

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2018] FAI 13

GLW-B1492-18

DETERMINATION

BY

SHERIFF PRINCIPAL C D TURNBULL

**UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016**

into the death of

MICHAEL TOWELL

5 April 2019

DETERMINATION

The Sheriff Principal, having considered the information presented at the inquiry,
determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc
(Scotland) Act 2016 (hereinafter referred to as “the Act”) that:-

D1. In terms of section 26(2)(a) of the Act, Michael Towell, born 12 September 1991, who
resided in Dundee, died at or about 11.20 pm on 30 September 2016 at the Queen Elizabeth
University Hospital, Glasgow.

D2. In terms of section 26(2)(b) and (d) of the Act, there was no accident resulting in the
death.

D3. In terms of section 26(2)(c) of the Act, the cause of the death of Michael Towell was
head injury.

D4. In terms of section 26(2)(e) of the Act, the precautions which (i) could reasonably have been taken; and (ii) had they been taken, might realistically have resulted in the death of Michael Towell being avoided would have been:

1. for Mr Towell to have disclosed to Dr Brian Tansey any of the episodes subsequently disclosed by Mr Towell and his mother to Dr Anne Coker, on 17 September 2013, which had occurred by the time of Dr Tansey's examination of Mr Towell on 14 November 2012 in connection with Mr Towell's application for a professional boxer's licence;
2. for Mr Towell to have followed the advice not to box which was given to him by three separate doctors in September and October 2013;
3. for Mr Towell to have disclosed to the doctor who carried out the pre-contest medical on 11 October 2013 that he had a diagnosis of temporal lobe epilepsy;
4. for the British Boxing Board of Control to have utilised the consent given by Mr Towell in 2014 and 2015 to contact Mr Towell's doctor to obtain medical information pertaining to his application to box;
5. for Mr Towell to have disclosed to Dr Henderson on or about 13 September 2016 the circumstances of his hospital attendance on 11 September 2016; and
6. for Mr Towell to have followed the head injury advice given to him by Dr Skelly on 11 September 2016 and returned to Ninewells after he had vomited in the early hours of 12 September 2016.

D5. In terms of section 26(2)(f) of the Act, the defects in any system of working which contributed to the death of Michael Towell were:

1. the British Boxing Board of Control's rules and processes relevant to boxers' fitness to box are vulnerable to the withholding and concealing of relevant information by boxers.

D6. In terms of section 26(2)(g) of the Act, the other facts which are relevant to the circumstances of the death of Michael Towell are as follows:

1. Mr Towell should have been re-referred to neurology by the Coldside Medical Practice following his attendance at Ninewells Hospital, Dundee on 21 May 2016. No such referral was made. Had such a referral been made, it is probable that Mr Towell would not have attended. In any event, had a referral been made in May 2016, it is unlikely that Mr Towell would have been offered a neurology appointment prior to his death.
2. No additional or different action should have been taken by the staff of NHS Tayside in relation to Mr Towell when he attended Ninewells Hospital, Dundee on 11 September 2016. Mr Towell was appropriately assessed and treated that day by the staff at Ninewells Hospital.
3. Assuming the chronic subdural haematoma suffered by Mr Towell and discovered in the post-mortem examination was present on 11 September 2016, due to its size, it would not have been identified by the staff at Ninewells if they had carried out a CT scan of Mr Towell's head on that date.
4. No additional or different action should have been taken by Dr Oswald of the Coldside Medical Practice, Dundee at or subsequent to his consultation with Mr Towell on 12 September 2016. Mr Towell was appropriately assessed and treated that day by Dr Oswald.

RECOMMENDATIONS

The Sheriff Principal, having considered the information presented at the inquiry, in terms of 26(1)(b) of the Act, recommends:

R1. That the BBBC should, as soon as reasonably practicable, obtain from each boxer presently licensed by them details of their current GP and of any other medical professional from whom they have received treatment in the past 12 months;

R2. That the BBBC should give consideration to suspending the licence of any boxer who does not provide the details required in terms of recommendation R1 within 21 days of being requested to do so;

R3. That the BBBC should, as soon as reasonably practicable, send to each boxer's GP and to any other relevant medical professional a copy of the boxer's latest BBBC medical examination form and seek from them (a) confirmation that the information therein contained is, to the best of their knowledge and belief, complete and accurate; and (b) either (i) details of any relevant medical history of the boxer which may be relevant to his fitness to box; or (ii) confirmation that there is nothing within the boxer's medical history that is relevant to his fitness to box;

R4. That the BBBC should, as soon as reasonably practicable, revise their medical examination form to require the provision of the details of the boxer's current GP and of any other medical professional from whom they have received treatment in the previous 12 months;

R5. In the case of a boxer applying for a new licence or for the renewal of an existing licence, prior to granting or renewing a licence the BBBC should send to the boxer's GP and to any other relevant medical professional a copy of the boxer's latest medical examination form and obtain from them (a) confirmation that the information therein contained is, to the best of their knowledge and belief, complete and accurate; and (b) either (i) details of any relevant medical history of the boxer which may be relevant to his fitness to box; or (ii) confirmation that there is nothing within the boxer's medical history that is relevant to his fitness to box;

R6. That the British Medical Association should actively encourage all of their members to respond promptly to any request they may receive from the BBBC to provide the information set out in recommendations R3 and R5; and

R7. That the BBBC should revise their rule 5.7 to (a) remove the reference to the illness or injury being sustained during training for any specific contest; and (b) require all boxers; trainers; managers; and promoters to immediately inform the BBBC of the illness or injury in question.

NOTE

[1] This determination follows an inquiry held into the death of a professional boxer, Michael Towell (who I refer to as “Mr Towell”), who died on 30 September 2016, the day after he had fought Dale Evans in the final eliminator contest for the British welterweight championship, considered below at Part 22. This determination is made up of 34 parts and three appendices, namely:

1.	Introduction	paragraph	[1]
2.	The Legal Framework	paragraphs	[2] – [6]
3.	The Inquiry Process	paragraphs	[7] – [10]
4.	Michael Towell	paragraphs	[11] – [13]
5.	BBBC Medical Requirements	paragraphs	[14] – [21]
6.	Turning Professional	paragraphs	[22] – [31]
7.	May – June 2013	paragraphs	[32] – [37]
8.	9 September 2013	paragraphs	[38] – [48]
9.	10 September 2013 – 11 October 2013	paragraphs	[42] – [55]
10.	The BBBC Rules	paragraphs	[56] – [70]
11.	12 October – 31 December 2013	paragraphs	[71] – [84]
12.	2014	paragraphs	[85] – [99]
13.	2015	paragraphs	[100] – [114]
14.	January – April 2016	paragraphs	[115] – [125]
15.	21 May 2016	paragraphs	[126] – [143]

16.	Lead Up To The Dale Evans Fight:		
	Arrangements for the Fight	paragraphs	[144] – [146]
	Preparations for the Fight	paragraphs	[147] – [149]
	The Edinburgh Sparring Session	paragraphs	[150] – [159]
17.	The Boxing Doctor	paragraphs	[160] – [187]
18.	11 September 2016:		
	The Sparring Session	paragraphs	[188] – [205]
	The Hospital Visit	paragraphs	[206] – [257]
	SIGN and NICE Guidelines	paragraphs	[258] – [262]
	Expert Evidence	paragraphs	[263] – [277]
	Discussion	paragraphs	[278] – [284]
19.	12 September 2016:		
	The GP Appointment	paragraphs	[285] – [300]
	Expert Evidence	paragraphs	[301] – [312]
	Discussion	paragraphs	[313] – [315]
20.	13 – 27 September 2016	paragraphs	[316] – [337]
21.	The Weigh-In	paragraphs	[338] – [354]
22.	Dale Evans Fight	paragraphs	[355] – [366]
23.	Post-Fight	paragraphs	[367] – [380]
24.	Cause of Death	paragraphs	[381] – [384]
25.	Second Impact Syndrome	paragraphs	[385] – [395]
26.	Accident or Not?	paragraphs	[396] – [402]
27.	Reasonable Precautions	paragraphs	[403] – [410]

28.	Defects in any System of Working	paragraphs	[411] – [413]
29.	Other Relevant Facts	paragraphs	[414] – [418]
30.	DVLA Reporting	paragraphs	[419] – [424]
31.	Confidentiality	paragraphs	[425] – [428]
32.	Other Matters	paragraph	[429]
33.	Recommendations	paragraphs	[430] – [454]
34.	Conclusion	paragraphs	[455] – [459]

Appendices

1. Witnesses
2. Judges Scores
3. Karate

2. The Legal Framework

[2] Fatal accident inquiries are now governed by the terms of (a) the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (hereinafter referred to as “the Act”); and (b) the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (hereinafter referred to as “the Rules”). In the notice of an inquiry, given under section 15 of the Act, the Crown contended that the inquiry was a mandatory one under section 2(3) of the Act, as Mr Towell’s death was the result of an accident which occurred in Scotland and while he was acting in the course of his employment or occupation, as a boxer. For the reasons set out in Part 26 below, I have determined that there was no accident resulting in Mr Towell’s death. Notwithstanding this conclusion, I intend no criticism, whatsoever, of the Crown for proceeding in the manner they did. Mr Towell’s death was sudden. The circumstances of it

were such that it was undoubtedly in the public interest for an inquiry to be held.

Accordingly, it would have been perfectly open for the Crown to seek a discretionary inquiry in terms of section 4 of the Act.

[3] The purpose of a fatal accident inquiry is set out in section 1(3) of the Act. It is to (a) establish the circumstances of the death; and (b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances. It is not the purpose of a fatal accident inquiry to establish civil or criminal liability (see section 1(4) of the Act). A fatal accident inquiry is inquisitorial, not adversarial (see rule 2.2.(1) of the Rules).

[4] As soon as possible after the conclusion of the evidence and submissions in an inquiry, the presiding sheriff must make a determination setting out certain findings and such recommendations (if any) as the sheriff considers appropriate.

