INQUIRY UNDER THE FATAL ACCIDENTS AND INQUIRY (SCOTLAND) ACT INTO THE SUDDEN DEATH OF DANIEL CHRISTIAN BARCLAY

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FALKIRK

FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

DETERMINATION

by

NEIL J MACKINNON, Advocate, Sheriff of Tayside Central and Fife at Falkirk

following an Inquiry held at Falkirk

into the death of

DANIEL CHRISTIAN BARCLAY

FALKIRK, 20 April 2006

In terms of the undernoted sub-sections of Section 6(1) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 the Sheriff determines as follows:-

Section 6(1)(a)

1. The late Daniel Barclay (date of birth 5 June 1985) died at Stirling Royal Infirmary, Livilands Gate, Stirling at 04.40 hours on 17 May 2005, said death resulting from a self-inflicted hanging by the neck which took place within cell B3, Crammond Block, HM Young Offenders' Institution, Polmont, between the hours of 4.44pm and 5.10pm on 4 May 2005.

Section 6(1)(b)

2. The cause of Mr Barclay's death was bronchopneumonia resulting from hypoxic brain damage sustained during hanging by the neck.

Section 6(1)(e)

3. On 14 April 2005 Daniel Barclay (born 5 June 1985) was transferred from HM Prison Perth to HM Young Offenders' Institution, Polmont. He had a prior history of treatment for mental health difficulties, including treatment by anti-psychotic medication (haloperidol) and by mood stabilising medication (lithium carbonate), the use of said medications having been discontinued following on side effects experienced by Mr Barclay.

4. On arrival at HM Young Offenders' Institution, Polmont, Daniel Barclay was initially located in a general hall. He expressed fear of association with others in the hall and requested protection. On 15 April 2005 arrangements were made for Mr Barclay's medical records to be obtained from Stratheden Hospital, Cupar.

5. Daniel Barclay was thereafter located in "Crammond" Hall, a hall reserved for vulnerable young offenders. On 29 April 2005 he indicated to staff that he would self-harm if he did not receive help. Accordingly he was placed in a "safe cell" in the Iona Accommodation Block, there being no such cells situated within the Crammond Block.

6. Within said establishment a strategy known as "Act to Care" governs young offenders considered to be at risk of suicide. A daily log is kept in relation to the young offender and, when placed in a "safe cell", anti-ligature clothing is provided. Case conferences, attended by the young offender, discuss the circumstances and determine the level of risk applicable to him, and also the frequency of the case conferences, the first case conference being held within 24 hours of the young offender being placed on the "Act" strategy.

7. On the morning of Saturday 30 April 2005 a case conference was held during which Mr Barclay expressed concern that other young offenders were out to kill him. Although he denied feeling suicidal, it was decided that he should be treated as being at high risk of suicide, remaining in the safe cell within the Iona Accommodation Block, and subject to observation at intervals of 15 minutes. It was further decided that he should be referred to the visiting psychiatrist, due to attend said Institution on the next following Monday, 2 May 2005. A further case conference was also scheduled for 2 May 2005.

8. On Sunday 1 May 2005 Daniel Barclay made a request for medication and was advised that he would require to see the psychiatrist first. He denied any thoughts of deliberate self-harm or suicide.

9. On the morning of Monday 2 May 2005 Daniel Barclay met with Dr Rhona Morrison, Consultant Forensic Psychiatrist. Dr Morrison had been aware that Mr Barclay had been transferred from Perth Prison, and had requested relevant medical records from Stratheden Hospital, entering a summary of salient points from the medical history into the Scottish Prison Service Medical Records relating to Mr Barclay. On examination and assessment of Mr Barclay, Dr Morrison formed the view that he was thought disordered, and appeared to be developing a schizophrenic illness. Mr Barclay, although denying feeling suicidal, expressed fear of being killed by people in the Iona Block, and requested that he be moved out of there.

