

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY
(SCOTLAND) ACT 1976

DETERMINATION IN RESPECT OF THE DEATH OF POLICE CONSTABLE KEVIN
LOWE

I find in terms of Section 6(i)(a) of the Act that Police Constable Kevin Lowe, born on 29th January 1960, who resided latterly at 6 South Crescent Road Ardrossan died at the junction of the A77 Northbound and Symington Road North, Symington on 20th October 2006 at around 19:08 hours, life being pronounced extinct at 20:46 hours and in terms of Section 6(i)(b) of the Act that the causes of death were 1(a) Head and chest injuries due to (b) Road traffic accident.

I find in terms of Section 6(i)(c) that there were no reasonable precautions whereby the death and any accident resulting in the death might have been avoided and in terms of Section 6(i)(d) that there were no defects in any system of working which contributed to the death or any accident resulting in the death; in respect of these two findings I accept the submissions made by the Procurator Fiscal Depute and representatives of Mrs Lynda McLelland, Transport Scotland and the Chief Constable of Strathclyde Police.

Since this incident resulted in the death of a Police Constable on duty in the course of his employment in an unmarked road traffic police car on the A77 it is appropriate that I turn my attention to Section 6(i)(e), "any other facts which are relevant to the circumstances of the death" and which are matters, in my judgement, of public interest.

The facts and circumstances surrounding and preceding the incident are as follows:-

- 1) Police Constable Kevin Lowe date of birth 29th January 1960 was an advanced police driver having passed the appropriate course at Grade 2 in 1993 and undertaken a pursuit seminar in November 2005. He joined the police force in 1982 and entered the Traffic Department in 1992. In September 2004 he was transferred from the Road Traffic Policing Unit at Greenock to that at Ayr.
- 2) At the time of his death he was an efficient and well thought-of officer and there had been no reported concerns from any of his colleagues in connection with his driving.
- 3) On 20th October 2006 he was allocated to Unit TU94 along with Police Constable James Brown, that being an unmarked silver Mercedes 320 petrol saloon car with an automatic 5 speed gear box registered number SA02 GBY. The car was first registered in 2002 and had been rotated (as all unmarked vehicles are) coming to Ayr some two months prior to the date in question. At that date Constable Lowe was the driver and Constable Brown was the passenger.
- 4) On said date Chief Superintendent Jeanette Joyce of Strathclyde Police, having 32 years police service the last seven of which prior to that date

had been in the Complaints and Discipline Branch, left Police Headquarters in Pitt Street, Glasgow, to return home to Dundonald. She travelled down the southbound A77 and turned right at Bogend Toll into Tarbolton Road which is a single carriageway road without streetlights.

- 5) Driving towards Dundonald near Crooks Farm she was aware of an oncoming car swerving as a result of which she slowed having seen an object black and silver coloured on the road which she initially thought was a rucksack.
- 6) She stopped having observed a female sitting in the roadway near the centre line but on the eastbound carriageway facing traffic on that lane.
- 7) At approximately 18:30 Chief Superintendent Joyce alighted from her vehicle and found the female sitting on the road rocking backwards and forwards and holding her left elbow. She was distressed, crying and howling, had her legs crossed and had an injury to the left side of her face which was bleeding. Silver bangles lay on the ground beside her along with a baseball cap.
- 8) Upon questioning by Chief Superintendent Joyce as to whether or not a vehicle had hit her, her response was, "It didn't even stop". Upon being asked again if a car had hit her she indicated the affirmative. Chief

Superintendent Joyce decided to summon assistance and borrowed a mobile telephone from another driver who had also stopped. That driver had telephoned the 999 service but been placed in a queue and in the circumstances where Superintendent Joyce believed the female to have suffered a head injury she decided to take swifter action.

9) Chief Superintendent Joyce then telephoned Force Overview on a restricted number where she spoke to Police Sergeant David Stevenson, the duty officer. She requested an ambulance and a marked police car, adding that the female appeared to have been struck by a vehicle perhaps once or twice and had suffered facial and arm injuries. She gave Sergeant Stevenson the locus and appeared to him to have a tone of urgency in her voice. The female had a large swelling on her left temple, and in the view of Chief Superintendent Joyce was becoming less responsive and beginning to lose consciousness.

10) Sergeant Stevenson logged the call on the STORM log (a Strathclyde Police Computer system) as a code 41, a Road Traffic Incident. He allocated to it a "Grade One" priority.

11) Incidents reported to the police are graded as follows:

Grade One – Immediate, indicating an immediate threat to life;

Grade Two – High, an ongoing incident but no indication of threat to life;

Grade Three – Standard, incident not ongoing but attendance required;

Grades Four and Five do not require police attendance.

In respect of Grades One and Two drivers of police vehicles may use the siren and emergency lights at their discretion.

12) A code 41, Road Traffic Incident, is normally Grade Three. The grading may be increased depending on the circumstances. In the event of doubt, the grade is upgraded by default to a higher grade.

13) In the light of the information supplied by Chief Superintendent Joyce, it seemed likely that the female had been involved in a "hit and run" accident resulting in her injuries, including what might have been a serious head injury, and in those circumstances the allocation of Grade One by Sergeant Stevenson was reasonable.