[5] The findings the sheriff is required to make are set out in section 26(2) of the Act, namely, (a) when and where the death occurred; (b) when and where any accident resulting in the death occurred; (c) the cause or causes of the death; (d) the cause or causes of any accident resulting in the death; (e) any precautions which (i) could reasonably have been taken; and (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided; (f) any defects in any system of working which contributed to the death or any accident resulting in the death; and (g) any other facts which are relevant to the circumstances of the death.

[6] The recommendations which the sheriff is entitled to make are set out in section 26(4) of the Act. The recommendations must be directed towards (a) the taking of reasonable precautions; (b) the making of improvements to any system of working; (c) the introduction

of a system of working; and (d) the taking of any other steps which might realistically prevent other deaths in similar circumstances. Recommendations may (but need not) be addressed to (i) a participant in the inquiry; or (ii) a body or office-holder appearing to the sheriff to have an interest in the prevention of deaths in similar circumstances. A person to whom a recommendation is addressed must, if that person was a participant in the inquiry to which the recommendation relates, give to the Scottish Courts & Tribunals Service a response in writing within a period of eight weeks beginning with the day on which the respondent received a copy of the determination in which the recommendation is made (see section 28(1) and (3) of the Act). If the person to which a recommendation relates was not a participant in the inquiry, they are not obliged to give a response (see section 28(1)(b) of the Act). A response to a recommendation must set out details of what the respondent has done, or proposes to do, in response to the recommendation, or, if the respondent has not done, and does not intend to do, anything in response to the recommendation, the response must set out the reasons for that (see section 28(2) of the Act).

3. The Inquiry Process

[7] A notice of an inquiry was given by the procurator fiscal under section 15(1) of the Act on 30 July 2018. Having considered that notice, in terms of rule 3.2.(2) of the Rules, on 1 August 2018 I ordered the procurator fiscal to appear before me in chambers to discuss the first order. That having happened, I pronounced a first order on 14 August 2018, assigning both a preliminary hearing and dates for the inquiry. Preliminary hearings took place on 26 September and on 1, 22 and 31 October, all 2018.

[8] Parties entered into a joint minute of agreement in terms of rule 4.10 of the Rules. The relevant terms of the joint minute of agreement are reflected in this determination.

[9] Thereafter, the inquiry heard evidence from 33 witnesses over twelve court days between 5 November and 11 December, both 2018. The witnesses who gave evidence are detailed in Appendix 1 below. Closing submissions were made by the participants on 13 December 2018.

[10] The procurator fiscal represents the public interest in a fatal accident inquiry. In this inquiry, the public interest was represented by Ms Beadsworth, procurator fiscal depute, assisted by Ms Gallagher, procurator fiscal depute. Mr Mark Fitzpatrick, advocate, appeared on behalf of Tayside Health Board; Mr Jessiman, solicitor, appeared on behalf of Dr Elizabeth Skelly; Mr Mawby, solicitor, appeared on behalf of Dr Angus Oswald and Dr Fiona Bullions; Mr Brent Haywood, solicitor advocate, appeared on behalf of the British Boxing Board of Control Ltd (who I refer to in this determination as “the BBBC”); Ms Toner, advocate, appeared on behalf of Tracey Towell; and Ms Raftery, solicitor, appeared on behalf of Dr Scott Henderson. I am grateful to counsel and the solicitors appearing in the inquiry for their valuable and professional contributions.

4. Michael Towell

[11] Mr Towell was born in Dundee on 12 September 1991. He was 25 years of age at the time of his death. Mr Towell had been employed by Interserve as an apprentice scaffolder since 2012. He was in the final year of his apprenticeship at the time of his death.

[12] Mr Towell held a full UK driving licence, having passed his driving test in July 2012 and having been issued with a full driving licence on 16 July 2012. He never made a medical declaration to the Driver and Vehicle Licensing Agency (hereinafter referred to as “the DVLA”).

[13] Mr Towell started boxing when he was aged 12 or 13. Prior to turning professional, he boxed as an amateur with the Lochee Amateur Boxing Club and the St Francis Boxing Club, both in Dundee. He competed in around 20 contests as an amateur.

5. BBBC Medical Requirements

[14] The BBBC requires all boxers to be fit to take part in their contests. A boxer applying for a new licence requires to be examined by a BBBC medical officer (see BBBC rule 8.2). Once licensed, each boxer must complete an annual medical examination (see BBBC rule 5.12). The required examination is the same in relation to new applications and renewals, with one exception (see paragraph [17] below). It includes a consideration of the boxer's past medical history, past surgical history, medications, allergies and social history, together with an examination of the boxer's head, ears, neck, and a cardiovascular, respiratory and abdominal examination. A cranial and peripheral nervous system examination is also conducted.

[15] The BBBC provide a pro-forma "Boxer's Medical Examination Form" for the medical examinations. When Mr Towell turned professional (see paragraph [22] below) the form included a medical questionnaire comprising 15 separate questions. Three of the questions merit consideration, namely:

- "1. Are you in good health as far as you know"?
- 3. Have you suffered at any time from any of the following (if so give full details, dates and doctors consulted and results of investigations:
Headaches, blackouts or fits
- 15. Any other investigations i.e., blood tests, X-rays, ECG, EEG".

In addition, immediately prior to the signature of the boxer, there is a paragraph in the following terms, namely:

“I hereby give my consent to the British Boxing Board of Control and its Medical Officers to contact my doctor to obtain medical information pertaining to my application to box.”

I will, respectively, refer to these matters below as “Question 1”; “Question 3”; “Question 15”; and “the Consent”. It is a notable feature of the Boxer’s Medical Examination Form that the boxer is not required to confirm that the answers he has given to the questions posed in the form are accurate. The efficacy of the questionnaire, insofar as Question 1; Question 3; and Question 15 are concerned relies entirely upon the boxer being honest in his answers.

[16] The “Boxer’s Medical Examination Form” changed around July 2014. The three questions I refer to above remained within the new form, however, their numbering changed (respectively becoming questions 18; 2 and 14). The terms of the Consent did not change.

[17] The boxer is also required to attend a registered optometrist to undergo a full eye examination. Blood tests for Hepatitis B, Hepatitis C and HIV are also undertaken. The boxer must have an annual MRI (magnetic resonance imaging) brain scan, which is reported upon by a consultant neuroradiologist, who has access to the boxer’s previous scans for comparison. If the boxer has not previously held a licence with the BBBC then a MRA (magnetic resonance angiogram) is also undertaken, to assess for vascular abnormalities.

[18] If the neuroradiologist raises a concern in relation to the results of the MRI scan, that would then be passed to the BBBC’s neuro-panel, which consists of four consultant neurosurgeons. They would review the scans and advise if it was safe for the boxer to

compete. If any concerns arise with another part of the annual medical, the BBBC will seek specialist opinion prior to deciding whether or not to license the boxer.

[19] The BBBC's procedures also require the boxer to submit to a pre-contest medical (see rule 3.9). The BBBC provide a pro-forma "Boxer's Pre-Contest Medical" form which at the time of each of Mr Towell's fights included a questionnaire comprising eight separate questions, four of which relate to the boxer's last fight and four of which relate to the boxer's condition at the time the pre-contest medical is completed (i.e. on the day of the contest).

Two of the questions merit consideration, namely:

- "7. Are you suffering from any illness?
- 8. Do you feel well today?"

The form provides that if the answer to question 7 is "Yes", details of the illness are to be stated. I will, respectively, refer to these questions below as "Question 7" and "Question 8".

The pre-contest medical also requires the carrying out of an examination of the boxer's pupils, ears, heart, chest, fingers, knuckles and ribcage. The answers to the various questions would, ordinarily, be inserted by the examining doctor on the basis of information provided by the boxer. The efficacy of the questionnaire, insofar as Question 7 and Question 8 are concerned, relies entirely upon the boxer being honest in his answers.

[20] For completeness, although not relevant to this determination, the same BBBC pro-forma contains a section entitled "Post Contest Medical" which requires seven health related matters to be checked post-contest and provides space for relevant general comments to be added.

[21] It is appropriate to observe, at this stage, that subsequent to Mr Towell's death, and as a consequence of it, the BBBC introduced an updated "Boxer's Pre-Contest Medical" form. This was introduced in August 2017. Specific questions have been added in relation to "Relevant Past Medical History"; asking whether, in the month prior to the fight in question, the boxer has suffered from headaches, migraines or vision disturbance. Whilst the form is more detailed than that in use at the time of Mr Towell's death, it is difficult to see it making much by way of difference to circumstances such as those which give rise to this inquiry. Dr Christopher Greenhalgh is a consultant anaesthetist who has been a BBBC medical officer since 2003 and chief medical officer for the BBBC Scottish Area Council since 2014. Dr Greenhalgh was one of two medical officers present for Mr Towell's fight with Mr Evans on 29 September 2016 (see paragraphs [368] to [373] below). In evidence, Dr Greenhalgh indicated that the pre-fight medical form in use when Mr Towell boxed professionally would generally take about two minutes to complete. That, I respectfully suggest, speaks volumes for the thoroughness and value of the exercise. It is difficult to imagine that the updated form would take much longer to complete. The questions posed are almost entirely dependent upon the boxer answering them honestly.

6. Turning Professional

[22] Mr Towell made application to the BBBC for a boxer's licence on 14 September 2012. On 11 November 2012, at a meeting of the Scottish Area Council of the BBBC, held at the Radisson Blu Hotel in Glasgow (hereinafter referred to as "the Radisson"), Mr Towell's application for a licence as a professional boxer was unanimously approved.

[23] On 11 November 2012, Mr Towell entered into an agreement with Tommy Gilmour MBE, appointing Mr Gilmour to act as his manager. Mr Gilmour subsequently approached

Stephen Graham and James Coyle and asked them to train Mr Towell. Mr Graham and Mr Coyle started training Mr Towell around two weeks before Mr Towell made his professional debut.