10. Dr Morrison suspected that Daniel Barclay may have had a drug induced psychosis, and wished a urine test to be carried out. She prescribed Olanzapine, an anti-psychotic medication and decided to review Mr Barclay in one week's time. Were there to be no improvement in Mr Barclay's condition, it would be necessary then to consider hospitalisation. She was aware that another psychiatrist was due to visit Polmont Young Offenders' Institution on Thursday of that week. She also formed the view that Mr Barclay would benefit from placement in a cell in the Health Centre

within Polmont Young Offenders' Institution, as she was of the opinion that he needed a quieter, more supportive environment.

11. Within the Health Centre there were three cells adapted for use as safe or anti-ligature cells. Prior to April 2005 these cells would have been available for use by a young offender, with the Iona safe cells being available in the event that more than three young offenders required to be accommodated. In or about early April 2005 it was decided that the purpose designed safe cells in the Iona Accommodation Block should be given priority, rather than the safe cells in the Health Centre.

12. Dr Morrison's request for the transfer of Mr Barclay to a cell in the Health Centre was not granted. The request was considered by the Acting Head of Health Care, who declined to allow one of the Health Centre cells to be used. Said decision was in accordance with the Governor's decision that the Iona safe cells should be the cells to which first resort should be made in such an eventuality.

13. In circumstances where a Health Centre safe cell was unavailable for use by Mr Barclay, Dr Morrison was content that Mr Barclay should spend the daytime within the Health Centre, returning overnight to the safe cell in the Iona Accommodation Block. Although this was not her preferred option, she was satisfied that this arrangement would be a safe option in the short term, until a firm diagnosis could be made.

14. On the afternoon of Monday 2 May 2005 a case conference was held, attended by Daniel Barclay, a Hall Manager, a Prison Officer and a Nurse. Only the nurse had access to Mr Barclay's medical records; those records did not accompany the nurse to the case conference. Mr Barclay denied any thoughts of suicide or self-harm. He expressed a desire to return to Crammond Hall, to be once more in a normal cell with access to a television and his own possessions. In circumstances where Mr Barclay had only recently begun his course of medication as prescribed by Dr Morrison and in view of his unsettled presentation, it was decided that he should remain on "high risk" with observations at 15 minute intervals. It was decided that he should remain in the Iona safe cell overnight, but with access to the Health Centre during the daytime, from approximately 9.30am until 4.30pm. The drug screening test subsequently disclosed that Mr Barclay did not have drugs in his system.

15. A Prison Officer named Paul Bennett was assigned to act as "security officer" to Daniel Barclay. His initial impression was that Mr Barclay was a very scared boy, terrified to go anywhere within the establishment. He felt safe in the Health Centre and wanted to stay there. On Tuesday 3 May 2005 Mr Barclay appeared to be brighter and more talkative. On the same date he repeated his wish to go back to the Crammond cell, mentioning this to Patricia Campbell, Clinical Nurse Manager.

16. On the morning of Wednesday 4 May 2005 Mr Barclay appeared more settled when he came to the Health Centre. He was talkative and played pool. He met his solicitor in an interview room at 09.37am. He told his solicitor that he no longer felt suicidal. He appeared to believe that the only medication he had been given was medication to help him sleep. Later in the morning a case conference was held, during which Mr Barclay appeared more talkative and relaxed. He expressed a wish to return to Crammond, to be with his own peer group. He said that he did not feel

suicidal. No detailed information was presented to the case conference about Mr Barclay's psychiatric history. It was decided that Mr Barclay's level of risk should be reduced to "low" and that he should return to his cell in the Crammond Block, subject to observations being carried out at 30 minute intervals. The decision making process at case conferences is such that, even if only one individual were to take the view that the level of risk should be "high", that level of risk would be set. On said date Mr Robert Duff, a "First Line Manager", in attendance at the case conference, notwithstanding that he was content for Mr Barclay's level of risk to be reduced, had concerns which led to the conference decision that Mr Barclay should not be required to attend work placements for the rest of the week, and should be allowed to attend the Health Centre in the afternoons.

17. Following said case conference Mr Barclay appeared a lot happier. He was eager to return to his old cell where he could listen to music. Paul Bennett escorted him back to Crammond Block at approximately 4pm. Mr Barclay appeared to be quite happy. Mr Bennett handed over the "Act" documentation on arrival at the Crammond office.

