpret the application of Part 2 is by reference to the hazard that it is intended to address. That is described as attack and injury and that must refer to the risk of that happening to police personnel. Accordingly the officer who has to make a risk assessment has to do so in light of that perceived hazard. For a journey in a police car paragraph two lays down a requirement that reduces the risk to the minimum by directing that the prisoner or detainee is positioned in the rear seat on the opposite side from the driver. The same effect can be achieved in a van by the practice, used in the journey to the police station, of a seating arrangement that leaves a buffer zone of one seat between the driver and a prisoner or detainee. Beyond that it seems to me that the control measures that are said to be required where a van is being used must be left to the discretion of the officer in charge. That means that while the presence of a police officer beside a prisoner or detainee may be desirable in a police van it is not prescribed because the Risk Assessment does not cover that situation. Whether it ought to be is a matter for the appropriate police authorities to decide.

[148] Sergeant Campbell therefore had a discretion to decide where to place the boys in the van and he exercised it on the basis of what he knew at the time. I consider that in the interests of the safety of all he was right to apply the rule that no prisoner or detainee should be placed in the row behind the driver throughout the journey to the police station. The consequence of that was to limit the available accommodation for the four boys to the third and fourth rows of seats with police officers seated in the second row. Placing officers there also reduced the risk of injury to one or other of the boys if he or they attempted to escape from the van by way of the side door which could be opened from the inside and that was a sensible

safety precaution. Moreover, he was right to take into account the demeanour of the boys. Their atmosphere was relaxed and there was nothing to suggest that there was a recognisable risk of attack from any of them or of injury caused by or to them. They had been detained for an alleged crime of dishonesty and not one that imported any hint of violence or disorder, and their behaviour gave no real grounds to anticipate any such behaviour. A further important matter of officer safety on which he acted was that he would not place one of his officers on his own in the fourth row of the van and thus separated from the rest by the detainees.

[149] There were two criticisms made of his actual disposition: that he should have allocated one officer to sit beside one of the boys in the third row; and that he should have insisted on the removal of the riot shields that were placed in two of the seats in the fourth row thereby giving him the option of making better use of that fourth row. On the first he said that it was not possible to do that and on the second that while he recognised that removing the riot shields had the potential to allow for a different seating arrangement it did not occur to him at the time to do that. I have sympathy with his conclusion that it was not possible to have an officer sit in the third row which I presume he reached on general grounds of officer safety taken in conjunction with his assessment of the particular demeanour of the boys and it is a decision which falls well within the discretion that he had to exercise. The same applies to the second criticism. In the circumstances that pertained at the time he was making his decision I conclude that in permitting the disposition of the boys, himself and his fellow officers in the back of the van his exercise of discretion cannot be criticised as incorrect or unreasonable. It is only with the benefit of hindsight that it is all too easy to see that had he taken a different decision then George might have been denied the

opportunity to consume the drugs that he did. To make that different decision would have involved Sergeant Campbell choosing to compromise the rules of officer safety to an unacceptable extent by placing either himself or another officer in the third row beside George in order to anticipate the potential for a risk of something happening that was at the time and in context undefined and unknown and as a consequence move David to somewhere else in the van, possibly in the fourth row where Anthony was placed. Stating this hypothetical different decision in itself indicates its unfeasibility.

The journey from Barlanark Road to the police station

[150] In this critical part of the passage of events the contested facts and the issues which underlie them concern four features of the evidence: the level of supervision of the boys by the police officers during the journey from the school to the police station; the source of the bag of cocaine; how much of the drug in the bag George ingested; and what the officers understood that he had done. The evidence for what happened in the van came from Kenneth, David, Anthony, Sergeant Campbell and Constables Beattie and Morrison, for the previous use of the van and the cleaning regime from those three police officers and for the contents of the bag from Detective Sergeant Miller and Dr Thanacoody. I have already indicated my general approach to the assessment of the evidence of the three boys. Both Detective Sergeant Miller and Dr Thanacoody gave evidence as skilled witnesses. For each his qualifications and level of experience entitled him to give expert evidence and these requisites were never questioned. Each gave evidence within his particular field of expertise. Each was accepted by all representatives as unquestionably reliable. I agree and add that

the evidence given by each was of great assistance to the Inquiry.

The level of supervision

[151] The level and type of supervision of the boys during the journey was almost entirely dictated by the disposition of the persons in the van. With Constable Morrison concentrating on driving supervision was up to Sergeant Campbell and Constable Beattie who were both seated in the second row. Constable Beattie said that he sat in the offside seat of the three in the second row and positioned himself so that he was sitting side on facing inwards in order to see all three boys. His view of George was restricted by the seat headrest on his seat, which is the feature that is independent of the disposition within the van, but he could see George's face clearly and because the middle headrest of the three seats of the second row had been removed he could see David to his shoulder level as he sat beside George and also Anthony. Sergeant Campbell said, and Constable Beattie confirmed, that before the journey started he had told the boys to put their hands on their knees and he had reiterated this during the journey. Everyone had to remain seated during the journey and it was not possible to have anyone standing up. Sergeant Campbell sat in general facing sideways towards the nearside of the van and from that position was able to see not only the side door but also to keep an eye on Anthony in particular but also David. I accept the reliability of this evidence.