14) The next step was for Sergeant Stevenson to transfer the information to the Area Control Room at Pitt Street within which is situated the U Division POD. He also telephoned someone in the POD and called an ambulance. An ambulance was already on its way to the incident.

15) Sharon Brown, a communications operative, a civilian employee of Strathclyde Police, was on duty in the U Division POD. At 18:46 she requested attendance to the locus by any available units, to which units Delta 25 and Delta 27, divisional marked police vehicles, indicated they

would attend. Each of these vehicles is staffed by two police constables. Delta 27 requested an ambulance and a traffic unit to attend the incident.

16) At or about 18:54 hours Sharon Brown called for a traffic unit to attend the accident. This brought no response and the Duty Inspector at Ayr called her requesting she contact each traffic unit to ask why there had been no response. She called Tango Uniform 21 (TU21) who indicated that they were on a meal break at Ayr Office and not therefore available. It is normal practice to call the first unit (allocated TU11, TU21, etc.) in a traffic unit group first.

17) At approximately 18:56 hours the divisional officers at the locus again requested a traffic unit to attend. TU22, a marked road traffic policing vehicle indicated they would attend from Ayr Police Office. Divisional officers on the scene had reported the physical condition of the female as "a bit crooked" and indicated that the incident appeared to be a "hit and run".

18) At approximately 19:01 hours, TU94, the unmarked car, called to indicate that they were on their way to the locus of the accident on the Tarbolton Road.

19) Sergeant Graham Clark was the on-duty Road Policing Sergeant at Ayr in charge of allocating vehicles and duties. He noted the call from control to ask TU21 to attend the locus of the incident. He was on his meal break

along with Constables Lowe, Brown, Philip and Allan when the crew of TU21 came in with their hot meal. Sergeant Clark therefore spoke to Constables Phillips and Allan the crew of TU22 and asked them to answer the call. Sergeant Clark understood the incident was a serious "hit and run" called in by an off-duty police officer but was given no grading.

20)As he walked along the corridor back to his office, Sergeant Clark saw Constables Lowe and Brown putting on their body armour and he asked if they were also attending the incident, to which they indicated the affirmative. They were more ready than the crew of TU22 and were able to leave immediately. Sergeant Clark asked them to give him an update when they arrived at the scene of the incident.

21)In taking the decision to attend the incident, the crew of TU94 self-tasked. The crews of unmarked police vehicles have a wide discretion as to where they carry out and what they do by way of their duties. Sergeant Clark was aware that Constable Lowe well knew the A77, since the unmarked cars spent a lot of time on that road.

22)TU94 in addition to the normal equipment found in such Mercedes-Benz cars had been equipped with an electronic dashboard with police emergency equipment control panel. The following functions were included in this system:-

(a) alternately flashing headlights;

- (b) front strobe LED (light emitting diode) blue lights, which were fitted behind the grille;
- (c) rear strobe lamps, being red lamps in the tail lamp units;
- (d) rear blue lamps mounted on the interior roof panel of the vehicle;
- (e) a matrix sign mounted on the rear interior parcel shelf of the vehicle.

23) Paramedics had arrived at the scene of the incident at approximately 18:59 hours, two minutes prior to the call in of TU94 to the effect that it was in its way. From what location that call was made is unknown. No update call had been made from the locus by divisional officers in regard to the condition of the victim prior to the accident involving TU94 on the A77.

24) In the wake of TU94 leaving Ayr Police Office the marked vehicle TU22 left, to take the same route, approximately one to two minutes behind.

25) Both police vehicles called in to request the "marking up" of speed camera activation on Whitletts Road Ayr and the overhead SPECS system on the A77. These requests were made at approximately 19.01 and 19.02 respectively, TU94 having called first. The point on the journeys of both vehicles where the call-ins were made cannot be determined, but the timing of the calls indicates that the two units were quite close together in time, but subject to noting that at the speeds they achieved as mentioned later, such a time gap of one or two minutes would represent a considerable gap in distance between them.

26) TU94 was travelling at speeds in excess of the speed limit with its emergency equipment activated. Although fitted with video recording equipment that system was not in use. It was travelling at speeds at or in excess of 100 miles per hour at various points on the part of the A77 from Dutch House Roundabout towards the Symington turn-offs. The frontal display of the vehicle, to indicate it was a police vehicle with its emergency equipment activated, showed the alternating headlights and the blue lights in the grille, which are on the same plane as the headlights. This display is a standard feature of such vehicles in all Scottish and UK police forces.

27) TU94 proceeded on that part of the A77 between Dutch House and the locus of the collision in the off-side lane or lane two of the northbound carriageway at very high speed, overtaking as it did so vehicles driven by off-duty Police Constable Alistair Ingram (attached to the Traffic Unit at Ayr) who estimated its speed at some 120 miles per hour, Andrew Morrison and Nicholas Cairney. It had left witness Cairney's vehicle some 300 metres behind when it reached the Symington Road North junction. It passed Symington Road South and approached the junction with Symington Road North. Symington Road North runs westwards from the A77. On the northbound carriageway there is a deceleration lane for traffic turning off into it and an acceleration lane for traffic turning left out of it to proceed northwards. On the southbound carriageway of the A77 there is a deceleration lane beside the central reservation for traffic

turning westwards. Such traffic requires to cross on the level the northbound carriageway of the A77.