18. Mr Barclay was placed within his cell at the Crammond Block, (Cell B3). The evening meal is generally made available after 4pm. On said date Mr Barclay illuminated his cell light to request that he go to the toilet. He was allowed out, his door being unlocked for that purpose. He met a fellow young offender, Nicholas McGurk, who was out of his cell to obtain his meal. Mr Barclay told him that he had been up to the Health Centre but he was fine now - he was "brand new". Mr Barclay obtained his meal and returned to his cell, the door being locked at 4.44pm.

19. Mr Barclay's return to the Crammond Block had prompted a degree of concern amongst at least one prison officer about the reduction in frequency of observation from 15 to 30 minute intervals. The First Line Manager took account of this concern and planned to read the case conference documentation with a view to contacting the Health Centre in the event that he also felt concerned about the level of risk.

20. At 5.10pm on said date, in the course of an observation visit to Mr Barclay's cell, it was noted that the spy hole on the cell door was covered. The cell door was immediately opened up. It appeared that Mr Barclay had wound a bed sheet around window bars within the cell, tying the sheet around his neck. Assistance was sought and efforts were made to take the pressure off the knot by supporting Mr Barclay's weight. Mr Barclay was placed on the floor in the recovery position. There was concern as respects Mr Barclay's breathing and a "code blue" call was issued. For a short period cardiopulmonary resuscitation was carried out and a slight pulse was noted. An ambulance arrived and the ambulance defibrillator was substituted for the one available at HM Young Offenders' Institution, Polmont. Breathing was assisted by the bag and mask method to supply oxygen. Mr Barclay was intubated to assist his breathing and to protect his airway for transfer to hospital. He was taken to Stirling Royal Infirmary, leaving the said Institution at approximately 17.56 hours. On 5 May 2005 Mr Barclay underwent a CT scan which showed that he had no fracture to his spine, indicating that his condition was due to lack of oxygen to the brain causing brain damage rather than injury to the neck or spinal cord. He had no response to pain, indicating a severe degree of brain damage. Mr Barclay was ex-tubated on 9 May 2005, as he was able to breath on his own, albeit it appeared there

was no chance of recovery. He developed bronchopneumonia due to the severity of the brain damage and was pronounced dead on 17 May 2005.

21. On 9 May 2005 a Multidisciplinary Mental Health Team Meeting was held at Polmont Young Offenders' Institution. The Minutes record *inter alia* "removing the YO from a segregated Crammond to a potentially hostile hall causes unnecessary stress and fear which can only exacerbate their feelings. Some vulnerable YO's especially in Crammond may not express their true feelings at a case conference for fear of being transferred to Iona. This is not beneficial to their anxious state due to large numbers and the volume of noise within the Hall and they may fear attack, therefore it is a disincentive to report suicidal thoughts when safe cells are in Iona. A YO may express that they are no longer suicidal, just to get out of Iona".

22. By letter dated 12 May 2005 Dr Morrison wrote to the Governor of Polmont Young Offenders' Institution expressing concerns over the delivery of prison mental health care.

23. In or about late May 2005 the Governor of Polmont Young Offenders' Institution reconsidered the earlier decision to give priority to Iona safe cells in preference to the Health Centre safe cells. Numbers of young offenders in the Iona Block had been rising. The decision had been contentious, as staff viewed this allocation of resources as involving additional responsibility, notwithstanding that the staffing levels had earlier been agreed. The Governor, on further consideration of matters, decided that once more, the Health Centre cells should be made available for the use of young offenders in priority to the safe cells located within the Iona Block. He did so in circumstances where he required to consider whether it would be fair to ask staff to manage the high numbers of young offenders in the Iona Block and in addition to take responsibility for offenders on the "Act" strategy. During the period when the Iona cells were given priority, the cells in the Health Centre were on occasion utilised for operational reasons.

24. In or about early June 2005 the Deputy Governor of Polmont Young Offenders' Institution, William Middleton prepared a paper concerning *inter alia* the desirability of building additional safe cells in a new house block to be built at Polmont Young Offenders' Institution. The paper was not prepared in response to Mr Barclay's death. A meeting took place in or about 8 July 2005 at the Headquarters of the Scottish Prison Service during which there was a discussion of issues including whether 24 hour nursing care (withdrawn in or about November/December 2004) should be restored. A decision was made not to restore such care, but it was accepted that the Health Centre cells could be continued to be used in priority to the Iona safe cells, for young offenders on the Act strategy, and, further, it was decided that four anti-ligature cells should be constructed in a new accommodation block to be built at Polmont Young Offenders' Institution.