[152] When viewed in context I cannot conclude that the level and type of supervision of George and the other boys during the journey was anything other than what could be expected and, with issue 1(b) particularly in mind, did not fall below what could be expected. As I have already noted the prevailing atmosphere

was relaxed and there was nothing to suggest that there was a recognisable risk of attack from any of the boys or of injury by or to them. The state of mind of the officers was that the boys had been searched before entering the van and there was nothing to indicate that they had on them or with them any source of potential danger to themselves or the officers. During the early part of the journey the boys chatted amongst themselves and indulged in bantering talk with the officers which reinforced and continued the relaxed atmosphere. While George was not in the direct line of sight of Sergeant Campbell unless he turned around, Constable Beattie was in a position to see George's face close to his.

The source of the bag of cocaine

[153] Much time was spent at the Inquiry in investigating the source of the bag of cocaine. Two potential sources were examined: that it was in the van before the boys were placed in it; and that it was in George's possession. Another available potential source, that the bag was in the possession of a boy other than George and was passed to him in the van, was not investigated in the evidence and therefore I take no further notice of it.

[154] The high point of the evidence in support of the source of the bag of cocaine being the van came from David and Anthony. David said that during the course of the journey he observed a bag of cocaine underneath the seat in front of him and George. That placed it underneath the seats in which the two police officers were sitting. David then said that he bent down to get it and picked it up with his hand whereupon George noticed the bag and took it from his hand but later in his evidence he said that he might have been mistaken about that and accepted that in

his police statement given only hours after the incident he had said that it was George who had picked up the bag from the floor. Kenneth said that he did not see the bag until it was in George's hands. Anthony said initially that David pointed out the drugs and they were under the second row of seats but later acknowledged that this did not correlate with his statement to the police and to his interview. Neither of the police officers in the second row saw any of this.

[155] For the reasons already stated I have given the evidence of David and Anthony little credence. On this matter and for that reason I do not accept David's first account and any force that it might have had was lost when he changed his position in the course of his evidence and for Anthony his admission that he told lies to the police led me to the same conclusion. In any event the most that each could say was that he saw it first on the floor of the van. He was unable to say that it was there when he got into the van or how it got onto the floor of the van.

[156] The other evidence that pointed away from the bag having been in the van came from a combination of the characteristics of the back of the van, the observations of the police officers in the van and the use made of the van earlier that day.

[157] The floor of the van was at a height of some two feet or so above the ground. A person standing at its side door and making to enter it by way of the opened side door had a clear view right in the natural line of vision and close up of the area of and under both its second and third rows of seating. The colour of the floor was black. The bag of cocaine was larger than a single golf ball, the bag was made of clear plastic and the cocaine in it was white in colour. The situation that was posed was that there was a white bag of that size on a black floor no further away than

almost the width of a van situated at a height and a distance which was easily viewable from the side door at which a person entering the van could be expected to be looking into the van in the process of entering it directly towards the seats in the second and third rows. At the very least on balance such a bag, white in colour and larger than a golf ball in size, lying on a floor that was black in colour and in the direct line of sight ought to have been readily visible. That none of the three police officers saw it, but especially Sergeant Campbell, persuades me that the bag was not lying on the floor of the van when the four boys were being placed in it.

[158] In addition to that, and buttressing that conclusion, there is the assistance given by the use made of the van earlier that day. While the vehicle journey record for the van for 8 September 2006 was incomplete, a not uncommon if unfortunate occurrence at the time according to Sergeant Campbell, the three officers gave evidence from what it did record as well as from their own recollection of events. I accept their evidence as reliable. It was to the effect that on 8 September 2006 the van was used on two occasions before being allocated to go to Barlanark Road.

[159] The first was at 10:30 hours when it was used to convey police officers to an address in Baillieston for the purpose of executing a search warrant granted under the Misuse of Drugs Act 1971. Constable Morrison drove the vehicle to that address. Sergeant Campbell was also in the vehicle and sat in one of the two front passenger seats to the left of the driver's seat. Constable Beattie sat in the rear of the vehicle in the second row of seats and immediately behind the driver's seat. The search recovered a controlled substance but only in the form of pills. They were seized. The search did not recover cocaine nor did it result in the detention by way of custody of any person. Constable Beattie had the pills in his possession throughout

the journey from the address to Shettleston Police Office where they were lodged with the production keeper there.

[160] The next use of the van came when the production keeper asked Sergeant Campbell, Constable Beattie and Constable Morrison to convey to Glasgow Sheriff Court an envelope containing controlled substances which were required for an on-going summary trial. Constable Beattie took possession of this envelope. It was sealed. Constable Morrison drove the van to Glasgow Sheriff Court. During the journey Sergeant Campbell sat in the seat next to the driver's seat and Constable Beattie sat in the rear with the envelope. Constable Beattie delivered the envelope, still sealed, while Sergeant Campbell and Constable Beattie remained within the van. Once Constable Beattie had returned to the van it returned to Baillieston Police Office. It arrived there between 14:30 hours and 15:00 hours. The officer's then had a refreshment break which lasted for approximately 30 minutes. After that break Sergeant Campbell told Constables Beattie and Morrison that they were required to attend at the former Barlanark Primary School. That was to transport the four boys detained there.

[161] The two occasions involved only police officers. Neither occasion involved carrying cocaine in a bag. On both occasions the officers made use of the second row of the van. To gain access to that row required opening the side door of the van. In so doing the area in which the bag of cocaine was said to lie came into plain view. That it was not seen there at any point in time prior to placing the four boys in the back of the van enables me to infer without any difficulty that the bag was not on the floor of the van under the second row of seats before the journey from the school to the police station.