[24] Before boxing professionally, Mr Towell underwent a medical examination by Dr Brian Tansey on 14 November 2012; underwent an examination by an optometrist, A.Crawford, on 31 October 2012; had blood taken on 14 November 2012 for the purposes of a biochemistry report; and underwent a MRI scan of the head and a MRA scan on 14 November 2012. By letter dated 20 November 2012, Dr Kyriakos Lobotesis, consultant neuroradiologist, confirmed that the intracranial appearances were within normal limits; and that no aneurysms were detected on the MRA.

[25] Dr Tansey completed a "Boxer's Medical Examination Form" as part of his examination of Mr Towell on 14 November 2012. The answers to the various questions would, ordinarily, be inserted by the examining doctor on the basis of information provided by the boxer. Dr Tansey died on 27 September 2018, prior to the commencement of the inquiry. Certain evidence which he would have given was agreed by way of the joint minute of agreement referred to at paragraph [8] above.

[26] From approximately 1994 Dr Tansey worked as a ringside doctor and conducted pre and post-fight medicals and annual medicals for the BBBC. When completing annual medicals he did not receive or examine any medical records. The annual medical examinations which he conducted included a medical questionnaire, a family history and a physical examination. Dr Tansey undertook the annual medical examinations of Mr Towell in 2012, 2014 and 2015.

[27] From the terms of the joint minute of agreement, and the evidence of Dr Scott Henderson on this issue (Dr Henderson carried out the annual medical on Mr Towell in 2016 – see paragraphs [115] and [170] below), I am satisfied that the answers to the various questions in each of the “Boxer’s Medical Examination Forms” relative to Mr Towell were inserted by the examining doctor on the basis of information provided to them by Mr Towell. I am also satisfied that the answers to the various questions in each of the “Boxer’s Pre-Contest Medical” forms were inserted by the examining doctor on the basis of information provided to them by Mr Towell.

[28] For the 2012 “Boxer’s Medical Examination Form”, Mr Towell answered Question 1 “Yes”; and Question 3 “No”. In 2012, Mr Towell answered Question 15 “14 November 2012”, which I take to be a reference to the tests which were carried out on that date, as referred to at paragraph [24] above. Having reviewed the material submitted to him, the BBBC’s chief medical officer recommended that a licence be granted to Mr Towell on 28 November 2012.

[29] The evidence before the inquiry suggests that Mr Towell’s answers to Questions 1 and 3 may not have been honest ones. The circumstances which have caused me to arrive at such a conclusion are set out below in paragraphs [42] and [43]. Whilst the evidence was not as clear as it might have been on this point, on 17 September 2013, Mr Towell’s mother, Tracey Towell (who I refer to as “Mrs Towell”) advised Dr Anne Coker that she had witnessed three episodes in the “past year”. That time scale extends two months prior to the 2012 medical examination. Whilst the precise dates of the three episodes were not identified, there is no basis to take issue with what was said by Mrs Towell and recorded by Dr Coker

in September 2013. If Mr Towell had provided details of any episode which had occurred by the time of Dr Tansey's examination on 14 November 2012, it is likely that the BBBC would have made further investigations and, had they done so, it is probable that Mr Towell would not have been licenced to box professionally (see rule 8.1 referred to at paragraph [61] below). In these circumstances, Mr Towell's death might realistically have been avoided.

[30] Robert Smith, the general secretary of the BBBC, gave evidence to the inquiry. If the BBBC learned that a boxer suffered from seizures they would suspend his licence and make further investigations. It is implicit in Mr Smith's evidence that if the BBBC were made aware of such circumstances in the course of a boxer first applying for a licence, those investigations would be carried out before a licence was granted (or refused). Mr Smith also spoke to Mr Towell's recreational drug use. The BBBC were unaware of that. If they had been it would probably have led to a suspension for a period of time (see BBBC rules 8.3 and 25.2). To Mr Smith, the fact that a boxer was suffering from headaches suggested he was not fit and well. If the BBBC were aware of such a situation they would suspend the boxer's licence and make further investigations.

[31] Mr Towell made his professional debut against Tom Bowen on 18 March 2013 at the Radisson. Mr Towell fought Mr Bowen over six rounds, winning on points. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "No"; and Question 8 "Yes".

7. May – June 2013

[32] On 31 May 2013, Mrs Towell phoned Mr Towell's GP practice, the Coldside Medical Practice in Dundee, to make an appointment for Mr Towell, who was then at work. The

contemporaneous note in the GP records indicated that Mrs Towell advised the practice that twice in the last few months Mr Towell had fallen out of bed and had seemed confused and bitten his lip. Mrs Towell was noted as being worried in case these were seizures. On the first occasion Mr Towell was reported as having been drinking, however, he had apparently not been drinking at the time of the latter episode, earlier that week. Mrs Towell was given the next available non-urgent appointment for Mr Towell but was advised that Mr Towell should seek advice urgently if he had another seizure.

[33] On 3 June 2013 Mrs Towell again phoned the Coldside Medical Practice. She spoke with Dr Macpherson. The contemporaneous note in the GP records states that Mrs Towell was concerned over the two episodes of “black outs”, in one of which Mr Towell had bitten his tongue. The note records that Mr Towell “had to get CT scan as work up for boxing career. Also headaches.” In her evidence to the inquiry, Mrs Towell was asked what Mr Towell’s view was in relation to these matters. Her response was that Mr Towell believed that there was nothing wrong with him and he was fine.

[34] Accompanied by Mrs Towell, Mr Towell saw Dr Macpherson the following day, 4 June 2013. Dr Macpherson did not give evidence to the inquiry. The contemporaneous note in the GP records states as follows:

“[D] Sleep disturbance, unspecified 2 occ fall out of bed – once was drunk, second time not – also had bitten tongue. Note Boxing career, also scaffolder. He declines ref to neurology??? Nocturnal fit, but will reconsider if recurrence. Takes cocaine now and again – Mum aware. Alcohol at weekend. Trains ++ for boxing.”

In evidence, Mrs Towell stated that Mr Towell declined the reference to neurology as there was “nothing wrong with him”.

[35] Mr Towell's second professional fight came a little over three weeks later, on 28 June 2013 against Martin McCord at the Miner's Welfare Club in Cleland. Mr Towell fought Mr McCord over six rounds. The contest ended in a draw. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "Yes"; and Question 8 "Yes". Despite answering Question 7 "Yes", the examining doctor, Dr Greenhalgh, did not complete the form to state what the illness was.

[36] In evidence, Dr Greenhalgh's position was that he had ticked "Yes" in error, having intended to tick the "No" box. Had Mr Towell answered "Yes" to this question, Dr Greenhalgh would have included further information on the form. I am satisfied that Mr Towell indicated to Dr Greenhalgh that he was not suffering from any illness on 28 June 2013. I am equally satisfied that Mr Towell did not advise Dr Greenhalgh of the circumstances set out in paragraphs [32] – [34] above.

[37] Whatever view is taken of the accuracy of the answers given by Mr Towell to the questions he was asked during his annual medical examination on 14 November 2012, there can be no doubt whatsoever that on 28 June 2013 Mr Towell either lied to or deliberately misled Dr Greenhalgh. Regrettably, Mr Towell persisted in this deception in each of the subsequent eleven pre-contest medicals he underwent, as well as in each of the three annual medicals he subsequently underwent.

8. 9 September 2013

[38] The first recorded medical event of significance in relation to Mr Towell was on 9 September 2013. None of the witnesses to the inquiry spoke to the circumstances of this episode directly. The Scottish Ambulance Service Patient Carer Information Form within

Mr Towell's medical records (the terms of which were agreed by way of the joint minute of agreement) states that an ambulance attended on Mr Towell at 16:00 on that date because he had experienced:

“? seizure activity – uncoordinated, bit tongue, incontinent of urine – episode 3 – 4 mins.”

The form goes on to record that Mr Towell refused transport to “ARI” (which I take to mean Aberdeen Royal Infirmary), but agreed to be seen at Ninewells Hospital in Dundee (hereinafter referred to as “Ninewells”). Mr Towell's partner, Chloe Ross, did not witness this episode. The circumstances of it were not explored further with her in evidence.

Equally, Mrs Towell was unable to cast any light on the circumstances, however, she accompanied Mr Towell to Ninewells, Mr Towell's time of arrival there being noted as 17:16.

In her consultation with Mr Towell on 17 September 2013 (see paragraphs [42] to [47] below), Dr Coker noted that the episode of 9 September 2013 had occurred in Mr Towell's works van on the way back from Aberdeen, and had been witnessed by his work colleagues, who felt it was a seizure and called the ambulance.

[39] The hospital notes confirm that Mr Towell was seen by Dr Nichol at Ninewells at 18:10 on 9 September 2013. The note of that attendance records that Mr Towell had been sleeping in a car when he had a general seizure, bit his tongue and was incontinent, noting that the episode itself resolved with a postictal period. The note records that there had been two previous episodes.

[40] Dr Nichol's notes identified the possibility of temporal lobe epilepsy. Dr Nichol referred Mr Towell to the first seizure clinic (otherwise known as the first fit clinic). The doctor's notes record advice to Mr Towell (i) not to work at height; (ii) not to box until the

clinic; and (iii) not to drive. Notably, the doctor records that all of this was witnessed by Mrs Towell. Mrs Towell's evidence in relation to this advice was inconsistent. The particular advice was put to her and she was asked if she recalled it being given. She confirmed it was, however, she was not clear in her recollection of the advice given by the doctor in relation to not boxing until the clinic.

[41] As I explained below in a number of parts of this determination, I found the evidence given by Mrs Towell to be unsatisfactory in a number of respects. Whilst this issue is not one of significance standing the short period between Dr Nichol's advice and Mr Towell's attendance at the first seizure clinic (eight days), I am satisfied that on 9 September 2013 Dr Nichol advised Mr Towell not to box until the first seizure clinic. There was no evidence before the inquiry which permits me to form a view as to whether Mr Towell did, in fact, follow or ignore that advice.