25. An internal review was initiated by the Scottish Prison Service in respect of said death, with said review being conducted jointly by Dr Debbie Nelson, a Consultant Psychiatrist and James Duffy, Health Care Manager at HM Prison Shotts. Although said review, in its written form, appeared to raise a question about why Mr Barclay's level of risk had been reduced to "low" so quickly, Dr Nelson, on further reflection, arrived at the view that this was a reasonable decision.

NOTE

[1] In this Fatal Accident Inquiry evidence was heard over a period of five days commencing on 20 February 2005. Those persons who gave evidence or provided written statements are listed in the Annex hereto. The sympathy of the Court is extended to the family of Daniel Barclay, and the Court acknowledges the particular efforts made by family members to attend the Inquiry over the course of the week during which evidence was heard.

[2] A Fatal Accident Inquiry is held under and in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, and that statute requires that an inquiry should be held into the death of any person held in legal custody. The statute provides, in terms of Section 6(1) that:-

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

[3] The Procurator Fiscal has the responsibility in the public interest of investigating the circumstances of the death and placing before the Court evidence which has a bearing on those circumstances. The Court can only proceed upon the basis of the evidence placed before it and may not speculate about whether other circumstances exist other than those matters raised in the evidence.

[4] It is also clear on the authorities that an inquiry such as this is not a forum for determining fault or apportioning blame. The function of the Sheriff is different to that which he is required to perform at a proof in a civil action to recover damages.

[5] Over the course of the Fatal Accident Inquiry I heard evidence from a considerable number of witnesses. I formed the view that each witness was endeavouring to give a truthful and accurate account of the events to which they spoke. Where differences of recollection or emphasis occurred I considered that the Governor of Polmont young Offenders' Institution, Mr Millar gave particularly cogent and compelling evidence, and preferred his testimony where minor differences occurred.

[6] Several issues were explored during the course of the inquiry and it was clear from the presentation of the evidence that the Procurator Fiscal Depute was endeavouring to address matters which had been focused by Mr Alexander Barclay in his written statement.

[7] The circumstances of Daniel Barclay's reception into Polmont Young Offenders Institution were explored in evidence. Against a background of treatment for mental health problems it was clearly important for all relevant information to be made

available to the mental health team at Polmont Young Offenders' Institution. The testimony of mental health team nurses showed that contact was made with the doctor formerly treating Daniel Barclay and arrangements were made for the transmission of his medical records to Polmont Young Offenders' Institution. The initial assessment records that relevant details of his psychiatric history were obtained and summarised in the assessment pro-forma. These details included the types of anti-psychotic medication and mood stabiliser, which he had been prescribed, together with dosages. Dr Morrison made a summary of relevant information from the medical records.

[8] At the inquiry Ms Kennedy appeared for the Procurator Fiscal. Miss Gorman, Solicitor, appeared for the Scottish Prison Officers Association. Mr MacLeod, Solicitor, appeared for the Forth Valley Primary Care NHS Trust, and for the interest in particular of Dr Morrison. Mr McLean, Solicitor, represented the Scottish Ministers on behalf the Scottish Prison Service.

[9] It appears that, prior to his transfer to Polmont Young Offenders' Institution, Daniel Barclay had ceased to take his medication due to side effects. At Polmont Young Offenders' Institution it seems that he made a request for medication on 1 May 2005 (as recorded in the daily log). He was told that he would need to see the psychiatrist first, and in respect that the prescription of medication would be a matter for Dr Morrison, I cannot see that this decision is open to criticism. Dr Morrison was due to attend the Institution on the next following day, and in the meantime, Daniel Barclay was on a high risk observation regime in an anti-ligature cell.