[162] As part of the discussion about the provenance of the drugs attention was given to what cleaning regime there was for the van and whether it was implemented as it ought to have been on 8 September. The evidence about that regime was to the effect that as at that date there was no system in place within Strathclyde Police for the cleaning of the unit's two vehicles and such cleaning as was done was done on an *ad hoc* basis. The general picture was that each team of officers within the unit was responsible for lifting their rubbish from the vehicles at the end of a shift and their interiors were brushed out if there was a quiet period during a shift and their outsides given an occasional hand wash. Of particular relevance to the present circumstances was the comment by Sergeant Campbell that he ran a pretty tight ship with the officers in his unit and made sure that the vans that they used were clean and tidy. The cleaning regime in place in September 2006 does not seem to have been a regime at all but rather an informal arrangement to which resort was made as and when individual teams of officers took the view that a van had to be cleaned of whatever it needed to be cleaned. That said I do not need to make any recommendation in my determination about a suitable cleaning regime then in place because of my conclusion that the bag was not on the floor of the van under the second row of seats before the journey from the school to the police station and I do not need to consider the matter further for the purposes of the Inquiry.

[163] My conclusion excludes the van as the source of the bag. It does not follow from it necessarily that it proves that the other potential source was George. I have already indicated that the events at the school and up to the point in time when George was placed in the van, of which the two successive searches and his demeanour are the most important indicators, did not persuade me that on balance I

could make a finding of fact that George did not have the bag of cocaine on his person throughout that time. The next question is whether there was anything in George's actions while in the van that taken together with those earlier events could persuade me that I could make a finding of fact about where the drugs came from.

[164] The additional available facts relate to George's conduct in the van. Of them the first is the giggling that came from all four boys. That it seems to me is consistent with George in particular knowing what it was that he had in his hands. It was not the response of someone who was worried about being caught in possession of drugs that he had found under the seat in front of him. Had that been the case, as was suggested, then the simple, direct and readily available response would have been to return the bag to the floor. Then there is the fact that he did retain possession of the bag. If he had no prior knowledge of or involvement with the bag and its contents it makes no sense for him to do that. It does however make sense if he did have that prior knowledge. Giggling and retention of possession point in favour of the source being George.

[165] The most potent feature that does that is his action in consuming as much of the contents of the bag as he could. That action is so extreme that it imputes a degree of involvement with and knowledge of the bag and its contents that is more than passing or incidental. It was an action fraught with the risk of imminent and catastrophic harm to himself, as it so tragically proved to be. It also connotes a realisation on his part of the serious situation in which he found himself and a consequential desire, possibly fuelled in part by a degree of desperation, to hide the evidence by a means readily available to him, that of consuming the cocaine. The urgency of his desire to do that may be measured by his seeking to consume as much

of the contents of the bag as he could in one bite. In his haste, what he did had a consequence that ran counter to that desire because it caused some of the cocaine to escape from the bag and his mouth and distribute itself onto one of his fingers and over his clothing, his seat and the adjacent floor. I am satisfied that he took the extreme action that he did not only because he wanted to dispose of the contents of the bag in order to avoid being found in possession of a significant quantity of a controlled substance that was a Class A Drug but also because he had prior knowledge of the cocaine and its source. That was because he had brought the cocaine into the van on his person. I am satisfied that the sum total of his actions in the van taken in conjunction with the earlier events support a finding in fact made that George had the bag on his person when he entered the van. There is no evidence to suggest any other source once the van itself has been excluded. That is the only conclusion to draw on the balance of probabilities that makes sense in light of the evidence presented to the Inquiry. That conclusion answers issue 1(a).

[166] Why he had it on his person must remain unanswered. Detective Sergeant Miller said that an ounce quantity was capable of being carried and, in his experience, had been carried, by a drug courier taking it on behalf of a drug dealer to the next point in the chain of supply of the drug in question and that on occasion a dealer would persuade a person who was in his debt to act as a courier. There is no evidence before the Inquiry that would permit me to reach that conclusion in respect of George's actions and so why he had it on his person must remain undetermined. Where he had it on his person remains unclear. Certain evidence taken up in submissions suggested that it was either in one of his shoes or in the area of his groin or less likely the area of his buttocks but the evidence is too slight for me to make a

finding in fact of where he had concealed it although the stronger proposal was the area of his groin.

How much of the Drugs did George ingest?

[167] The cocaine was contained within a clear polythene bag and the size of the bag was larger than a single golf ball. As I have already indicated that fact was not controverted by the end of the Inquiry. The importance of that finding is that according to Detective Sergeant Miller to describe a quantity of cocaine as a golf ball was at the material time a slang term commonly used by drug dealers and users for one ounce of the drug. That evidence was not challenged. I conclude that what George had in his hand was a recognised measure of cocaine weighing no less than one ounce. It is within judicial knowledge that one imperial ounce is equivalent to 28.35 metric grammes to two decimal places.

[168] The task of assessing how much George ingested is not so simple and has to be done using several different strands of evidence. The earliest in terms of awareness has to be sought from what the three boys said. Kenneth said in his examination in chief that it was three quarters of the contents of the bag while the remaining quarter went over George and his seat and he was not cross-examined on that. David said in his examination in chief that he saw George take some into his mouth but he could not say how much that was and he, David, swallowed some which he described as a sherbet and then related what he took to being equivalent to some four grammes of the cocaine. In cross-examination he said that he did not see what was attributed to Kenneth that George tried to put it all into his mouth but retorted that he did see George take some and he conceded that what Kenneth had

said was what probably happened. He did not need medical assistance for what he had ingested. Anthony said in his examination in chief that George started eating the drug and took quite a large amount although he could not be specific about how much of the contents of the bag he had eaten. No cross-examination elucidated that evidence.