28) On the northbound carriageway there is a dip some 287 metres south of said junction levelling out at approximately 66 metres south.

29) Mrs Lynda McLelland, of 13 Brewlands Crescent Symington was driving south on the A77 in a Mitsubishi Shogun motor vehicle registered number ST52 ODP on her way home. To do so she required to turn right across the northbound carriageway of the A77 into Symington Road North. She positioned her vehicle in the deceleration lane and turned into the gap in the central reservation, stopping her vehicle there prior to continuing with her manoeuvre. The actual position of her vehicle in the gap cannot be determined. She moved off, crossing the northbound carriageway and the front part of her vehicle entered Symington Road North while the rear part was still within the inside lane or lane one of the northbound carriageway of the A77.

30) As she commenced to move off TU94 was approximately 110 metres south of the junction "bellmouth". At this point Police Constable Lowe became aware of the other vehicle entering the carriageway on which he was driving and instinctively steered TU94 to the northwest or left towards the bellmouth of the junction. This instinctive reaction is deeply ingrained and no matter how much training a driver has undergone, in the agony of the moment human reaction takes over, the instinct being to

move away from danger. The reaction time available to Constable Lowe was infinitesimal. He did not brake.

31) A collision took place between the two vehicles in the bellmouth area of the junction. TU94 struck the left hand or near-side of the Shogun, the off-side front of TU94 striking the near-side front wheel area of the Shogun and then the offside rear of TU94 struck the rear of the Shogun causing it to spin and oscillate. It rolled northwards losing contact with the carriageway, turning clockwise twice with a further partial rotation before coming to rest on its off-side, facing west, on the west footway of the northbound carriageway. Mrs McLelland was partially thrown from the vehicle through the off-side front door window and suffered serious injuries including fractures to both arms, multiple rib fractures, collapsed lung and soft tissue swelling to neck and brain haemorrhage. While in hospital she suffered a stroke.

32) TU94 continued on the course taken as a result of the evasive steering action taken by Constable Lowe, proceeding north-westerly over the westerly footpath of the northbound carriageway, over a grass embankment through a fence and into a field where it came to rest.

33) Constable Lowe suffered fatal injuries as a result of the collision and Constable Brown suffered serious injuries including internal injuries necessitating the removal of parts of his intestine, fractures to both feet and a fractured left clavicle.

34)As a result of the fatal injuries to his head and chest it is likely that Constable Lowe died almost instantly at or about 19.08 although not pronounced dead until 20.46.

35)Witnesses Morrison and Cairney before-mentioned both stopped their vehicles to assist as did the occupants of other vehicles and local residents, one of whom extinguished a fire in TU94.

36)At approximately 19:09 TU22 crewed by Constables Phillips and Allen drove past the scene of the accident and noted the Shogun vehicle lying on the west footway. Constable Phillips executed a U-turn and returned on the southbound carriageway to investigate. He assessed the situation and parked his vehicle at a "fend-off" angle with all its emergency beacons on and displaying its fluorescent side towards northbound traffic. Constable Phillips found Constable Lowe trapped in the car and could find no sign of life. PC Brown was extracted from TU94 as PC Phillips was concerned of a risk of fire.

37)Police casualty surgeon Doctor Phillip Larraway attended at the scene at approximately 20:45 hours and pronounced Constable Lowe's life extinct at 20:46 hours.

38)As a consequence of this latter incident, no traffic vehicle ever attended the original incident on the road to Dundonald.

- 39)As a result of the fatal accident the A77 and adjacent roadways were closed and the scene preserved for investigation purposes.
- 40)Lothian and Borders Police were asked to carry out an investigation into the incident, involving as it did an on duty police officer, and officers from that other force attended on the 20th of October and on subsequent dates to carry out a full investigation and produce a report.
- 41)On the 24th of October Doctors John Clark and Consultant Forensic Pathologist Julie McAdam conducted a post-mortem examination on the body of Constable Lowe as a result of which their opinion was that the causes of death were as stated in the finding in relation to Section 6(1)(b).
- 42)Both vehicles involved were conveyed to a vehicle yard in Kilmaronock where they were examined. Neither vehicle had any defects which would have any bearing on the accident.
- 43)For vehicles proceeding southbound on the A77 to turn right into Symington Road North there were sightline restrictions at the central reservation. The road signage and the Brifen wire and post carriageway separation system restricted the available view unless the front of the vehicle so turning were positioned right at the Give Way line between the

central reservation gap and the off-side lane of the northbound carriageway.

44)The Brifen wire system is widely used and can be more effective than a solid barrier in that it is designed to trap a vehicle rather than deflecting it back into its own carriageway. A solid barrier at this locus would have more adversely affected the sightlines.

45)There were similar sightline restrictions for the same reasons for vehicles travelling north on said lane in regard to vehicles in the central reservation gap waiting to turn right.

46)These restrictions did not obscure other vehicles in either of these situations but might partially obscure them.

47)At the time of the collision TU94 was displaying the blue flashing grille lights and the alternating headlights, with the siren also activated. The effectiveness of a siren in these situations is very limited and it may not be heard by other drivers.