[10] When Dr Morrison conducted her examination on 2 May 2005 she formed the view that Daniel Barclay appeared to be developing a schizophrenic illness. It was clear that his fears were associated with the Iona Accommodation Block where he was located. On the view that a quieter, more supportive environment would be appropriate, she made efforts to have him placed in a Health Centre safe cell. She understood the cells to be, in effect, closed, but was aware that there was precedent for such cells being used notwithstanding that closure.

[11] The decision to give priority to the Iona safe cells in preference to the cells located within the Health Centre was taken in circumstances spoken to by the Governor, Mr Millar. There had been a review of nursing services carried out in 2003, and implementation of that review had taken place on a timetable spoken to by Mr Middleton, the Deputy Governor, with overnight nursing care having been withdrawn in or about November/December 2004. The immediate reasons behind the decision to give priority to the Iona cells are reflected in the findings made *supra.* The Iona cells were purpose designed as anti-ligature cells, rather than being merely adapted for use. It is equally clear that a Governor cannot be expected to take each and every decision relating to the management of an Institution such as Polmont Young Offenders' Institution. It is necessary to delegate certain decision making functions, and in that regard, Mr Kane's decision not to allow Dr Morrison's request may be understood as a decision made in light of the prevailing allocation of resources. On the evidence, it is clear that Mr Kane considered he had no discretion to make a cell available. Now, in the case of Daniel Barclay there were particular circumstances which would have rendered it appropriate to have a cell made available. His feelings of paranoia were related to a specific place - the Iona Block

where he was located. Witnesses such as Elizabeth Walker accepted that it could have been beneficial for Daniel Barclay to have been housed in a cell within the Health Centre. For reasons unrelated to the death of Daniel Barclay (although the timing of the management decision unsurprisingly led Mr Kane, for example, to conclude that there was a link with the death of Mr Barclay) priority has now been given to the Health Centre cells, available once more as a resource to be used in preference to the Iona safe cells. In the field of mental health it appears desirable that there should be sufficient flexibility to allow for an allocation of resources, which meets the needs of the particular young offender. But for the fact that the Health Centre cells have been made available once more, and the fact that the Governor has also instituted changes to the way "Act" procedures are managed (including changes designed to create an improved daytime regime) I would have been minded formally to recommend that flexible procedures be put in place to allow for discretionary decision making in cases such as this, where a young offender's feelings of paranoia are associated with a specific location.

[12] The case conference procedures which ultimately led to Daniel Barclay's level of risk being reduced from high to low were comprehensively explored in evidence. Although the pro-forma documents recording the case conference proceedings appear to call for a frequency of case conferences to be set at 24 hourly intervals in those instances where the young offender is deemed to be at high risk, in practice this does not appear to happen. It was my understanding of James Duffy's evidence that revised documents now reflect the general practice, with each case conference determining the frequency of conferences as appropriate to the individual case.

[13] The process where by the decision was made to reduce Daniel Barclay's level of risk allowed for discussion to take place involving all the participants at the conference. It appears that, in general, there would be at least one member of the mental health team present who would be familiar with the psychiatric history of the young offender, but who may not always be in a position to share that history with others due to reasons of confidentiality. Accordingly at conferences there may not always be an introductory briefing or overview given to all the participants about the young offender's psychiatric background. I did not consider that this aspect of the case conference procedure was unsatisfactory, although it clearly places a particular responsibility on the member of the team who has access to the medical records. Given that the conferences operate a system which sets the risk at high if even one person considers that to be the appropriate level, the system will always give the member of the team with access to the records the opportunity if so advised to override the views of the others at the conference.

[14] For the case conference procedure effectually to safe guard the welfare of the young offender, it is vital that each participant at the case conference understands that he or she can cause the level of risk to be set at the highest level, irrespective of the views of the others attending the case conference. During the evidence of Mr Robert Duff, a First Line Manager at Polmont Young Offenders' Institution, there appeared to be a suggestion that in the event of a disagreement amongst participants about the appropriate level of risk, there would be an element of compromise. Having read and re-read the notes of evidence I have concluded that, truly, Mr Duff's position was that if one participant, eg a mental health nurse, called for the level of risk to be set at high then that level of risk would be adopted.