[169] For the reasons already given I treat all their evidence in general with considerable caution. In particular on this matter Kenneth's evidence suffers from making no mention of David taking some of the cocaine, and from the fact that the police subsequently recovered a quantity of the cocaine from the van which at its highest could be said to account for about one half of an ounce. David's reliability is weakened significantly by his claim that he had taken as much as he said he did. That evidence is in conflict with the evidence of Dr Thanacoody about the effects of taking cocaine. On even the most restricted view of that evidence David's own assessment at its very least ought to have made him very unwell. What he did actually take made his mouth and teeth go numb but it was not enough to make him unwell. I conclude that his assessment involves a considerable exaggeration and that he took much less than he said. That left more available to George. Anthony was able only to give a general indication.

[170] Assistance of a much more objective nature comes from what was said about the residue of cocaine recovered from the van as part of the police investigation into George's death. As already noted police officers recovered three separate quantities of cocaine from the rear of the van. They weighed 2.332g, 2.72g and 8.102g respectively. That makes a total weight of 13.154 grammes or slightly less than half an ounce. That information was not questioned and I accept that it has been proved.

There was a suggestion that the cocaine might have become contaminated before or while being lifted from the floor of the van but there was no suggestion that any such contaminant had affected the weight of that cocaine to any measurable extent. Proceeding therefore on the footing that the weight is that of the drug, then the maximum that George could have ingested was in the order of slightly more than half an ounce and at the most approximately 15 grammes. David took some, some went over him and some over the seat but the weight of that cannot be assessed. There was no evidence led that told me what if anything was left in the bag and if there were anything left in it at what its weight was assessed. In the absence of any such evidence I have to proceed on the calculation that I have given above.

[171] While all of these various strands of evidence do not allow me to conclude with any precision how much of the cocaine George ate they do all point in the same direction, that it was a significant proportion of that half an ounce and that the proportion was towards the upper end of that amount. Accordingly I make a finding of fact that, on the balance of probabilities, George ingested a proportion of that half an ounce of cocaine that was not less than one half of that remaining amount and may have been more than that and that its purity was a minimum of twenty three per cent.

The police understanding of what George had done

[172] The uncontested facts already given above in paragraphs [64] and [65] set out the circumstances in which the police officers became aware of George's possession of the cocaine, and thereby answer issue 1(c). Issue 1(d) raises the question of the circumstances in which they became aware that he had ingested cocaine.

[173] As already stated the immediate conclusion of Sergeant Campbell was that George had burst a tenner bag. From what he saw of George and of the residue of drugs on his person and on the floor of the van, he did not form the conclusion that George had consumed any of the drugs but rather had tried to dispose of the drugs by bursting the bag and distributing its contents. On the reliable evidence given about the nature and extent of the scattering of cocaine on George and in his immediate vicinity that was spoken to that conclusion was not unreasonable in the circumstances and I do not consider that it can be criticised. Having formed that view he did not leave matters there. He went on, in the hearing of Constable Beattie, to ask George if he had taken any of the drugs. That was the right question to ask. It showed that Sergeant Campbell had George's welfare in mind. George's reply was to deny that he had. This was untrue. There was no evidence to support a conclusion that the residue of the drug seen by Sergeant Campbell and Constable Beattie was inconsistent with that response. That, taken together with the heat of the moment and the proximity of arrival at the police station makes it easy to understand that what George had said was accepted as correct. Its consequence was to postpone by some minutes any acknowledgement by George to the police that he had consumed any of the drugs.

Part Six

The medical facts and their medical consequences for George of ingesting the cocaine.

[174] At this point in the passage of events it is essential to be clear on what George had done to himself by ingesting the cocaine and the consequences of that action for him in medical terms. The importance of doing so at this stage in the events is not only because the task has to be done and this is a convenient moment to do it but more fundamentally and central to the work of the Inquiry the import of it has to be assessed by reference to the demands of the five criteria in section 6(1) of the Act and in particular criteria (c) and (d) and (e).

[175] The evidence of what cocaine does to the human body when consumed, how the body can show the effects of that consumption and over what period of time it can do that, what is the recognised treatment for a person who has taken the drug in large quantity and the likelihood of survival after taking a large dose of the kind consumed by George came from Dr Thanacoody. All cross-examination of him consisted of eliciting additional information and clarification and what he said was accepted by all as entirely correct and was used as such in the submissions of all. I adopt that approach wholeheartedly and use the facts that he gave. He brought to the Inquiry his considerable experience of acute medicine and clinical toxicology and his knowledge of clinical pharmacology. He had practical experience of the effects of cocaine on the human body much of which he had acquired while working as a consultant in Edinburgh before moving to his present consultant's post in Newcastle-upon-Tyne and of how a patient who had overdosed on cocaine would be treated in

the hospital environment. His knowledge and experience enabled him to opine upon George's chances of survival. He based his conclusions on the information which he had been given by the Crown in advance of the Inquiry and this was supplemented by reference to the toxicology reports dated 16 and 18 October 2006, Crown production number 13, on samples of George's blood and hair, the contents of which were agreed to be true and accurate, and to the tenor of relevant evidence given to the Inquiry up to the time that he gave his evidence. On that basis of fact he was able to give his opinion on George's chances of survival.