48)As it approached the locus TU94 was travelling at approximately 102 miles per hour, with a margin of error of 10% either way. After the collision, the speedometer reading was frozen at 98 miles per hour. There was insufficient time for Constable Lowe to bring TU94 to a halt. Had he maintained his direct course without deviation and continued in

the off-side lane of the northbound carriageway it is likely that TU94 would have passed behind the rear of the Shogun and no collision would have occurred.

49)The effectiveness of the light warning systems on TU94 was reduced by the effects of the Brifen wire and posts and the street furniture at the junction. The posts produced a stroboscopic effect causing fixed headlights to appear to alternate when viewed through the posts so that the alternating headlamps of TU94 could appear to be fixed while the car was at speed. Similarly when viewed through the posts static headlights on a vehicle are also made to appear to be flashing alternately with the result that it was not possible for a driver such as Mrs McLelland to distinguish between a vehicle displaying alternately flashing headlights and one with static headlights affected by the Brifen wire posts.

50)The effectiveness of the forward blue emergency lighting of TU94 was negated by the light wash from its own and other vehicles' headlamps, because said blue lights are situated in the same plane as the headlights.

51)It is likely that Mrs McLelland failed to appreciate the nature of the oncoming vehicle TU94 or its speed as a result of these visibility restrictions and other factors namely that the speed limit on the A77 at the locus is 70 miles per hour and is enforced by SPECS cameras, which measure average speed over a distance. She was well acquainted with the manoeuvre which she undertook that night and used to judging the

gap in oncoming traffic in which she would be able to proceed to cross the northbound carriageway safely. Further her difficulties were compounded by TU94 passing slower vehicles in the inside lane which were running parallel with it rendering the difference between its alternating headlights and the static headlights of the other vehicles indistinguishable due to the Brifen wire posts.

52) It is much more difficult for a driver to assess the speed of a vehicle approaching or receding than it is to assess the speed of a vehicle crossing his or her path, particularly if the driver is also moving.

53) The Shogun was dark coloured. It is possible for a northbound driver in the off-side lane to see the lights of vehicles in the deceleration right-turn lane on the southbound carriageway. However when such vehicles are positioned at or near to the Give Way line at the central reservation their near-side or left side is displayed with the result that headlights are not clearly visible, they being directed in a westerly direction across the carriageway and showing only as two points of light. In addition because of the road lighting on the A77 as the road again dips to the north of the junction and into the distance such road lights appear to descend towards the horizon with the result that they become immixed with vehicle lights on the southbound carriageway and in the central reservation gap.

54)As a result of these sightline difficulties for Constable Lowe it is unlikely that he would have been able to see the Mitsubishi Shogun waiting in the central reservation to turn across his path.

55)Although the public perception is that the junction in question is a dangerous junction, that is not borne out by accident statistics as in a six year period there had been only two other recorded accidents as the locus neither of which occurred due to the same mechanism of a vehicle turning westwards across the northbound carriageway in the face of northbound traffic.

56)As a result neither Transport Scotland as Roads Authority nor Strathclyde Police were aware of the particular difficulties at this junction, these only emerging following upon the accident investigation by Lothian and Borders Police who carried out a full investigation as a result of which Transport Scotland and Strathclyde Police are liaising with a view to ameliorating the situation at this junction.

NOTE

Having set forth the facts which led to this accident I now turn to consider what may be said in terms of Section 6(i)(e) but before doing so have to express the sympathy of the Court to the relatives, friends and colleagues of Constable Lowe who died in the course of his duties serving the public. It is

indeed a tragedy that the life of this long - serving and well respected officer was cut short in such circumstances. It is also to be hoped that Constable Brown and Mrs. McLelland continue to recover from the severe injuries which they sustained.

It is very important that the purpose of a Fatal Accident Inquiry be clearly understood. Its purpose is to bring out in public the facts of the case. It is not a trial of anyone nor is it a proper forum for determining fault nor is it an exercise in pillorying or stigmatising any individual or individuals or apportioning blame among them. As Constable Lowe died in the course of his employment this inquiry is mandatory but there may also be serious public concern about the use of unmarked police vehicles and the locus of the accident.

There was unanimity among the Procurator Fiscal and others involved in the inquiry that it would not be appropriate to make findings in respect of Section 6(i)(c) or 6(i)(d) and as I say before I have accepted these submissions confining what I say to Section 6(i)(e) only.

Another important consideration which must be mentioned and which ought to be mentioned in every Fatal Accident Inquiry determination is that the Court is not here to deal with hindsight. With hindsight it is always possible to find a better way to do or not do things. What happened on this night was the coming together of a combination of factors arising from unusual

and unanticipated circumstances. Had these circumstances not all conspired to come together in their effects at the specific time then this tragedy would not have happened. If a matter of seconds earlier or indeed later TU94 would have missed the Shogun and indeed had Constable Lowe not had the completely understandable and instinctive human reaction of swinging TU94 to the left to avoid a shape which must have appeared from his right to cross his path then TU94 would in all probability have passed the rear of the Shogun without collision.