9. 10 September 2013 – 11 October 2013

[42] Mr Towell was seen by Dr Anne Coker at a first seizure clinic on 17 September 2013. Mr Towell attended the appointment with his mother. The matters discussed were contemporaneously noted by Dr Coker and also set out by her in a letter she wrote to Mr Towell's GP on the day of the clinic. Dr Coker gave evidence to the inquiry. Now retired, Dr Coker was formerly a GP with a special interest in neurology, working between a medical centre in Dundee and Ninewells. Dr Coker was also a GP member of the group which authored the SIGN guidelines on headaches (for which, see paragraph [259] below) in 2005 and epilepsy in 2015. She spoke to the notes she made at the time of her consultation with Mr Towell and to the terms of her letter to Dr Macpherson. As noted by Dr Coker, the episode on 9 September 2013 was not an isolated event. In addition to this incident, around

five months earlier (i.e. around April 2013, the month following Mr Towell's first professional fight), Mr Towell was found by his mother, having fallen out of bed. He had been drinking the night before. When found he had bitten his tongue, which was bleeding. He was confused postictally. Dr Coker noted (and Mrs Towell spoke in evidence to the fact) that Mrs Towell's partner had epilepsy. Dr Coker noted that Mrs Towell's view was that what she had witnessed on this particular occasion *was* similar to her partner's postictal state. In evidence, Mrs Towell stated that what she had witnessed on this particular occasion *was not* similar to her partner's postictal state. She had been a carer for someone who suffers from epilepsy for eight years. What she had seen with Mr Towell was not anything she recognised from that. In her evidence, she had seen seizures. This is an example of Mrs Towell giving evidence to the inquiry which was contradicted by contemporaneous documentation.

[43] Dr Coker noted that, in addition to these two episodes, Mr Towell was having complex partial seizures with episodes of déjà vu. Mr Towell reported as feeling "like (he had) been there before" and that, during these episodes, his speech was regarded (by others) as being incomprehensible. Mr Towell reported as being confused briefly and not recalling the episodes in their aftermath. In terms of frequency, this was noted as being variable; Mr Towell could have several on one day and then none for a few weeks. Mr Towell had made a similar disclosure to Dr Nichol on 9 September 2013. Dr Coker noted Mrs Towell as stating that she had seen three such episodes in the past year (i.e. between September 2012 and the date of the consultation with Dr Coker) and had witnessed Mr Towell's speech being muddled, he being unaware of her presence and complaining of a headache afterwards.

[44] Dr Coker had noted that in relation to the episode on 9 September 2013, Mr Towell had taken neither alcohol nor cocaine in the three weeks preceding this event. Mrs Towell spoke in evidence to Mr Towell drinking heavily and taking cocaine in the aftermath of fights. Dr Coker explained that alcohol and recreational drugs are potential provoking factors for seizures. The episode of 9 September 2013 took place more than two months after Mr Towell's then last professional fight. As I will come on to consider below, Mr Towell next fought on 11 October 2013 (just over three weeks after he had seen Dr Coker at the first seizure clinic). In consultation with Dr Nichol on 9 September 2012, Mr Towell had again, candidly, disclosed his occasional cocaine use. In these circumstances, I am satisfied that it is unlikely that Mr Towell had taken either alcohol or cocaine in the three weeks preceding the episode on 9 September 2013 and that such potential provoking factors were not relevant to this episode.

[45] Dr Coker's working diagnosis was one of temporal lobe epilepsy. She offered Mr Towell prophylaxis to reduce the risk of seizures, however, he declined. Dr Coker explained that she would not have offered prophylactic medication lightly. She recorded Mrs Towell's view that protein drinks being taken by Mr Towell might be a possible cause of his condition. Dr Coker advised Mr Towell not to take these. She also recorded Mr Towell's concern about the implications of his seizures for his work as a scaffolder and for his boxing career. Dr Coker recorded that Mr Towell did not wish to consider a diagnosis of epilepsy at that time. Dr Coker advised Mr Towell not to drive and to inform DVLA. By way of further investigation, Dr Coker arranged for an EEG, an ECG and an MRI brain scan. She made these arrangements on the same day as seeing Mr Towell which, in Dr Coker's evidence, was suggestive of a degree of urgency on her part. Dr Coker explained to

Mr Towell that a normal MRI scan would not exclude epilepsy, the condition being primarily diagnosed on the basis of history.

[46] Dr Coker did not advise Mr Towell, in terms, not to box, however, her evidence to the inquiry was that when she told Mr Towell of her working diagnosis, namely, temporal lobe epilepsy, Mrs Towell said that Mr Towell could not continue boxing. Whilst I accept Mrs Towell's evidence that Dr Coker did not give Mr Towell specific advice not to box, in my view it is clear that Dr Coker did not think that Mr Towell should be boxing and that Mrs Towell realised that a diagnosis of temporal lobe epilepsy would mean that Mr Towell could not box.

[47] Dr Coker's response to Mrs Towell's comment was to say that Mr Towell should adhere to boxing regulations. I take from Dr Coker's evidence that she had an expectation that Mr Towell was in some way compelled to disclose her working diagnosis to the BBBC who were then likely to prevent Mr Towell from boxing professionally. I do not regard that as an unrealistic expectation, however, as I consider below (see paragraph [62]), there is, in fact, no compulsion on a boxer to disclose to the BBBC anything regarding his fitness to box outwith the annual medical examination. The significant limitations which attach to the process of annual medical examination currently operated by the BBBC are considered below at paragraphs [411] to [413].

[48] Mr Towell saw his GP, Dr Macpherson, two days later on 19 September 2013. Dr Macpherson's note of that consultation records that he strongly advised Mr Towell not to box, however, Mr Towell intended to do so. Mr Towell wished to return to work, working at ground level and not driving machinery. Mrs Towell repeated to Dr Macpherson her

assertion to Dr Coker that Mr Towell was aggressive when taking “build up milkshakes” (i.e. protein drinks) before a fight. In evidence, Mrs Towell accepted that Dr Macpherson had advised Mr Towell not to box.

[49] Mr Towell’s case was reviewed by a locum GP on 20 September 2013. Mr Towell had lost his statement of fitness for work (colloquially referred to as a “Med 3”) and had decided not to go back to work until the results of the MRI scan were known. The locum GP recorded in Mr Towell’s notes that Mr Towell had been strongly advised not to box. A duplicate statement of fitness for work was provided to Mr Towell. Mrs Towell’s recollection was that boxing was not discussed. The locum GP in question was not identified. They did not give evidence to the inquiry. Nonetheless, I am satisfied that the note accurately reflects what was discussed with Mr Towell, in the presence of his mother, on 20 September 2013. It is consistent with the advice which it is accepted was given previously by Dr Nichol and Dr Macpherson (and subsequently by Dr Papagiorcopulo). Mrs Towell’s recollection of this particular appointment was poor. Mr Towell’s boxing was, I venture to suggest, an unusual feature for a GP. Repeating the advice given by Dr Macpherson appears to me to be the appropriate step to take in the circumstances the locum was confronted by (i.e. a request to sign Mr Towell off from his work for a further period pending the results of an MRI brain scan) and I am satisfied that such advice was given to Mr Towell on 20 September 2013.

[50] Mr Towell had a discussion with Dr Carla Papagiorcopulo on 3 October 2013. He requested a further statement of fitness for work as the results of the neurology investigations were still awaited. Dr Papagiorcopulo noted that Mr Towell felt that everything was fine and that he did not have epilepsy. She recorded that Mr Towell was

still boxing and that she had encouraged him to stop for the time being. The doctor also recorded that Mr Towell was still taking the protein drinks that his mother felt may have played a part in the episode of 9 September 2013 and which Dr Coker had suggested he stop taking. The doctor recorded that Mr Towell had not spoken to the DVLA regarding his seizure and that she explained to him his duty to do so. In the context of the reliability of Mrs Towell as a witness, it is appropriate to add that she did not recall this particular GP appointment.

[51] It will be noted that on five separate occasions in the period of just over three weeks, between 9 September 2013 and 3 October 2013, the advice given to Mr Towell by a number of doctors was not to box. He was told that, in terms, by four doctors and the fifth, Dr Coker, whilst not saying so in terms in either her consultation with Mr Towell on 17 September 2013 or her subsequent letter to Mr Towell's GP, made it clear in evidence that she told Mr Towell to adhere to boxing regulations with the concomitant expectation I have set out in paragraph [47] above. Dr Coker's evidence was clear that when she proposed her diagnosis, Mr Towell's mother said that he would be not be able to continue boxing. As a consequence, Mr Towell chose simply to disregard the diagnosis. It is, regrettably, quite clear that even if Dr Coker had advised Mr Towell in terms to stop boxing he would have ignored that advice (as he ignored the advice of Dr Macpherson, the unnamed locum GP and Dr Papagiorcopulo) and continued to do so. I am satisfied on the evidence that Mr Towell singularly ignored the advice given by the three general practitioners not to box. As noted above (see paragraph [41]), the evidence before the inquiry does not permit me to conclude whether or not Mr Towell followed the advice of Dr Nichol on 9 September 2013, however, standing what followed, I have no hesitation in concluding that, flagrantly

disregarding the medical advice given to him, Mr Towell continued to box, ignoring entirely the working diagnosis given to him by Dr Coker. That is apparent from the fact that a mere eight days after a third doctor, Dr Papagiorcopulo, had told him not to box, and less than five weeks after he had suffered from a seizure, Mr Towell participated in another professional fight.

[52] I am satisfied that Mr Towell could reasonably have taken the advice given to him by doctors in September and October 2013 not to box. I am equally satisfied that had he done so, his death might realistically have been avoided.

[53] Mr Towell's third professional fight was on 11 October 2013 against Billy Campbell at the Ravenscraig Regional Sports Facility in Motherwell. Mr Towell was scheduled to fight Mr Campbell over six rounds, but won by knock out in the second round. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "No"; and Question 8 "Yes".

[54] Whilst an affirmative answer to Question 8 (Do you feel well today?) may have been an accurate one; a negative answer to Question 7 (Are you suffering from any illness?) patently was not. Accepting, as I do, the evidence of Dr Coker and her working diagnosis (which, it should be noted, confirmed the preliminary view of Dr Nichol), by 17 September 2013, Mr Towell knew (at the very least) that he had a diagnosis of temporal lobe epilepsy and should have disclosed that to the doctor who carried out the pre-contest medical. He did not do so.