[15] For completeness I should record that in the course of the re-examination of Alan Oliver, a prison officer, an objection was taken by Mr McLean to a line of questioning relating to the possible return of young offenders to the Crammond Hall on 15 minute observations, this not having arisen in cross-examination. The witness had given some evidence in cross-examination about 15 minute and 30 minute observations, and I have concluded that this evidence should be treated as admissible.

SUBMISSIONS

[16] Ms Kennedy, having invited me to make the determination set out, *supra*, as to Daniel Barclay's time of death, invited me to consider, for the purposes of Section 6(1)(e) of the 1976 Act, a number of matters. These included the treatment given to Mr Barclay in the period from 29 April 2005 in terms of the "Act to Care" strategy, and the fear that Daniel Barclay had of being in accommodation at the Iona Block, together with the wish on the part of Dr Morrison that Mr Barclay be moved from that block together with the refusal by Mr Kane of that request. It was relevant to consider whether Mr Barclay should have been in prison at all. Further, the condition of the anti-ligature cells was not conducive to recovery or recuperation. With regard to the medication given to Mr Barclay, it was relevant to consider that Mr Barclay was not given medication until the Monday (2 May 2005) despite requesting medication. It was relevant also to consider whether Mr Barclay should have been seen by a doctor before he was. For the purposes of Section 6(1)(c) the Court was invited to have regard to Dr Morrison's request to have Mr Barclay moved from Iona, and in this context the Minutes of the Meeting of 9 May 2005 were pertinent. Ms Kennedy drew my attention to the terms of Section 6(1)(d) of the 1976 Act but was content to leave this aspect of matters to the Court, making no specific submission under this head.

[17] Miss Gorman invited me to hold that there was no evidence which would point to a determination being made in terms of Section 6(1)(c), (d) or (e). She drew my attention to the testimony given in particular by Mr Bennett and by Mr Duff, together with the evidence from Nurse Walker about Mr Barclay's appearance of improvement. In respect of the case conference procedure, there had been no disagreement as to the appropriate level of risk to be set in respect of Mr Barclay.

[18] Mr MacLeod submitted that no findings should be made in terms of Section 6(1)(c) or (d). He pointed to the detailed entries in the records setting out Dr Morrison's views and the steps taken by her to secure a quieter environment for Mr Barclay. She understood the matter would be taken to Governor level. She was however satisfied that the regime, which allowed for Mr Barclay to be in the Health Centre during the day was a safe one, notwithstanding that this was not the provision she wanted. Mr Barclay was commenced on a course of medication and complied with this over the course of the following two days. During the course of the inquiry the issue had been raised of whether Mr Barclay should have been hospitalised. There could have been a difficulty in obtaining a hospital bed, and, further, the anti-ligature cell meantime provided a safe environment. It was clear that Dr Morrison in her evidence regarded the decision by the case conference to reduce Mr Barclay to a low level of risk as a reasonable one.

[19] Mr McLean invited the Court not to make any findings under Section 6(1)(c). The key time was the case conference on 4 May 2005. No defects in the system had been shown such as to warrant a determination in terms of Section 6(1)(d). There was no link between the timing of case conferences and Mr Barclay's death. In any event, a case conference had been held on 30 April 2005, within 24 hours of Mr Barclay being placed on "Act". So far as Section 6(1)(e) of the statute was concerned, the burden of proof was on the Procurator Fiscal. It was outwith the remit of the inquiry to look at matters of Scottish Prison Service policy. The Court should find it established that the Act to Care strategy was applied appropriately in Mr Barclay's case and, that once a risk of suicide was identified on 29 April, he was made safe at that time. The procedure adopted on 2 May 2005 continued to keep him safe and a care plan acceptable to Dr Morrison was adopted. To other inmates such as Mr McGurk, Mr Barclay appeared "brand new". Mr Bennett had given compelling evidence about Mr Barclay's demeanour. The Court should find that the case conference of 4 May made the correct decision. Matters had arisen in evidence about confidentiality and the sharing of information, but the Court would be entitled to hold that the relevant information was shared. Following Mr Barclay's improvement a decision was taken to reduce his level of risk. The Court could be clear that there existed no causal link between the death of Mr Barclay and the fact that he had spent the nights of 2nd and 3rd May 2005 in an Iona anti-ligature cell. Dr Morrison's evidence was that she could not say there was any such link. The Court should have regard to the Governor's evidence as to the decision making procedures applicable to the Health Centre cells. Although there had been certain exceptional cases such as the young offender who had "MRSA" the issue of the non-availability of a Health Centre cell for Mr Barclay was not relevant to his death.