I have already set out in detail in the factual findings the situation which arose on the 20th of October when the collision occurred at approximately 19:08 and I do not intend to repeat them here save to note that while the public perception locally is that this junction is dangerous the accident records which were laid before me do not bear out that finding, as there were only two recorded accidents neither of which involved a similar manoeuvre. However I am bound to note that right turns across two lanes of a derestricted carriageway where the national speed limit of 70 miles per hour applies carry inherent risks in that they bring into conflict vehicles crossing each other's path. This is especially so at this particular junction because of the dip on the northbound carriageway followed by the rise to the junction and the limited views which I have set out in the factual findings. By definition, accident statistics do not of course include near misses or suchlike happenings and no evidence about such was given nor is it likely to be available.

For the avoidance of doubt, what I say hereafter about the locus refers to it as at the relevant date and not as now changed.

For vehicle drivers looking south from the central reserve space as they waited to turn right their view was affected considerably by the angle at which the vehicle was positioned, the view being unrestricted provided the front of their vehicle was hard up against and parallel to the give-way lines but if positioned further back or at an angle the view was restricted. We do not know exactly where the Shogun was stopped. Drivers of vehicles travelling north in the outer lane of the northbound carriageway were subject to a restricted view unless the front of the turning vehicle was hard against the give way lines – which is a naturally uncomfortable position for a driver to take given that said front is then positioned in very close proximity to traffic travelling at up to 70 miles per hour. In addition at night, as I have found, the street lights descending towards the horizon confuse the position further in regard to the lights of vehicles so positioned or travelling south from the point of view of a driver travelling north.

This stretch of the A77 was built in the 1960s to the standards then set out and were it being built now, it would obviously require to be built to today's standards which would ensure a higher grade of road. Transport Scotland is progressing bringing the road up to expressway standard which will involve closing the gaps in the central reserve and projected building of a grade separated junction at the locus which would mean a right-turn manoeuvre of the type which caused this accident would be eliminated. It has to be noted

the current road is well maintained and at the time of the accident the weather was dry and fine and there was nothing affecting the visibility save of course that it was dark.

I now turn to look at the facts and circumstances surrounding the original incident on the road from the A77 to Dundonald called in by Chief Superintendent Joyce which ultimately resulted in TU94 travelling northwards on the A77 towards such incident.

It is apparent from the report by Superintendent O’Kane (Production Number 15) that a female driver with a friend proceeding eastwards along the road believed she might have struck a female who was on the road. The evidence of that driver was not produced to the Inquiry. This was the incident that Chief Superintendent Joyce found and upon exiting from her car saw the woman to be crying (“howling”) with blood on her face and a swelling on her head. From the answers to her questioning of the female Chief Superintendent Joyce deduced that there had been a hit and run accident and had concerns about the woman’s injuries particularly her head injury. Chief Superintendent Joyce did not notice that the car driven by the female in an easterly direction had stopped and had not seen it braking.

Because of her concerns she then took the step of telephoning direct to Force Overview all as set out in the factual findings. She was concerned there had been a hit and run accident and gave evidence that the female, she believed,

was deteriorating. The constables in Uniform Delta 27 (marked divisional car) arrived on the scene and Chief Superintendent Joyce left.

Paramedics in the ambulance arrived at about 18:59 and attended to the female. No traffic cars ever attended and no proceedings resulted from the incident.

It was as a result of this initial incident that TU94 driven by Police Constable Lowe was on the A77 and became involved in the fatal accident.

In connection with the original incident questions arise as to whether or not the police response in treating the incident as Grade 1 was appropriate and whether or not Strathclyde Police (as is already done by Lothian and Borders Police) should adopt the practice of advising the officers "on the ground" of the grading of a call. At present in Strathclyde the grade is an administrative matter only to allow allocation of resources and it is up to the officers directly concerned with the incident to take decisions as to how they proceed. This is not consistent with officers understanding that Grade 1 and Grade 2 incidents justify in the discretion of the officers the use of the emergency lighting and siren but not being advised of the grade allocated. In effect they require to grade the incident themselves and it seems illogical to use the grading allocated by Control simply for reasons of assignment of resources so that these officers are ignorant of the grading. I accept that even if so advised, officers have to make another assessment themselves, as I say later.

I am satisfied that on the night in question given the information and the manner of it being provided by Chief Superintendent Joyce the interpretation of it by Sergeant Stevenson in Force Overview was justified. That meant that the police believed they were dealing with a serious hit and run accident and in those circumstances the use of a road traffic policing unit would certainly be justified not only from the point of view of possible pursuit of a vehicle involved but from the point of view of securing the scene for the preservation of evidence. There is no doubt that divisional officers have training sufficient to permit them to carry out these tasks to an extent but it is to be noted that the divisional officers at the scene decided that the calling of a traffic unit was justified. At the time of the fatal collision further information was not available as to the condition of the female in the initial incident, paramedics having arrived on the scene only two minutes before Constable Lowe departed from Ayr Police Office and was already on his way. By the time of the collision no update from the Tarbolton Road incident had been called in by the officers attending. They cannot be criticised for that in view of the duties to which they had to attend such as requiring to set up traffic control and otherwise secure the scene within that very short space of time. From the arrival of the paramedics, given their need to examine and assess the female and come to a view as to the nature and extent of her injuries, convey that to the police officers and for them to relay it to Control it is highly unlikely that such updated information would have had any effect on the outcome of events. Indeed had the female's injuries been at that stage assessed and relayed as non life-threatening, so far as all concerned knew they were still dealing with a "hit and run" situation, which might reasonably

have resulted in a later grading at level 2 - which still permits the use of siren and emergency lights.