[55] I am satisfied that Mr Towell could reasonably have disclosed to the doctor who carried out the pre-contest medical on 11 October 2013 that he had a diagnosis of temporal

lobe epilepsy. I am equally satisfied that had he done so, his death might realistically have been avoided.

10. The BBBC Rules

[56] Having received a diagnosis of temporal lobe epilepsy on 17 September 2013, two questions arise. Firstly, what should Mr Towell have done? Secondly, what was he required to do in terms of the BBBC rules.

[57] The answer to the first question is, regrettably, simple. Mr Towell should have followed the advice given to him by a number of doctors in September and October 2013 not to box. I have concluded that to have done so would have been a precaution which could reasonably have been taken; and which, had it been taken, might realistically have resulted in the death of Mr Towell being avoided.

[58] The answer to the second question should, equally, have been a simple one, however, my task in answering that particular question has not been assisted by the manner in which the evidence relating to the rules was presented at the inquiry. The joint minute of agreement agrees the terms of the BBBC rules and regulations which were in effect at the time of Mr Towell's death, namely, the 2015 version of the rules. In evidence, Mr Smith confirmed that the rules and regulations were amended every year i.e. the 2015 version of the rules was not that in force at the time of the inquiry. Mr Smith did, however, state that the medical provisions of the rules had not changed since 2015.

[59] I am required to answer the second question by reference to a version of the BBBC rules and regulations which was not, in fact, that in force at the time of Mr Towell's diagnosis, however, as the recommendation I make in this regard is made standing the

terms of particular rules which were in force both at the time of Mr Towell's death and at the time of the inquiry, I regard it as appropriate to proceed on the assumption that the relevant rules as they stood in 2015 were in identical terms to those which applied at the time Mr Towell received his diagnosis of temporal lobe epilepsy. Two particular rules merit consideration.

[60] Firstly, the rule which relates to boxers is rule 5. Rule 5.7 is in the following terms:

"In cases of illness or injury to a Boxer during training for any specific contest, the Boxer or his Manager must immediately inform the Promoter, who may require the Boxer to be examined by a doctor appointed by the (BBBC) or Area Council."

[61] Secondly, the rule which relates to the issue of medical examination is rule 8. Rule 8.1, insofar as relevant for present purposes, is in the following terms:

"If any applicant for a Boxer's licence, not having previously held such a licence, suffers from any of the following it may preclude the grant to him of a Boxer's licence. If at any time thereafter any Boxer shall suffer from any of the following the (BBBC) ... may take such action as in its absolute discretion it sees fit –

(a) Any neurological abnormality, whether congenital or acquired including epilepsy, severe migraine or any abnormalities which appear in Cat scan, MRI or EEG tracing;"

[62] Outwith the requirements to be examined when first applying for a licence (which is dealt with by rule 8.2); and to undertake an annual medical examination (which is dealt with by rule 5.12), both of which involve completion of the medical questionnaire considered above in Part 5, insofar as I can ascertain, the only obligation incumbent upon a boxer in relation to the disclosure of a medical condition is that to be found in rule 5.7.

[63] Whilst undoubtedly well intentioned, the wording of rule 5.7 is curious in a number of respects. The illness or injury must occur during training for "any specific contest". That,

having regard to the requirement to inform the promoter (of the specific contest) is a reasonably clear obligation, however, the rule is of limited value in that it is only applicable where the boxer has a contest scheduled. The wording suggests that if the boxer does not have a scheduled fight, there is no obligation to disclose an illness or injury to anyone.

[64] Assuming that the illness or injury occurs in the lead up to a scheduled contest, the boxer or his manager must immediately inform the promoter. The manager will only be able to inform the promoter if he is made aware of the illness or injury, whether that is by the boxer or by some other means. It is notable that there is no obligation incumbent upon the boxer or his manager to inform the BBBC. There should be.

[65] Assuming that the boxer or his manager informs the promoter of the illness or injury, the promoter may, but is not obliged to, require the boxer to be examined by a doctor appointed by the BBBC or Area Council. Whilst one can conceive of trivial injuries that would clearly not prevent the scheduled contest proceeding, thus justifying the discretion the rule provides, it is most surprising that the decision as to whether or not the boxer is medically examined rests with the promoter. It should not.

[66] Considering rule 5.7 in light of Mr Towell's position as at 17 September 2013, I cannot say whether the rule was engaged for the simple reason that there was no evidence before the inquiry as to whether Mr Towell's fight on 11 October 2013 against Billy Campbell had been scheduled at that date. If the fight was scheduled, Mr Towell should have disclosed the diagnosis of temporal lobe epilepsy to either his manager (Mr Gilmour) or to the promoter of that fight.

[67] The issue of compliance with the requirements of rule 5.7 in the lead up to the fight with Mr Evans is considered below in paragraphs [186] to [187] and in paragraphs [336] to [337].

[68] Turning to rule 8.1, it is a clear recognition that boxers who suffer from certain conditions (the rule has thirteen separate sub-paragraphs) may be precluded from having a licence granted to them. Moreover, the rule also contemplates that if a boxer who holds a licence develops such a condition, the BBBC are entitled to take such action as in its absolute discretion it sees fit. In practice, that may result in the licence being suspended and / or withdrawn.

[69] Rule 8.1(a) categorises epilepsy as a neurological abnormality. It is a condition of concern to the BBBC. Putting to one side what Mr Towell knew at the time of his examination by Dr Tansey when he first applied for a boxing licence in 2012, on 17 September 2013 Mr Towell was given a diagnosis of temporal lobe epilepsy. He did not advise his manager; his trainers; or the BBBC. In terms of the BBBC's rules he was not obliged to do so at that time. Regrettably, I am unable to identify any provision within the BBBC rules which requires a boxer to disclose such a condition to the BBBC, outwith the initial and annual medicals; the pre-contest medicals; and the requirements of rule 5.7. That is a defect in the BBBC system which I consider below in Part 28.

[70] The evidence before the inquiry causes me to conclude that even if the BBBC rules had obliged Mr Towell to disclose the diagnosis of temporal lobe epilepsy to the BBBC in September 2013, he would not have done so. I reach that conclusion on the basis of the

numerous subsequent occasions on which he ought to have disclosed the diagnosis, but failed to do so.

11. 12 October – 31 December 2013

[71] As part of the investigations requested by Dr Coker, Mr Towell had undergone an MRI head scan at Ninewells on 24 September 2013. Mr Towell consulted with Dr Fiona Bullions of the Coldside Medical Practice on 17 October 2013. Whilst Dr Bullions gave evidence to the inquiry, she was not asked questions in relation to her interaction with Mr Towell in 2013. Mrs Towell gave certain evidence in relation to the consultation on 17 October 2013. The terms of paragraphs [72] and [73] below are drawn from Mr Towell's medical records (the terms of which were agreed by way of the joint minute of agreement) and the evidence given by Mrs Towell in relation to this consultation.

[72] Mr Towell was very frustrated at the absence of a result from the MRI scan. Dr Bullions was able to access the result of the MRI scan. It showed no gross abnormalities, however, Dr Bullions was not prepared to certify Mr Towell as fit to return to work as a scaffolder based upon this. She suggested that he waited for a formal opinion from the neurologist, advising him not to drive and to advise DVLA. Mr Towell told Dr Bullions that he was convinced that he had had a "sugar rush" which had caused him to fall from scaffolding. Mrs Towell spoke to this discussion in her evidence. That evidence suggested that the episode in question was, in fact, that of 9 September 2013 (considered in Part 8 above). There was no evidence before the inquiry to support a conclusion that Mr Towell did, in fact, fall from scaffolding.

[73] Mrs Towell's evidence was that Mr Towell did not react well to what she had told Dr Bullions. She described Mr Towell as being "livid" and "fuming"; he was passionate about his boxing and felt that she was trying to stop him boxing by telling Dr Bullions what was going on with him. The terms of this evidence are confirmed by the contemporaneous note made of a phone call between Mrs Towell and Dr Taylor of the Coldside Medical Practice on 21 October 2013. The note records that Mrs Towell said that Mr Towell was "blaming her for opening her mouth and ruining his life." Dr Taylor suggested that it might be best if Mrs Towell and her son came in to see Dr Macmillan.

[74] Mr Towell consulted with Dr Macmillan of the Coldside Medical Practice on both 21 and 22 October 2013. In evidence, Mrs Towell only spoke to the terms of the latter consultation with Dr Macmillan. Dr Macmillan did not give evidence to the inquiry. From the evidence before the inquiry I am unable to conclude if the phone call between Mrs Towell and Dr Taylor came before or after the consultation with Dr Macmillan on 21 October 2013.

[75] The terms of the contemporaneous notes made by Dr Macmillan of the consultations on 21 and 22 October 2013 are instructive. The note in relation to the consultation on 21 October 2013 is in the following terms:

"Anger reaction. Wants signed fit for work. Was told that neurologist would be returning from holiday and that she would review his MRI scan and inform us that he is fit for work. "Nothing wrong with me" "Waste of time coming here" "I'll just make another appointment" Advised that MRI is to exclude or reasons for seizure activity such as space occupying lesions. Unhappy and left."

The note in relation to the consultation on 22 October 2013 is in the following terms:

"Aggressive personality swearing at me and general language re his dissatisfaction that I won't give him a line that says he is fit to return to work. He says that there is no situation at work that he could fill that does not require him

to be up scaffolding and therefore with his undetermined diagnosis but suggestive of temporal lobe epilepsy I am not in a position to deem him fit to return to work. I suggested he could ask for occupational health assessment at work. Accompanied by his mother today. Apparently not driving."

[76] Mrs Towell confirmed in evidence that Mr Towell had been angry in relation to the work situation. She confirmed in evidence that Mr Towell was not driving at that time.