[176] Dr Thanacoody said that cocaine acts as a stimulant to the central nervous system. Once absorbed into the body it goes to the brain and stimulates neurones and this induces states of agitation and euphoria. It can cause a number of effects on different organ systems of the body but its primary effect is on the heart and the vascular system producing an increase in the heart rate (tachycardia) and an increase in blood pressure (hypertension). It can also disturb the rhythm of the heart and induce a myocardial infarction, which has the capacity to cause death. The effect of tachycardia caused by cocaine can vary from minor to fatal. The discernable symptoms of cocaine poisoning are chest pain (ischaemia) and palpitations due to the occurrence of a very fast heart rate. In some persons the chest pain resolves but in more intoxicated persons subjected to greater levels of intoxication it can cause death.

[177] Ischaemia is the reduction in the blood supply to the heart caused by coronary vessel spasms. If the disturbance of the rhythm of the heart results in a very fast heart rate it can produce an occurrence of tachycardia which affects the ventricles, the main pumping chambers of the heart (ventricular tachycardia). This is

potentially life threatening because it can lead to ventricular fibrillation and that can lead to a heart attack (cardiac arrest), collapse and death. A person who ingests cocaine is at risk of suffering a heart attack.

[178] One consequence of cocaine induced stimulation of the central nervous system is the incidence of seizures. There are two major types of seizure: tonic-clonic and status epilepticus. A tonic-clonic seizure affects the whole brain. Its symptoms involve shaking of the limbs, sometimes foaming at the mouth, biting of the tongue, loss of bladder control and sometimes a loss of consciousness. Status epilepticus occurs when such seizures become protracted and last for more than five minutes. If the type of seizure involves a loss of consciousness it is generalised, if not, focal. Status epilepticus can involve either. Aspects of seizures can prevent oxygen getting to the brain and therefore it is important to be able to maintain a clear airway so far as possible. Suffering seizures and suffering a cardiac arrest are two distinct features of a drugs overdose which are potentially slightly interrelated because of the occurrence of acidosis in the blood due to the process of lactation. Acidosis can be corrected by administering bicarbonate either before it shows itself or after.

[179] If the person who has taken cocaine presents as cyanosed then this could be attributable to two recognised effects of taking cocaine: either the cocaine has so affected the working of the heart that it is not able to pump enough blood around the body; or the haemoglobin in the blood that is being pumped around the body is carrying insufficient oxygen to the body tissues. Benzocaine reduces the capacity of the blood to carry oxygen.

[180] The rapidity with which the effects of cocaine induced toxicity show themselves depends upon the dose taken and whether it was completely ingested. If

cocaine were retained in the mouth it could lead to direct introduction into the body system and the effects would be noticeable in about half an hour to an hour but if it were ingested into the stomach this delayed the effects and it would be between one and two hours before they manifested themselves. In that latter situation the person concerned could show no symptoms of toxicity for that period of one to two hours after ingesting the drug.

[181] Dr Thanacoody's analysis and explanation of the effects on the human body of taking cocaine, of how they manifest themselves and over what period of time they do is entirely consistent with the uncontroverted evidence of George's condition from the time that the first signs became apparent at about 16.50 hours, of grinding his teeth, and then subsequently and most obviously in the police casualty surgeon's room fifteen minutes later where his condition deteriorated significantly and rapidly. His presentation there was recalled by Dr McColl, Inspector McIntosh, Mr Sinnerton, Mr Fitzpatrick and Mr McGuinness. I accept all that body of evidence as reliable. It was uncontroverted and is described above within paragraphs [79] to [89] inclusive. It starts with George suffering a seizure which is tonic-clonic in nature and progresses rapidly to more protracted seizures which produce the condition of status epilepticus. In addition his measured heart rate was fast. He was seen to be cyanosed. His condition deteriorated rapidly and he sustained a heart attack as he was being transported to the waiting ambulance. All of this occurred over a period of some twenty four minutes and the period started slightly more than one hour after he consumed the cocaine.

[182] The uncontroverted evidence taken in conjunction with the expert evidence of Dr Thanacoody supports the conclusion that George was suffering from acute

cocaine poisoning. Dr Thanacoody was able to place in context the consequences of what George had done. He said that the consumption of one gramme of pure cocaine is generally considered to be a fatal dose but that the effects of the drug can vary between individuals and in some persons a dose of thirty to fifty milligrammes can cause death while in others it might be as much as five grammes. By pure cocaine he meant ninety to ninety-five per cent pure, uncut with any other drug used as a bulking agent. If the cocaine were in the order of twenty five per cent pure then a fatal dose would be three grammes. The dose would be slightly higher if the cocaine had been cut with benzocaine or lignocaine. If in addition the person had taken alcohol then the interaction between cocaine and ethanol produces cocathylene which can enhance the cardiac toxicity of cocaine and thereby increase the probability of a disturbance of the rhythm of the heart and the likelihood of a cardiac arrest.

[183] George took the cocaine while he still had alcohol, ecstasy and valium in his body. He had consumed more than one can of lager up to about one hour before he took the cocaine, one ecstasy tablet and one valium tablet more than one hour before he did that. On the basis of the information he had, some of which he received while he was giving evidence, Dr Thanacoody concluded that in the circumstances George's mortality rate was very high and in excess of seventy five per cent and that it was highly probable that it would result in a fatal outcome for George. He observed that the level of the metabolite benzoylecgonine in the serum sample that was analysed by Dr Torrance and Dr Wylie, 1.9 milligrammes per litre of serum, was a presence that was average for patients who had died of a drugs overdose. He also confirmed that the presence of alcohol and benzodiazepine in George's system

increased that seventy five per cent mortality rate but he could not say by how much and even without them his chances of survival were very low. My conclusion that he ingested at least seven grammes of cocaine that was a minimum of twenty three per cent pure sits well within, and does not run counter to the percentage calculation in, his conclusion. It was a quantity that was significantly greater than the minimum that can be expected to cause death and its toxic properties were high enough in themselves to cause death, without the added elements of what else he had consumed in the period of some three hours before he consumed the cocaine.