It is only now in hindsight that it can be seen that the injury to the female was less serious than was thought at the time, and as previously mentioned hindsight cannot be applied in coming to a determination and it would be wrong to judge that the incident should have received a lower grading; I am satisfied on the information available at the time that it should have received the grading which it did.

While it is clear that the assignation of a grading is from officers who are not on the scene, in this case Sergeant Stevenson was acting on information provided by a very senior police officer who was at the scene and it could be argued that officers remote are not best placed to assign a grading on the basis of sketchy information. That stricture does not apply in this case because of the involvement of the senior officer there and then. I also temper my remarks about the conveying of the grading to officers "on the ground" in the light of the preceding sentence and what I have said above. It appears to me that there cannot be inflexible rules and even though it seems correct that officers directly involved in response should be advised of the grading allocated it must be open to them in their professional discretion to exercise their judgement in all the circumstances known to them. I therefore agree with Mr Sheldon for the Chief Constable when he says that the grading system has limitations and that it would be unfortunate – and indeed in my view wrong – if officers felt bound by the transmission of a grading to respond in a manner contrary to their professional judgement and

training. This dilemma has been addressed by Lothian and Borders Police and Strathclyde Police may wish to consider how it is dealt with in that Force.

While touched upon in the preceding section, the next matter to be dealt with is whether or not a response at the speeds achieved by Constable Lowe and Constable Phillips in the unmarked car and marked car respectively was appropriate in the circumstances.

There is no doubt that in terms of their training and in terms of what they knew of the incident they were authorised to drive in excess of the speed limit subject of course to the constraints of taking due precautions and consideration of road conditions, traffic conditions and hazards either known to them or which should have been known to them. As far as they both knew this was a serious hit and run accident with whatever results for the victim were not yet known and where there could be a fugitive vehicle; there was also the necessity for specialist traffic officers to secure the scene and seek evidence in the use of their expertise which in such matters was that beyond that of divisional officers. Accordingly subject to the constraints above mentioned and to what I say below, it is my view that the decisions of the officers concerned to drive the traffic cars at speed were correct in appropriate locations.

However leaving aside the question of whether or not the unmarked car TU94 should have been deployed in advance of the marked car TU22 I have to consider the constraints noted above in relation to the speeds achieved by

the two traffic cars between Ayr Police Office, and particularly beyond Dutch House, and Symington North Road-end.

For some reason the video recording equipment in TU94 was not deployed although it would have been normal so to do. The video equipment in TU22 was operating and the inquiry had the benefit of viewing a recording made of its journey in which it achieved speeds of some excess over 100 miles per hour; maxima of some 99mph occurred on the stretch from Whitletts to Sandyford, from there to Dutch House 114, from there to Hansel 112 passing the overbridge there at 110 and up to some 115 mph on the stretch of the A77 from Hansel to the locus of the collision. It was of course fully equipped with blue lights and siren (which I have noted already is of limited effect in this situation) and is conspicuously painted to be easily identified as a police vehicle. The limitations of visibility by someone in Mrs McLelland's position would not apply to such a vehicle because while the Brifen wire system with its posts might still interfere with alternate flashing headlights the upper works of the vehicle would be clearly visible and the blue beacons on the roof would be in plain sight and would easily identify the vehicle for what it was. Had TU22 preceded TU94 Mrs McLelland waiting to cross the northbound carriageway in the same position would have had intimation of a police operation of some sort, but that would not have altered the facts which in regard to each driver's view of the other in the lead up to the collision would still have remained the same. As I noted, if vehicles travelling in the same direction at 90 mph plus are even one minute apart that represents a spatial gap of one and a half miles; at two minutes apart, that gap is three miles.

I said above that there were constraints which apply to the deployment of high speed vehicles in relation to their speeds. I noted particularly the evidence of Chief Inspector Ian Murray who was head of the Traffic Policing Division at Tulliallan Police College.

He explained the use of a four week course with modules and how drivers were examined on theory and practice being taught information, position, speed, gear, and acceleration and then about road hazards, road features, weather, other drivers etc. and how to devise a systematic way to deal with a hazard. He said that speed is a necessary tool but that is subject to appropriateness and safety. He described how drivers are taught to be able to stop on their own side of the road in the distance they can see to be clear. He described the half distance principle for the use of acceleration namely to accelerate to half the distance the driver could see ahead, on down-hills to one-third of the distance and on up-hills to two-thirds of the distance.

In his evidence he said that Constable Lowe would not have had a good view of the junction. From that and other evidence, it follows that the speed at which he approached this junction was excessive in the circumstances and the hazards there ought to have been better appreciated and assessed by him. I accept the submissions of the Procurator Fiscal Depute to the effect that while it appeared that he may have had a clear lane ahead, he was approaching a crest as well as the junction, and ought to have slowed until he knew the way ahead was truly clear. His view of the central gap was restricted as was his view of anything that might be in that gap. It appears

that he made little if any adjustment to his speed on the approach. It was, by the time he was in a position to appreciate the situation, too late for him to be able to stop his vehicle in the distance he could see and be assured was clear.