[77] Dr Bullions spoke with Mr Towell on 14 November 2013. She noted that he remained frustrated at his situation. He required a further statement of fitness for work. He advised Dr Bullions that he had been contacting Dr Coker's secretary to expedite the results. Those results came by way of a letter from Dr Coker to Mr Towell dated 19 November 2013 (a copy of which was also sent to the Coldside Medical Practice). Dr Coker's letter noted that Mr Towell's MRI brain scan and EEG (tracing of the brain) had not provided any answers for the seizures. She stated that, "It would be useful to arrange a sleep deprived EEG and that I will arrange this", going on to explain what it involved. Dr Coker reiterated her advice that Mr Towell continued to avoid driving in the meantime.

[78] There is one aspect of Dr Coker's letter that merits further comment. The sentence I quote above appears to have been the basis upon which Mr Towell subsequently regarded the sleep deprived EEG as optional. Putting aside the fact that it was open to Mr Towell to decline to participate in a sleep deprived EEG (as he did), I am satisfied that Dr Coker did not view it as "optional" in the sense subsequently portrayed by Mr Towell and his mother. It was an appropriate investigation in the circumstances and one that Dr Coker believed was in Mr Towell's best interests to undergo.

[79] Mr Towell discussed the position with his GP, Dr Angus Oswald of the Coldside Medical Practice on 27 November 2013. Dr Oswald gave evidence to the inquiry. Mrs Towell confirmed that she was not present at the consultation with Dr Oswald on 27 November 2013. The contemporaneous note made by Dr Oswald, which he spoke to in evidence, records that Mr Towell wished a certificate “signing him back to work”. Mr Towell is described as “pretty adamant”, stating that he had been told by neurology that a further test would be “useful” but was not required (in which regard, see my observations at paragraph [78] above). Mr Towell told Dr Oswald that he had been told that he had not had a seizure; that he could now return to work as there had been no further seizure type events; that his EEG was “normal”; and that he was awaiting a sleep deprived EEG.

[80] Dr Oswald expressed concern, given Dr Coker’s comments, however, Mr Towell insisted on a certificate. Dr Oswald e-mailed Dr Coker asking for her opinion but reluctantly ceded to Mr Towell’s request and issued him with a certificate, which permitted him to return to work. Dr Oswald told Mr Towell that he would call him once he had heard from Dr Coker. Dr Oswald’s view was that Dr Coker’s letter did not read (to him) in the way Mr Towell was “portraying the situation not for driving”, concluding that “(I) have to say I am not entirely confident that working on scaffolding advisable but have believed his (i.e. Mr Towell’s) telling of events.”

[81] Dr Oswald’s evidence in relation to this consultation was that Mr Towell was reluctant to accept the diagnosis of epilepsy, standing the normal brain scan and EEG. Mr Towell was very keen to go back to work and Dr Oswald’s view (which I regard as the correct one) is that Mr Towell regarded the sleep deprived EEG as preferable rather than necessary based upon his desire to return to work. In evidence, Dr Oswald stressed that he

was not entirely comfortable with the position advanced to him by Mr Towell at the consultation.

[82] Dr Coker replied to Dr Oswald's e-mail later on 27 November 2013. The terms of her response form part of the GP notes (Dr Oswald having copied and pasted the terms of the e-mail into the notes). It was in the following terms:

"I would advise him not to work as scaffolder or at heights or to drive. He awaits a sleep deprived EEG and has contacted Ninewells asking for a cancellation for the investigation. I'm not at Ninewells today but recall he has had one witnessed generalised seizure and from my recollection additional episodes were suggestive of probable complex partial seizures but he declined anti-epileptic drug treatment as he felt the probable seizures were due to a supplement he had been taking although no good evidence to support this view."

[83] Dr Oswald was clearly concerned by the terms of Dr Coker's response, when viewed against the position as set out by Mr Towell. He tried to contact Mr Towell by phone, without success. Dr Oswald then left a message with Mrs Towell asking that Mr Towell call him back. Dr Oswald subsequently spoke to Mr Towell and advised him that he should not be working. He made sure Mr Towell understood that he should not be working at heights. Dr Oswald dictated a letter to Mr Towell which was dated 28 November 2013. It reiterated Dr Oswald's advice of the previous day confirming that Mr Towell ought not to work as a scaffolder or at height or to drive; that the certificate he had provided to Mr Towell was invalid; and strongly suggesting that Mr Towell attend for the sleep deprived EEG. Mr Towell did not contact Dr Oswald in response to this letter.

[84] A number of observations fall to be made in relation to this particular passage of evidence. Telling Dr Oswald that he had not had a seizure was simply untrue. There was no basis in fact for the assertion that Mr Towell had been cleared to return to work as there

had been no further seizure type events. As I observed above at paragraph [78], the representation that the sleep deprived EEG was, in some way, viewed as optional by the neurologist was equally misleading. In conclusion, it is difficult but to conclude that Mr Towell was prepared to say anything to Dr Oswald to obtain the necessary certificate that would permit him to return to work.

12. 2014

[85] Mr Towell had an appointment to attend the epilepsy clinic at Ninewells on or around 9 January 2014. He did not attend. The hospital wrote to the Coldside Medical Practice on or about 16 January 2014 confirming this and the fact that they had issued Mr Towell with a further appointment.

[86] Mr Towell's annual BBBC medical examination was undertaken by Dr Brian Tansey on 21 February 2014. For the reasons set out above in Part 6, at paragraph [27] above, I am satisfied that the "Boxer's Medical Examination Form" was completed by Dr Tansey on the basis of his examination and information provided to him by Mr Towell.

[87] Mr Towell answered Question 1 "Yes". In light of the circumstances outlined above, whilst it appears clear that Mr Towell chose to believe he was in good health, he clearly was not.

[88] Mr Towell answered Question 3 "No". That answer was untrue. He had suffered what his mother described as a "blackout" on the two occasions recorded in Part 7, at paragraph [32] above. He had also suffered what one would colloquially describe as a "fit" (the term used in the "Boxer's Medical Examination Form") on 9 September 2013, as more fully described in Part 8 above.

[89] Mr Towell answered Question 15 “2013” but did not specify what the investigations were. Question 15 refers to blood tests, X rays, ECG and EEG. The investigations carried out in 2013 were in relation to the diagnosis of temporal lobe epilepsy. It appears that the BBBC made no enquiries in relation to this answer. Had they done so, using the Consent signed by Mr Towell, it is probable that the Coldside Medical Practice would have provided the BBBC with information regarding Mr Towell’s medical history which would have engaged rule 8.1 (see paragraph [61] above). That rule permits the BBBC to take such action as in its absolute discretion it sees fit. At the very least, investigations would have been carried out in relation to Mr Towell’s fitness to box. On the evidence before the inquiry, if the BBBC had made enquiries of Mr Towell’s GP in 2014, Mr Towell’s death might realistically have been avoided.

[90] Mr Towell underwent an examination by an optometrist at Optical Express in Dundee on 17 February 2014; and a biochemistry report was obtained relative to bloods taken from Mr Towell on 21 February 2014. An MRI head scan was taken on 21 February 2014 at Ross Hall Hospital in Glasgow. By letter dated 25 February 2014, Dr Maneesh Patel confirmed that that MRI head scan had been compared with the previous image from 14 November 2012 at Glasgow Nuffield Hospital (see paragraph [24] above); there had been no change between the scans; and the imaging appearances remained normal.

[91] On 27 February 2014, a recommendation was made by or on behalf of the BBBC’s chief medical officer that Mr Towell’s licence be renewed.

[92] Mr Towell signed the Consent in February 2014. Notwithstanding the answer given by Mr Towell to Question 15, and the absence of any detail relative to that answer, the BBBC

did not contact Mr Towell's doctor to obtain medical information pertaining to his application to box. Had the BBBC done so, it is likely that Mr Towell's licence would not have been renewed.

[93] Mr Towell was given an appointment to attend for a sleep deprived EEG at Ninewells on or about 11 March 2014. He did not attend. Dr Coker wrote to the Coldside Medical Practice on or about 20 March 2014 confirming the position. She also confirmed that neurophysiology had discharged Mr Towell.

[94] Dr Oswald wrote to Dr Coker regarding Mr Towell on 31 March 2014. Dr Oswald noted that he had recently received some correspondence to say that neurophysiology had discharged Mr Towell. He asked Dr Coker if, in these circumstances, the practice needed to be doing anything else. He also asked Dr Coker if Mr Towell was fit to drive.

[95] In his fourth professional fight on 12 April 2014, Mr Towell fought Rhys Pagan at the Lagoon Leisure Centre in Paisley for the Scottish Area light middleweight championship. Mr Towell was scheduled to fight Mr Pagan over ten rounds, but won by knock out in the third round. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "No"; and Question 8 "Yes".

[96] Dr Coker replied to Dr Oswald by letter dated 17 April 2014. Dr Coker confirmed that at Mr Towell's clinic appointment (on 17 September 2013 – see Part 9 above) he had been advised to inform DVLA of the generalised tonic clonic seizure as well as additional probably focal seizures. Dr Coker noted that she had recommended prophylaxis at the time, but Mr Towell was not keen to pursue this. Dr Coker went on to say this in her letter:

“With regards to your question about whether he is fit to drive, I would suggest he makes contact with the DVLA. The DVLA once in receipt of all of the above information will make an assessment to determine a date when he can legally resume driving.”

Dr Coker concluded by noting that Mr Towell had a clinic appointment with Dr Morrison on 6 May 2014 and recommended that he kept that appointment.

[97] In evidence, Dr Oswald confirmed that, subsequent to the consultation on 27 November 2013, Mr Towell had received letters in relation to further investigations, namely, the sleep deprived EEG which he did not attend; and that Mr Towell had been discharged from neurology. He spoke to the letter from Dr Coker of 17 April 2014 and to his subsequent letter to Mr Towell dated 30 April 2014. In his letter, noting Mr Towell’s failure to attend for the sleep deprived EEG, Dr Oswald raised the issue of Mr Towell informing DVLA of the seizures and the recommendation for prophylaxis. Dr Oswald told Mr Towell that he expected him to speak to DVLA and inform them of this as soon as possible, if he had not already done so. Dr Oswald also asked Mr Towell to confirm that he had spoken to DVLA, warning Mr Towell that if he did not hear anything from him soon (or from DVLA) he would be obliged to contact DVLA directly and inform them of events in order that they could establish whether Mr Towell was then fit to drive.