[184] Dr Thanacoody's conclusion is of critical importance for the work of the Inquiry. The standard of proof to which any fact in a fatal accident inquiry has to be found being on the balance of probabilities, the conclusion that George had swallowed a quantity of cocaine that on any view caused a mortality rate in excess of seventy five per cent proves to a standard that is significantly higher than the required legal standard that George ingested a fatal dose.

[185] That finding and conclusion shifts the focus of attention to what could have been be done for George in that situation and what were his chances of survival. These are matters that are fundamental to the work of the Inquiry and underlie all the issues that remain with the exception of 1(a) to (c) which have been already addressed. Their investigation lay at the heart of the extensive questioning of the police officers, police custody security officers and police casualty surgeons which took up the majority of the time of the Inquiry. It is necessary to work through both matters for that reason alone but also because Dr Thanacoody did qualify his conclusion on the fatal nature of the dose by saying that he could not exclude the possibility that with earlier treatment George could have survived.

[186] Dr Thanacoody told the Inquiry that the way that a person is treated who has taken a quantity of a drug such as cocaine is symptomatically. This involves a process of observation, and in light of that, the appropriate clinical response to support the patient. The patient's history is also helpful, if given truthfully, particularly so in respect of what had been taken and when and also previous recreational drug use.

[187] In broad terms the patient is observed while attached to a cardiac monitor that records how fast the patient's heart is beating and how high is his blood pressure. The period of observation should begin preferably before the drug is absorbed into the body system and the earlier the start the better the outcome is likely to be. The response of the medical staff treating the patient depends upon the analysis of the readings from the monitor and on what they see for themselves. If the patient suffers from, or is at imminent risk of suffering from, chest pain that would be treated with diazepam; if from seizures by an anti-convulsant drug such as diazepam or temazepam as well as receiving oxygen as required; and if required an anti-arrhythmic drug. It is possible to anticipate chest pain by interpreting the readings from the monitor. The treatment would not alter if it were known that the patient had taken alcohol as well as the drug. If while undergoing treatment the patient's heart stops then the medical staff would resort to attempts at resuscitation by way of CPR, check the information that the heart monitor attached to the patient relates and if necessary use atropine and adrenalin, drugs that are used where the patient has suffered a cardiac arrest, to assist in the process of resuscitation.

[188] It is clear that the earlier a course of treatment commences the better the chances of survival are expected to be but quite what effect on survival rates early

appraisal and the commencement of treatment will have in a case of a very high dosage of cocaine has to be measured for the purposes of the Inquiry against the legal standard of the balance of probabilities. Although there is scope in the symptomatic approach for anticipating a heart problem with the help of the heart monitor, by and large the regime seems to consist of waiting for the onset or occurrence of certain well recognised and understood signs of acute poisoning caused by a drug, or drugs, and responding to them as and when they occur. Of particular significance is the absence of any suggestion that the treatment involves attempting to remove the drug in question from the body of the patient at any point in time and that must apply even to where it is understood that it has yet to be absorbed into the patient's body system. It seems therefore that whatever drug has been taken and however it has been taken, it is not removed under medical supervision either in whole or in part from the body of the patient and as a consequence has to be left to work its way through the patient's system with whatever effects it has on that system being monitored and observed and the medical staff responding as considered appropriate. Punctuated throughout Dr Thanacoody's evidence was his repeated acknowledgement that at best George's chances of survival were very low. It seems to me that his observation that he could not exclude the possibility that with earlier treatment George could have survived has to be seen in light of this acknowledgement. If it were intended to hold out some hope that George might have survived it is when viewed in its proper context no higher than a very remote possibility and does not come near to a lively possibility of that happening or a possibility that it might happen.

[189] When the consequences of this treatment regime are applied to George's self-originated plight my conclusion is that on the balance of probabilities he would not have survived even if he had been taken to hospital as soon as he had ingested the cocaine. The fact is that he ingested so much cocaine in terms of its quantity, purity and after having already consumed alcohol, ecstasy and valium that he put himself beyond any realistic prospect or even lively possibility of survival from the moment that he took it. I am in no doubt that he did this unwittingly and entirely unintentionally and that makes his death all the more tragic. His death was sudden and was undoubtedly caused by an accident because ingesting the cocaine was an act whose fatal consequences were unexpected and unintended.

[190] Issue (3)(d) posed the question whether earlier or more appropriate medical interventions might have improved George's prospects of surviving. My conclusion means that I have to answer that question in the negative for both the timing of any such intervention and also its appropriateness.

Part Seven

The composition of my determination under section 6(1) of the Act

[191] The findings from the medical evidence are of far reaching significance and importance for the work of the Inquiry. As I have already observed, at paragraph [33] above, the duty on the presiding sheriff is set out in section 6 of the Act. It is to hear all the evidence tendered and any subsequent submissions made on that evidence, and then make, and issue, a determination setting out the circumstances of the death in question under reference to the five considerations set out in that section, in so far as they have been established to the court's satisfaction. To those criteria I now turn and in so doing take into account all the facts, both uncontested and those of the contested facts that I am satisfied have been proved and I require to use for these purposes, the medical evidence and the final positions of parties in their respective submissions on what determination they would like me to make in respect of each of the five criteria.

The five criteria

[192] The focus of attention throughout the Inquiry was principally on (c) but also on (d) and to an even more limited extent on (e). There was never any dispute in relation to (a) and (b).