Chief Inspector Murray was then present when the video recording made in TU22 was played to the Court and stated that at the junction concerned he would have expected the police vehicle to move leftwards to straddle the white line between the two lanes of the northbound carriageway. That, he said would give the police car driver a better view and let the police vehicle be seen – as he put it, to equalise the dangers from left and right. This repositioning, he said, was subject to the qualification that the police car driver would have to check the left hand lane was clear and that no-one was joining from the left. I note that so far as can be ascertained from the evidence given by witnesses TU94 did not carry out such a manoeuvre, proceeding at approximately 100 miles per hour in the outside lane. Constable Lowe was well acquainted with the A77 and knew or ought to have known of this junction where there could be conflicting traffic turning right across and did not carry out the movement to the left as mentioned by Chief Inspector Murray. However, that observation must be qualified by a total absence of evidence as to what vehicle or vehicles, if any, were emerging from or in Symington Road North to the left. Constable Brown could say only that he thought he looked left to check, said nothing about the presence of any vehicles there, turned back to look forward and then there was a black shadow in front and he knew no more. I therefore note the evidence of Chief

Inspector Murray but in the circumstances known to and analysed by me it is impossible to come to a view as to whether or not TU94 should have moved to straddle the lanes to have a better view and to render the car more visible to anyone in the gap.

Having dealt with the matter of whether or not the use of traffic vehicles was justified which I believe it was, and whether or not the use of high speed was justified, which I believe it was subject to the strictures above I then turn to look at another matter of public concern which is the use of unmarked police vehicles.

There is no doubt that had TU94 not been an unmarked police vehicle but a marked police vehicle then the accident would not in all probability have happened for the visibility reasons set out before so the question arises as to why the unmarked vehicle was deployed in advance of the marked vehicle when both were available within a very limited time scale of perhaps a minute – in other words should TU94 have self-tasked and gone and should it have been permitted so to do?

There is new guidance which was in draft at the time of the Inquiry for officers regarding the deployment and operational use of high performance unmarked vehicles. That guidance, according to Superintendent Patrick Docherty, Head of Road Policing in Strathclyde Police, merely crystallises all the training given to officers and improves the presentation of the previous guidance being much clearer and more easily understood.

It imposes the duty to "take cognisance of the availability and response of marked resources (must not respond if other resources are of a similar or appropriate distance from the incident)". As noted it was said that this was more a re-writing in better terms and an updating of the previous advice so I have to take it that similar advice was in place at the time of the accident. I note and record that Sergeant Clark did not instruct TU94 to proceed but merely let the crew go as they were slightly more prepared than the crew of TU22. Of course it also has to be noted that Constable Lowe and his colleague – and indeed any crew of an unmarked car – would not be and could not be aware of the difficulties which arose in regard to the visibility of their vehicle to other drivers and the identification of it as a police vehicle on an emergency call to such drivers, particularly in the specific situation arising that night. They were proceeding in the full, but misplaced, confidence that their emergency systems be clearly identifiable by other road users.

I am bound to say that the guidance now given seems quite clear in its terms and I had some difficulty in agreeing with the evidence of Superintendent Docherty who in effect seemed to indicate that the use of the words "must not respond" did not in fact mean "must not respond". I contrast with that the evidence of Superintendent Neil McCover, of Strathclyde Police Force Communications and Technology Complex to the effect that were a marked vehicle available to attend it would not be appropriate for the unmarked vehicle to attend. The guidance therefore would not seem to be clear as I read it to be, because I have two interpretations of it from senior police

officers and if it is ambiguous as Superintendent Docherty himself appears to think on the basis of his evidence the draft should perhaps be reconsidered. In the situation which arose here, there is no doubt that the preferable course of action would have been that the tasked car TU22 took the lead and if it was deemed necessary TU94 followed it. However in order for such a course of action to have a likely effect on events the cars would have had to be in very close convoy as otherwise the facts at the locus could have been just the same, given any even small time gap such as one or two minutes between them would produce a consequent substantial distance gap due to the speeds achieved.

ACTIONS TAKEN SINCE THE ACCIDENT

1) The Road Layout - since the accident took place both Strathclyde Police and Transport Scotland have been considering the situation of the road and the Brifen wire where it comes to an end at the southern side of the central reservation gap at the locus has been slewed towards the middle of the central reservation by approximately one metre. This considerably increases the visibility for a driver such as Mrs McLelland looking south to see vehicles in the outside lane of the northbound carriageway as they approach the junction and come from the dip. Unfortunately, as said in the evidence of PC Monteith of Lothian and Borders Police, the Accident Investigator, on a subsequent visit to the site he had found the situation had been somewhat

compromised by the erection of a new "No U-Turn" sign and a witness from Transport Scotland, Mr Devine, undertook to examine that matter.

The A77 is to be brought up to expressway standard. This will involve at this locus the building of an over-bridge to allow southbound traffic turning right to move off the left hand lane and cross over into Symington Road North. Similarly traffic turning out of Symington Road North to go south will no longer require to cross both carriageways of the A77, but will instead be fed in by a slip road to the left of the southbound carriageway having crossed over the same bridge. Improvements are also envisaged for the Bogend Toll junction, the next major junction to the north, where the Dundonald to Tarbolton road crosses the A77.