CONCLUSIONS

[20] I was invited by the Procurator Fiscal Depute to make a finding in terms of Section 6(1)(c) of the 1976 Act in light of the request made by Dr Morrison that one of the Health Centre cells be made available for Mr Barclay. Before the Court could make such a finding it would be necessary for the Court to be satisfied that such a measure was one "whereby the death and any accident resulting in the death might have been avoided". The wording of this part of the statutory provision envisages that there should be a "real or lively possibility" that the death might have been avoided by the "reasonable precaution" desiderated (*Carmichael - Sudden Deaths and Fatal Accident Inquiries - Third Edition - Para 5-75*).

[21] In considering this submission it is pertinent to have regard to a number of matters. Daniel Barclay was a vulnerable young offender, having been located in Crammond Hall. The evidence showed that young offenders from that Hall were sometimes subjected to threats or jibes, and an offender known to have originated from Crammond could well find himself in a stressful situation if relocated to a General Accommodation Block, such as Iona. There was evidence that in the Iona Block the atmosphere would have been noisy, whereas the cells in the Health Centre had a somewhat quieter environment.

[22] Daniel Barclay's feelings of paranoia were known to be associated with the Iona Block where he was relocated. He thought that persons there were going to kill him. Moreover, witnesses such as Elizabeth Walker acknowledged that relocation to a

cell in the Health Centre could be beneficial. The question whether such a move might have avoided the death of Daniel Barclay was explored in particular with the psychiatrists who gave evidence.

[23] It will be recalled that those best placed to observe Mr Barclay in the period from 2nd to 4 May 2005 noted an improvement in his mood, subsequent to his commencement on anti-psychotic medication. He was not expressing suicidal ideation. Dr Morrison in her evidence expressed the view that even if Daniel Barclay had been located in a cell in the Health Centre, the case conference may nevertheless have decided that he should return to Crammond. Indeed, if he responded and settled, he would probably have gone back to Crammond. Dr Morrison considered the decision taken by the case conference on 4 May 2005 to return Mr Barclay to Crammond to be a reasonable one. She did not appear to identify a causal link between Mr Barclay not being placed in a Health Centre cell and his death. It was not known whether his actions on afternoon of 4 May 2005 were impulsive or whether he had formed a serious intention in this regard. The fact that he took his meal did not clarify the matter. We would never know what motivated him.

[24] Dr Nelson appeared to accept that Daniel Barclay being located overnight in the place associated with his feeling of paranoia may have led to distress. This evidence accords with the evidence given by other witnesses to the effect that a move to the Health Centre could be beneficial. However, as Dr Morrison observed, we do not have an x-ray for the mind. I have concluded that it is not possible to say with confidence what motivated Mr Barclay's actings on the afternoon of 4 May 2005. There was some speculation in the documentation referred to in evidence (and notably in the Minutes of the Multidisciplinary Team Meeting of 9 May 2005) that perhaps Daniel Barclay expressed himself as being no longer suicidal "just to get out of Iona".

[25] I have concluded that little weight can be placed on such speculation. Daniel Barclay was being observed not only within the forum of case conferences, where he consistently denied any suicidal ideation, but his behaviour was also being monitored by Paul Bennett, the Prison Officer acting as security officer. He was able to discern a noticeable improvement in Daniel Barclay's presentation over the period following the administration of anti-psychotic medication. Were his denials of suicidal ideation synthetic i.e. a pretence designed only to secure his transfer back to Crammond, I consider that it is likely that staff members such as Mr Bennett would have had some impression or sense that there was such a pretence. On the contrary, Mr Bennett was able to recall conversations and remarks not confined to the case conference setting, which suggested that Daniel Barclay had a genuine wish to relocate back to his cell at Crammond where he would have access to music and his own possessions.