[98] Mr Towell did not attend the clinic appointment with Dr Morrison on 6 May 2014. Dr Morrison subsequently wrote to Dr Oswald confirming the position and that he had not offered Mr Towell a further appointment.

[99] Mr Towell’s fifth professional fight was on 6 October 2014 against Kevin McCauley at the Radisson. Mr Towell fought Mr McCauley over ten rounds, winning on points. In the

“Boxer’s Pre-Contest Medical” form for this fight, Mr Towell answered Question 7 “No”; and Question 8 “Yes”.

13. 2015

[100] In 2015, Mr Towell fought five professional contests, winning each one. It was his most active year as a professional boxer.

[101] Whilst Dr Bullions did not speak to this encounter in evidence, the GP notes record that on 12 January 2015 she had a discussion with Mr Towell and asked if he had had any further contact with neurology. Dr Bullions recorded Mr Towell’s response as being that he had spoken to people who knew about sports; that Mr Towell now knew that he had had a sugar rush and not a seizure; he has a yearly review through his boxing contacts with a doctor and they tell him he is fit to fight. Dr Bullions noted that Mr Towell remained upset that people were trying to keep him off his work. In the context of the foregoing exchange between Dr Bullions and Mr Towell, it is pertinent to observe that no witness to the inquiry appears to have been amongst the “people who knew about sports” that Mr Towell spoke to.

[102] The yearly review that Mr Towell referred to came just over four weeks later: Mr Towell’s annual BBBC medical examination being undertaken by Dr Brian Tansey on 10 February 2015. Again, for the reasons set out above in Part 6, at paragraph [27] above, I am satisfied that the “Boxer’s Medical Examination Form” was completed by Dr Tansey on the basis of his examination and the information provided to him by Mr Towell.

[103] Mr Towell answered Question 1 (then re-numbered 18) “Yes”. In light of the circumstances outlined above, whilst it appears clear that Mr Towell chose to believe he was in good health, he clearly was not.

[104] Mr Towell answered Question 3 (then re-numbered 2) “No”. That answer was untrue. He had suffered what his mother described as a “blackout” on the two occasions recorded in Part 7, at paragraph [32] above. He had also suffered what one would colloquially describe as a “fit” (the term used in the “Boxer’s Medical Examination Form”) on 9 September 2013, as more fully described in Part 8 above. Mr Towell answered Question 15 (then re-numbered 14) “2014” but did not specify what the investigations were. The question refers to blood tests, X rays, ECG and EEG.

[105] The answer given to Question 15 is somewhat curious. As will have been noted from the terms of Part 12 above, outwith the annual medical, there were no investigations carried out in 2014. In those circumstances, I can but conclude that the answer “2014” does, in fact, refer to the tests carried out as part of the annual medical examination that year. Whilst the position in 2015 is different from that in 2014 (see paragraph [89] above), the fact that a positive response was given to Question 15 in 2015 should have led to further investigation. My observations at paragraph [89] above apply equally here. Had the BBBC made enquiries of Mr Towell’s GP in 2015, Mr Towell’s death might realistically have been avoided.

[106] Mr Towell underwent an examination by an optometrist, Alison Johnson, in Dundee on 10 February 2015; and a biochemistry report was obtained relative to bloods taken from Mr Towell on 10 February 2015. An MRI head scan was taken on 10 February 2015 at Ross Hall Hospital in Glasgow. By letter dated 12 February 2015, Dr Maneesh Patel confirmed

that that MRI head scan had been compared with the previous image from 21 February 2014 also taken at Ross Hall Hospital (see paragraph [90] above); there had been no change between the scans; and the imaging appearances remained normal.

[107] On 12 February 2015, a recommendation was made to the stewards of the BBBC's chief medical officer that Mr Towell's licence be renewed.

[108] Mr Towell signed the Consent in February 2015. Notwithstanding the answer given by Mr Towell to Question 15 (then re-numbered 14), and the absence of any detail relative to that answer, the BBBC did not contact Mr Towell's doctor to obtain medical information pertaining to his application to box. Had the BBBC done so, it is likely that Mr Towell's licence would not have been renewed.

[109] Mr Towell's sixth professional fight was on 14 March 2015 against Arvydas Trizno at the Caird Hall in Dundee. Mr Towell was scheduled to fight Mr Trizno over ten rounds, but won by knock out in the first round. This fight was notable in two respects. Firstly, it was Mr Towell's first and only professional fight in Dundee. Secondly, it was the first time he had won by knockout in the first round. In light of the evidence before the inquiry in relation to Mr Towell's passion for boxing, it is likely that there is a connection between those two facts. It is not difficult to imagine the encouragement of a "home crowd" spurring Mr Towell on to heights he had not previously attained. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "No"; and Question 8 "Yes".

[110] Mr Towell's seventh professional fight was on 30 April 2015 against Lukasz Janik at the Radisson. Mr Towell was scheduled to fight Mr Janik over eight rounds, but won by

knock out in the first round. In the “Boxer’s Pre-Contest Medical” form for this fight, Mr Towell answered Question 7 “No”; and Question 8 “Yes”.

[111] Mr Towell’s eighth professional fight was on 23 May 2015 against Danny Little at the Bellahouston Leisure Centre in Glasgow. Mr Towell was scheduled to fight Mr Little over six rounds, but won by knock out in the third round. In the “Boxer’s Pre-Contest Medical” form for this fight, Mr Towell answered Question 7 “No”; and Question 8 “Yes”.

[112] Mr Towell’s ninth professional fight was on 22 October 2015 against Aleksei Tsatiasvili at the Radisson. Mr Towell was scheduled to fight Mr Tsatiasvili over six rounds, but won by knock out in the final round. In the “Boxer’s Pre-Contest Medical” form for this fight, Mr Towell answered Question 7 “No”; and Question 8 “Yes”.

[113] On 7 November 2015, between his ninth and tenth professional fights, Mr Towell entered into a new boxer/manager agreement with Mr Gilmour, for a further period of three years. Mr Gilmour was Mr Towell’s manager for his entire professional career.

[114] Mr Towell’s tenth professional fight was on 14 November 2015 against William Warburton at the Albert Hall in Stirling. Mr Towell fought Mr Warburton over eight rounds, winning on points. In the “Boxer’s Pre-Contest Medical” form for this fight, Mr Towell answered Question 7 “No”; and Question 8 “Yes”.

14. January – April 2016

[115] Mr Towell’s final annual BBBC medical examination was undertaken by Dr Henderson on 3 February 2016. This annual medical is considered below at paragraph [170]. Dr Henderson confirmed in evidence that the “Boxer’s Medical

Examination Form” was completed by him on the basis of his examination and the information provided to him by Mr Towell.

[116] Mr Towell answered Question 1 (then re-numbered 18) “Yes”. In light of the circumstances outlined above, whilst it appears clear that Mr Towell chose to believe he was in good health, he clearly was not, albeit he had had little contact with doctors in 2015 (and none in relation to seizures).

[117] Mr Towell answered Question 3 (then re-numbered 2) “Nil”. That answer was untrue. He had suffered what his mother described as a “blackout” on the two occasions recorded in Part 7, at paragraph [32] above. He had also suffered what one would colloquially describe as a “fit” (the term used in the “Boxer’s Medical Examination Form”) on 9 September 2013, as more fully described in Part 8 above.

[118] Mr Towell answered Question 15 (then re-numbered 14) “N/A”.

[119] Mr Towell underwent an examination by an optometrist, David Beaton, in Dundee on 2 February 2016; and a biochemistry report was obtained relative to bloods taken from Mr Towell on 5 February 2016. An MRI head scan was taken on 5 February 2016 at Ross Hall Hospital in Glasgow. By letter dated 9 February 2016, Dr Maneesh Patel confirmed that that MRI head scan had been compared with the previous image from 10 February 2015 also taken at Ross Hall Hospital (see paragraph [106] above); there had been no change between the scans; and the imaging appearances remained normal.

[120] As noted above, this was the final BBBC annual medical examination undertaken by Mr Towell. It is notable that Dr Maneesh Patel, a consultant neuroradiologist at Imperial

College NHS Trust, Charing Cross Hospital, London, reviewed Mr Towell's MRI scans on the instruction of the BBBC in 2014, 2015 and 2016 as part of their annual medical examination process. Dr Patel found the brain imaging to be normal on each occasion that he reviewed the scans of Mr Towell's brain.

[121] On 15 February 2016, a recommendation was made to the stewards of the BBBC that Mr Towell's licence be renewed. Had the BBBC known the position regarding Mr Towell's diagnosis of temporal lobe epilepsy, it is likely that Mr Towell's licence would not have been renewed.

[122] Mr Towell signed the Consent in February 2016. The BBBC did not contact Mr Towell's doctor to obtain medical information pertaining to his application to box. On this occasion there was no answer within the form that may have caused them to do so (unlike the position in 2014 and 2015).

[123] On 18 February 2016 Mr Towell fought an exhibition contest against Kris Carslaw at the Radisson. This particular fight was not spoken to in evidence, however, from the agreed paperwork, it appears that Mr Towell was a late substitute for another boxer. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "No"; and Question 8 "Yes".

[124] Mr Towell's eleventh professional fight was a British welterweight title eliminator on 5 March 2016 against Robert Dixon at the Lagoon Leisure Centre in Paisley. Mr Towell was scheduled to fight Mr Dixon over ten rounds, but won by knock out in the second round. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "No"; and Question 8 "Yes".

[125] Mr Towell's twelfth professional fight was on 28 April 2016 against Miguel Aguilar at the Radisson. Mr Towell was scheduled to fight Mr Aguilar over six rounds, but won by knock out in the first round. In the "Boxer's Pre-Contest Medical" form for this fight, Mr Towell answered Question 7 "No"; and Question 8 "Yes".