Section 6(1)(a)

[193] All representatives agreed on where and when George died. They expressed that agreement in the first joint minute of agreement. It was on 15 September 2006

within the Royal Infirmary, Glasgow and they give the time of death as 01:53 hours.

These matters were spoken to in evidence.

[194] I am satisfied that it is right to make a determination under section 6(1)(a) that George, whose date of birth was 30 June 1990, and who resided latterly at 34A Pendeen Road, Glasgow, died on 15 September 2006 at 01.53 hours within the Royal Infirmary, Glasgow. That time is different from the time of 01.25 hours which the Crown give in their application and in their submissions and which was adopted by all of the representatives, but the difference is only a matter of some half an hour and I do not see that anything of substance turns on that difference. Rather surprisingly to my mind the Crown did not lodge as a production an extract of an entry in the register of deaths in respect of George and put it before the Inquiry in some appropriate way but I would expect that it would say the same as my determination.

Section 6(1)(b)

[195] The causes of George's death were agreed by all representatives in that same first joint minute as being hypoxic brain damage due to cardiac arrest due to cocaine intoxication and this was supported by the medical evidence led.

[196] I am satisfied that it is right to make a determination under section 6(1)(b) that the causes of his death were as stated. They replicate the findings of the post mortem examination.

Section 6(1)(c)

[197] This criterion, which is concerned with the reasonable precautions, if any, whereby George's death might have been avoided, is the one to which the greatest

attention was paid in the evidence presented to the Inquiry and it was at the heart of practically all the issues that remain for consideration. In relation to it there was a division of opinion amongst the representatives. The Crown and the representatives of George's father, his grandmother and Constable Sewell submitted that there were such precautions, while the representatives of the Chief Constable, Sergeant Campbell, Constables Beattie, Morrison and Wilson and Dr McColl submitted that there were none. Those who submitted that there were such precautions adopted the Crown position but intimated precautions that were in addition to it.

[198] The Crown position was that it was a reasonable precaution that a juvenile in police custody who had informed the duty officer that he had taken a controlled substance should be taken immediately to hospital for medical examination. The Crown added that in order to secure that this precaution would be implemented and obeyed by duty officers of the now Police Service of Scotland I should recommend, presumably under section 6(1)(e), that the Service's Standard Operating Procedures should be amended to make this mandatory for juveniles who had used such substances prior to being taken into or whilst being held in police custody. The Crown accepted that not every person in police custody who had used controlled substances should be taken to hospital for medical examination but qualified that by saying that where the person was considered to be a juvenile then transporting him, or her, to hospital for medical examination would be a reasonable precaution to take regardless of how he or she presented. Having said that the Crown recognised that in George's case taking him to hospital immediately was unlikely to have changed the outcome.

[199] The solicitor for George's father went further than the Crown. He agreed that the Standard Operating Procedures should be amended as proposed but wanted them, in the interests of consistency and precision, to clarify what was meant by a juvenile and include a statement of the factors that might justify the immediate transmission of a juvenile to hospital and not leave the decision to individual officers. He also advocated suitable training for duty officers in relation to such matters. He concurred with the Crown in accepting that not every person in police custody who had used controlled substances required to be taken to hospital for medical examination but said that there were cases where hospital treatment was appropriate and that the person who was responsible for deciding whether that should happen was the duty officer.

[200] The solicitor for George's grandmother adopted the Crown position without qualification or addition. She observed that her client, Mrs Riddell, accepted that "no matter what medical assistance was provided to George he may not have survived" but qualified that by saying that there was a chance, albeit small, that George could have survived even with any resulting brain injury had he been provided with medical attention in a clinical setting at the earliest opportunity which did not happen because there was a delay in George receiving the medical treatment that he required. She concluded that had medical assistance been sought immediately from the point that George was processed at the charge bar, that being the point in time when he had informed the duty officer that he had used an unknown controlled substance whilst in police custody, his family would at least live in the knowledge that all that could have been done for George medically was done. Had that been done then George would have arrived at hospital prior to suffering his cardiac arrest.

[201] The solicitor for Constable Sewell, in the final analysis, restricted his additions to the Crown position to asking for a recommendation that every police casualty surgeon be trained in the use of adrenalin and that he or she has a supply available for use when it may be required and for a determination that where a juvenile who had been detained informed a police officer that he had consumed a controlled substance, or the police officer suspected that he had consumed such a substance or that he was under its influence, then there was a duty on the officer to inform the duty officer, on whom fell the responsibility for the care and control of the detainee, of this information or of his suspicions. If this determination were made then there ought to be a recommendation, presumably made under section 6(1)(e), that the Standard Operating Procedures of the Police Service of Scotland be amended to make it mandatory for police officers to convey such information to the duty officer.

[202] Section 6(1)(c) directs attention to the reasonable precautions, if any, whereby George's death and any accident resulting in his death might have been avoided. For what is meant by "reasonable precautions" and "might have been avoided" in the context of the Act and how to interpret those phrases I agree with and adopt gratefully the approach of Sheriff Brian Kearney in his determination of 17 January 1986 following the Inquiry into the death of James McAlpine. It has been adopted with approval and applied in many subsequent fatal accident inquiries and is referred to with approval in Mr Carmichael's book *Sudden Deaths and Fatal Accident Inquiries* at paragraph 8.99 of the third edition published in 2005. In stating what he considered to be the aims and objectives of a fatal accident inquiry Sheriff Kearney said:

“In relation to making a finding as to the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided (section 6(1)(c)) it is clearly not necessary for the court to be satisfied that the proposed precaution would in fact have avoided the accident or the death, only that it might have done, but the court must, as well as being satisfied that the precaution might have prevented the accident or death, be satisfied that the precaution was a reasonable one”.