[26] In these circumstances I am unable to hold that, for the purposes of Section 6(1)(c) the fulfilment of Dr Morrison's request would have constituted a reasonable precaution which might have avoided Daniel Barclay's death. I have, however, made certain observations, *supra*, concerning this aspect of matters.

[27] The Procurator Fiscal Depute made no specific submissions under reference to Section 6(1)(d) of said statute and I do not consider that any findings fall to be made under this particular statutory provision.

[28] With reference to Section 6(1)(e) of the 1976 Act, the Procurator Fiscal Depute drew my attention to a number of matters, all as recorded, *supra*. In so far as I have considered matters of medical treatment relevant, I have outlined such matters, *supra.*

[29] The Procurator Fiscal Depute submitted that it was relevant to consider whether Daniel Barclay should have been in Polmont Young Offenders' Institution at all. I accepted Dr Morrison's evidence to the effect that an appropriate care plan had been devised (albeit that it was not her preferred option) which would have allowed Mr Barclay to receive medication for a week until a further review during the next following week, with transfer to hospital being an option in the event that his condition did not improve.

[30] The condition of the anti-ligature cells was touched on briefly by the Procurator Fiscal Depute in her submission. She submitted that their condition was not conducive to recovery or recuperation. The anti-ligature cells in Iona were relatively new and purpose designed. In the circumstances of the present matter I do not consider that, on the evidence, their condition was relevant to the circumstances of Mr Barclay's death.

[31] A further matter addressed by the Procurator Fiscal Depute was the question of whether Daniel Barclay should have been seen by a doctor sooner than he was. There was some evidence of regular visits by a general practitioner, but in the present inquiry the crucial matter relates to Mr Barclay's psychiatric care. I was satisfied that, in that regard, the steps taken to implement the Act strategy and to make a referral to Dr Morrison were sufficiently prompt and timeous. I heard no evidence, which would allow me to conclude that the system whereby a psychiatrist would visit Polmont Young Offenders' Institution regularly on Mondays and Thursdays was deficient and ought to be revised.

[32] I accepted Dr Morrison's testimony to the effect that it was not possible to know what motivated Mr Barclay to take his life. He had evidently impressed witnesses such as Mr Bennett as being a lot happier after the case conference on 4 May 2005. It is particularly striking to recall that Nicholas McGurk had met Mr Barclay once he had returned to Crammond Hall on 4 May 2005, and Mr Barclay told Mr McGurk that he was "brand new"; that he had been up to the Health Centre but was fine now. Accordingly it may be that it was only on the spur of the moment that Mr Barclay decided to kill himself. It was Dr Morrison's view that we would never know what motivated him.

[33] I would wish to extend the Court's sympathies once more to the family of the deceased Daniel Barclay.

[34] The witnesses who gave evidence at the inquiry were as undernoted:-

1. Elizabeth Walker, HM Young Offenders' Institution, Polmont.

2. Rosemary Hynd, HM Young Offenders' Institution, Polmont.

3. Dr Rhona Morrison, Consultant Forensic Psychiatrist.

4. Patricia Lee-Campbell, HM Young Offenders' Institution, Polmont.

5. Paul Kane, HM Young Offenders' Institution, Polmont.

6. David McKigen, HM Young Offenders' Institution, Polmont.

7. Paul Bennett, HM Young Offenders' Institution, Polmont.

8. Robert Duff, HM Young Offenders' Institution, Polmont.

9. Alan Oliver, HM Young Offenders' Institution, Polmont.

10. James Steven, HM Young Offenders' Institution, Polmont.

11. William Millar, Governor, HM Young Offenders' Institution, Polmont.

12. William Middleton, Deputy Governor, HM Young Offenders' Institution, Polmont.

13. Dr Debbie Nelson, Consultant Psychiatrist.

14. James Duffy, Health Care Manager, HM Prison, Shotts.

[35] In addition, written statements were lodged in respect of the following:-

Alexander Barclay

Nicholas McGurk

Stuart Urquhart

Dennis Power

Lindsay Tolland

Dr Annette Riley MBCHB, Consultant Pathologist and,

Dr Alastair Howie, Consultant Physician, Stirling Royal Infirmary