At present the plans for the stretch of the A77 concerned envisaged only "left in, left out" junctions. However before progress can be made it is likely that a public local inquiry will be required in view of objections including those from South Ayrshire Council who appear to have taken the view, according to the evidence of Miss Blewitt Head of Design Team for this road at Transport Scotland that the plans envisaged are inadequate with a result that the Council would prefer a more complex and therefore expensive scheme. Due to delays in the statutory procedure Miss Blewitt gave evidence that it was likely that the improvements to bring the road up to expressway standard could be delayed by some two years. Meantime, the area from Bogend Toll to Dutch House Roundabout would be made subject to a 50 mile per hour speed limit which I was advised by Mr Devine would be in place by the end of October 2007.

2) Unmarked Police Vehicles – Blue Warning Lights – the inquiry was shown an illustration of the use of various types of warning lights in unmarked police vehicles with a view to raising them to a level higher than the present standard where they are fitted behind the grille and therefore on the evidence in this case of little or no use in the situation which arose here. Strathclyde Police, through the evidence of Superintendent Docherty apparently keep these matters under review but at present they do not have any such high level blue lighting in operation. It is apparent there are safety implications for the placing of these lights within the vehicle due to backwash into the cabin and possible difficulties for placing them at high level on the windscreen where their mounting could be affected in an accident by the deployment of air bags. It is to be hoped that Strathclyde Police and other forces will keep this situation under review because plainly on the evidence before me the higher the light is mounted the more chance there is of it being visible in this sort of situation. I note that one thing that has already been dealt with and disseminated to all forces is the danger of having a matrix sign on the rear parcel shelf of the unmarked car secured only by self tapping screws as the one in TU94 became detached in the impact and could if thrown forward sufficiently have caused injury.

It is appreciated that the use of unmarked cars is vital to cover police operations. They have to be able to switch quickly from such covert operation to being readily visible as a police car and that is a consideration which requires further attention by not just Strathclyde Police but all forces

given that in the particular circumstances of this accident (which are it is recognised a most unfortunate set of occurrences) negated the effectiveness of the existing systems fitted.

There are two other matters which I should briefly mention since they were brought out in the inquiry:-

1) Reassessment of police drivers and particularly road traffic officers

There is no formal reassessment of such drivers. Constable Lowe had passed the advanced driving test in 1993 and had been on a high speed pursuit course in 2005. Apart from that the only assessments made in respect of him and other drivers are informal and rely on reports from colleagues or, were such situation to arise, reports of accidents and incidents involving the driver concerned. I accept that formal reassessment of all such police drivers would be a logistical and resource impossibility on the basis of the evidence given to me.

2) The medical standard of police drivers.

There was no suggestion whatsoever that Police Constable Lowe was in any way medically unfit to be carrying out the tasks which he did and accordingly I do not intend to address this matter any further.

CONCLUSION

What led to this tragedy may be summarised as follows:-

1. Sightline problems at the junction for both drivers involved, now addressed by the moving of the Brifen wire system to allow better views;

the difficulty caused by traffic turning in a conflicting movement across the path of high-speed traffic has been addressed to an extent by the proposed imposition of the 50 miles per hour limit but can be eliminated only by the rebuilding of the road layout to close the central reservation gap and that is not a matter for this Inquiry; and, in any event, in the same circumstances such a limit might be disregarded by a police vehicle;

2. The problem for Mrs. McLelland in identifying the oncoming high speed of TU94 which is linked to 3 below;
3. TU94 not being readily identifiable as a police vehicle answering an emergency call due to the ineffectiveness of its emergency light systems, this being related to the sightline difficulties; this problem of identification of unmarked vehicles by other road users should continue to be studied and held under review by Strathclyde Police and other forces using such vehicles with a view to fitting forward – facing blue lights at a higher level than, or in addition to, those in the same plane as the headlights;
4. The speed and position of TU94 as it approached the junction with the result that it was going too fast approaching known hazards and unable to stop in the distance available.

Constable Lowe died tragically as a result of a combination of circumstances which were not and could not have been foreseen. On the evidence before me I cannot ascribe responsibility for the incident to any one party.

He was responding to a call on the basis of evidence before him which justified him in proceeding at speed. While it would have been preferable had TU22 the marked car preceded him, at the time he left the office he did not know that it

would be ready in one or two minutes to follow him. Accordingly on the basis of the information which he had he required to respond to a call to an incident which indicated on the information passed to Force Overview and then down the line a possibly very serious injury involving a driver who had made off after causing that injury. He is not in any way to be criticised for his response and while, with the benefit of hindsight, things might have been done differently there is no doubt that on the night police officers were faced with a difficult situation and all concerned responded with the best of intentions, in good faith and in the best traditions of the police service. It is an added tragedy that the original incident on the road to Dundonald turned out to be much less serious than was initially believed with no proceedings being taken by the Procurator Fiscal in respect of it against any party.

DETERMINATION DELIVERED TO TOM KANE AT 11.30, 12/11/07