“The phrase ‘might have been avoided’ is a wide one which has not, so far as I am aware, been made the subject of judicial interpretation. It means less than ‘would’ on the probabilities have been avoided’ and rather directs one’s mind in the direction of the lively possibilities.”

[203] Applying that approach to the present circumstances and my findings in relation to George’s death, on the balance of probabilities there can be no reasonable precaution that might have avoided it and the accident that caused it except one: that George should have refrained from ingesting the cocaine. Such was the quantity and purity of the cocaine that by consuming what he did, when he did and having already consumed alcohol, ecstasy and valium he caused his own death. It would not have altered the tragic outcome had he told the truth to Sergeant Campbell in the van about what he had consumed and the quantity that he had consumed and had Sergeant Campbell ordered Constable Morrison to drive immediately to the hospital. By then his chances of survival were no higher than very remote which in effect discounts them in any real sense. It also follows that all the extensive discussion that took place in the course of evidence and the proposals in the submissions that were dependent on that body of evidence about what individual police officers knew or ought to have known in the aftermath of George’ consumption of the cocaine, and what in particular Sergeant Campbell and especially Inspector MacIntosh should have done and when they should have done it dealt with matters that were by then too late to affect the inevitable outcome.

[204] In making a decision on what reasonable precautions might have prevented a death it is right to have regard to the important role that hindsight can play when viewed from the vantage point of the Inquiry. In that regard I agree with and adopt gratefully the conclusions reached in that regard by Sheriff Fiona Reith in her determination relating to the death of Sharman Weir issued on 23 January 2003:

“In my opinion, the purpose of a Fatal Accident Inquiry is to look back, as at the date of the inquiry, to determine what can now be seen as the reasonable precautions, if any, whereby the death might have been avoided, and any other facts which are relevant to the circumstances of death ... The purpose of the conclusions drawn is to assist those legitimately interested in the circumstances of the death to look to the future. They, armed with hindsight, the evidence led at the inquiry, and the determination of the inquiry, may be persuaded to take steps to prevent any recurrence of such a death in future.”

In this Inquiry my conclusion that the only reasonable precaution was that George should have refrained from ingesting the cocaine means that there is neither opportunity nor scope for exercising that category of hindsight.

[205] For those reason I do not need to address the issues that remain in so far as they seek a finding that there was such a reasonable precaution. Accordingly, I can make no determination under (c) beyond saying that there were no reasonable precautions whereby George’s death and any accident resulting in his death might have been avoided, that is, by anyone other than himself and I do not propose to place it on record in the formal part of my determination that he brought about his own death accidentally by an act that was unwitting and unintentional and unintended.

Section 6(1)(d)

[206] In relation to the issue of whether there were any defects in the system of working of Strathclyde Police that had contributed to George's death, there was another division of opinion. The Crown seek a determination that the system of working with respect to the inspection of police vehicles used for the transportation of people in police custody or police productions, especially controlled substances or offensive weapons, is defective as it stands at present. In furtherance of that the Crown wish a recommendation that The Police Service of Scotland amend their Standard Operating Procedures to incorporate not only the existing instruction that vehicles be inspected internally for damage and to ensure that vehicles are clean and tidy, but a system which allows for the thorough inspection of police vehicles for foreign objects and includes specific instructions to officers to inspect them internally between uses for the presence of foreign objects such as controlled drugs and weapons which may have been discarded or hidden by passengers.

[207] The solicitor for George's father adopted the Crown position but added to it a recommendation that the Police Service of Scotland be asked to consider ways in which the Service could best ensure that important information, such as about the consumption of drugs within a police vehicle, was communicated appropriately between officers and in particular that it was imparted to a duty officer who had responsibility for determining the care and welfare of a detainee. The solicitor for George's grandmother adopted the Crown position, the solicitor for Constable Sewell took note of it but neither adopted it nor dissented from it, and the other representatives submitted that no determination was required or appropriate.

[208] This criterion is concerned with any system of working and the defects in it, if any, which contributed to the death in question or (not and as in (c)) any accident

resulting in that death. The system in question is the ways in which the various police officers were obliged by the regulations, practices and procedures then in force to carry out their respective duties towards George and in particular his best welfare once, and for as long as he remained, in police custody.

[209] For the reasons already given in relation to section 6(1)(c), I am satisfied that there is neither scope nor opportunity for making any determination except the formal one that in the particular circumstances of this Inquiry there were no defects in any system of working that contributed to George's death and that I do not need to address the remaining issues in so far as they seek a finding of a defect in that system of working.

Section 6(1)(e)

[210] For the fifth and last criterion only the solicitor for Sergeant Campbell and Constables Beattie, Morrison and Wilson made a request for a finding that the Crown recommendation which they sought under (d) should, if it found favour, be better placed under (e) because the evidence did not establish a causal link between the absence of the system of inspection of police vehicles and the death of George. All the other representatives submitted that there was no other fact that was relevant to the circumstances of George's death that should be recorded under (e).

[211] This criterion is something of a catch-all. It refers to any other facts which are relevant to the circumstances of George's death. I am not satisfied that any of the proposals made in submissions raised a matter that falls within (e).

[212] Moreover, for the reasons already given in relation to section 6(1)(c) and applied in respect of (d) I am satisfied that there is neither scope nor opportunity for

making any determination except the formal one that there are no other facts which are relevant to the circumstances of George's death.