15. 21 May 2016

[126] On the morning of 21 May 2016, Mr Towell was in bed with his partner, Ms Ross. In evidence, Ms Ross explained that she had woken to find Mr Towell shaking. He had been asleep. He had bitten his tongue. Ms Ross could see blood from this injury. Asked if she knew what she was witnessing, Ms Ross replied that she assumed it was a seizure and that she had never seen one previously. Ms Ross jumped out of bed and shouted at Mr Towell. He did not respond. Ms Ross phoned an ambulance. She explained that Mr Towell then came out of the seizure and went back to sleep. When the ambulance attended, Mr Towell did not want to go to hospital. Ms Ross persuaded Mr Towell to go. She could not accompany him to hospital, as she required to look after the parties' son. She alerted Mr Towell's mother, asking that she attend hospital with Mr Towell. This was the only occasion on which Ms Ross witnessed an episode of this sort.

[127] Dr Yvonne Tan, a senior house officer, was on duty at the accident and emergency department of Ninewells on 21 May 2016 at around 11.05 am when she consulted with Mr Towell in the presence of his mother, who had met Mr Towell there. Mr Towell said that he had had a seizure and was confused. He had bitten his tongue but had sustained no other injury. Mr Towell said that he had never suffered from seizures before and that he had been binge drinking for two weeks and had taken cocaine. Dr Tan then discussed the

case with accident and emergency registrar Dr Karen Black who saw Mr Towell at around 11.30 am.

[128] Mr Towell advised Dr Black that he did not possess and had never possessed a driving licence. Dr Black then discussed the case with accident and emergency consultant Dr Brodie Paterson. Mr Towell was discharged. In a letter dated 22 May 2016 Dr Tan wrote to Dr Bullions asking that Mr Towell be re-referred to neurology.

[129] The terms of the preceding two paragraphs are drawn from the joint minute of agreement entered into by the parties to the inquiry. There are four particular aspects that merit further comment.

[130] Firstly, Mr Towell's statement to Dr Tan that he had never suffered from seizures before was, of course, completely untrue. That much is apparent from the terms of Mr Towell's consultation with Dr Coker on 17 September 2013 (see paragraph [42] above). It is difficult to comprehend why Mr Towell chose to lie in this way. It was, to say the least, an unsophisticated lie. As is confirmed by Dr Black's contemporaneous notes and by Dr Tan's subsequent letter to Dr Bullions (see paragraph [128] above), Dr Tan reviewed the records relating to Mr Towell which were available to her on NHS clinical portal and learned that Mr Towell had previously been investigated by neurology and had been diagnosed as possibly having temporal lobe epilepsy. Dr Black noted that she had challenged Mr Towell on this.

[131] Secondly, Mr Towell's statement to Dr Tan that he had been binge drinking in the previous two weeks and had taken cocaine can be viewed in two separate lights. On the one hand, it must be accepted that Mr Towell had previously been candid in relation to his binge

drinking and cocaine use (see above at paragraphs [34] and [44]). On the other hand in September 2013 Dr Coker had advised Mr Towell (in the presence of his mother) that binge drinking and cocaine use could provoke seizures (see paragraph [44] above). This particular seizure took place more than three weeks after Mr Towell's then last fight. Mrs Towell's evidence to the inquiry was that Mr Towell would "let his hair down" and could be out for two or three days after a fight "partying". It is difficult to reconcile that evidence with Mr Towell binge drinking and taking cocaine more than three weeks after his then last fight, when it appears probable that he must have known that his next fight was likely to be a final eliminator for the British welterweight championship. I reach that conclusion on the basis of the fact that purse offers for the final eliminator were invited by the BBBC on 8 June 2016.

[132] The terms of the joint minute of agreement potentially conflict with the evidence before the inquiry from Mrs Towell. Her evidence was that she had asked Dr Tan if binge drinking and cocaine use may have caused Mr Towell to take unwell, adding that Dr Tan said that this was possible. The response from Dr Tan is, of course, consistent with the evidence of Dr Coker (see paragraph [44] above). There was no evidence before the inquiry as to when Mr Towell had last drunk to excess and / or taken cocaine prior to the episode on 21 May 2016. I am, however, of the view that if the issues of binge drinking and cocaine use were raised with Dr Tan by Mrs Towell, she did so in an attempt to deflect Dr Tan and her colleagues from the possibility of another cause of the seizure. As it transpired, that attempt was a forlorn one standing the accident and emergency staff accessing the information on the NHS clinical portal.

[133] Thirdly, Mr Towell's statement to Dr Black that he did not possess and had never possessed a driving licence was another lie. Mrs Towell accepted that Mr Towell had said

this to Dr Tan. She maintained that she “gave him into trouble when (they) got outside”. I regret to say that, in this respect, I simply do not believe Mrs Towell’s evidence.

[134] By this time, Mr Towell (and Mrs Towell, who had attended virtually all of his medical appointments) were well aware of the importance of reporting Mr Towell’s condition to DVLA (see, for example, paragraphs [50], [72] and [97] above). I deal with the issue of DVLA reporting below in Part 30. Mr Towell never made a medical declaration to the DVLA. That was a conscious decision on his part. No other conclusion is available to me on the evidence. Mrs Towell’s position in evidence was that Mr Towell was fit and healthy. She insisted that he was “fine”. She insisted that she had never seen Mr Towell have a seizure, albeit she accepted seeing him “confused”. For these reasons, I cannot accept that Mrs Towell rebuked Mr Towell over his lie to Dr Black in the manner she stated she had in evidence.

[135] Fourthly, there is the issue of Dr Tan’s letter to Dr Bullions asking that Mr Towell be re-referred to neurology. No such referral was made. Both Dr Oswald and Dr Bullions spoke to the circumstances of this omission.

[136] Dr Oswald explained that Dr Tan’s request had, essentially, been “missed” by the Coldside Medical Practice. The system which operated within the practice at that time was that, as a considerable number of accident and emergency letters were received, it had been decided that the practice’s administrative staff could deal with many of these. On this particular occasion, the request was not passed to one of the doctors. Any request from accident and emergency such as that made by Dr Tan in this instance ought to have been

passed to a doctor in terms of the system that operated within the Coldside Medical Practice at that time.

[137] In evidence, Dr Oswald explained that if the letter had been seen by him, he would have contacted Mr Towell and discussed with him a referral to neurology, either in person or by phone. Dr Oswald went on to explain that if Mr Towell did not wish to be re-referred then, in all probability, he would not make a referral. His view was that that would have been a waste of an appointment. Dr Oswald advised the inquiry that if Mr Towell had been re-referred to neurology at the end of May 2016, a routine appointment at that time would have been in the order of 24 weeks thereafter (i.e. around mid-October 2016, after Mr Towell's death).

[138] Dr Bullions also gave evidence to the inquiry in relation to the system that then operated within the Coldside Medical Practice in May 2016. She confirmed that she had first seen Dr Tan's letter when she reviewed Mr Towell's notes after his death. She confirmed that the letter had not been passed to her at the point in time it was received.

[139] Dr Bullions' evidence was that if she had seen the letter she would have contacted Mr Towell to discuss it with him. Rather than discuss with him whether there would be a referral, she would have made the referral and advised Mr Towell of that. Her evidence was that if Mr Towell had not wished to be re-referred she would recommend that he attend the clinic appointment with neurology. Her evidence was that even if Mr Towell had stated that he would not attend, she would probably have re-referred him in any event, explaining to him that it was a very important matter. Dr Bullions did not regard this as an urgent

referral; it would have been a routine one. There was no reason to urgently prioritise such a referral in so far as she was aware.

[140] Dr Bullions explained that the system which operated within the Coldside Medical Practice in 2016 was no longer in effect. Changes have been made. All communications from accident and emergency departments are now passed to one of the GPs in the practice to be considered and actioned, as appropriate.

[141] In relation to the failure by the Coldside Medical Practice to re-refer Mr Towell to neurology in May 2016, Dr Norman Wallace (whose evidence is discussed below in Part 19) described this as significant system failure on the part of the practice for which he could see no justification. In Dr Wallace's view, on balance, it is unlikely that Mr Towell would have attended if he had been re-referred, however, it would have given the practice an opportunity to bring Mr Towell in and to discuss the issues with him.

[142] The failure to pass Dr Tan's letter to a doctor within the Coldside Medical Practice arose, in my view, as a result of a defect in the system of working in relation to such letters which operated within the practice at that time. It was not, however, a defect in a system of working which contributed to Mr Towell's death. The evidence before the inquiry suggests that if there had been a discussion between either Dr Oswald or Dr Bullions and Mr Towell in relation to a further referral to neurology, Mr Towell would not have agreed to be re-referred. I reach that conclusion on the basis of Mr Towell's lack of engagement in the previous referral to neurology (see Part 12 above).

[143] Whilst Mr Towell should have been re-referred to neurology after his attendance at Ninewells on 21 May 2016, and whilst the evidence suggests that if Dr Tan's letter had been

passed to the addressee, Dr Bullions, it is likely that such a referral would have been made, irrespective of Mr Towell's attitude to such a referral, there was no evidence before the inquiry to suggest that Mr Towell would have engaged with a referral to neurology if one had been made in May 2016. In any event, the evidence suggests that even if a referral had been made in May 2016, it is unlikely that Mr Towell would have been offered an appointment with neurology prior to his death.

16. Lead Up To The Dale Evans Fight

Arrangements for the Fight

[144] In June 2016 the BBBC invited purse bids from promoters to stage the final eliminator contest for the British welterweight championship between Mr Towell and Mr Evans. On 14th July 2016 the purse bids were opened. The highest bidder was Iain Wilson of St Andrews Sporting Club, Glasgow. The purse offer was £8,226. Mr Wilson did not give evidence to the inquiry.

[145] It was agreed between the promoter, Mr Wilson, and the boxers, Mr Evans and Mr Towell, that the winner of the contest would receive £4,935.60 (that is 60% of the purse offer) and that the loser would receive £3,290.40 (40% of the purse offer). The purse was to be shared equally in the event of a draw, that is each boxer would have received £4,113 in such circumstances.

[146] The contest was scheduled to take place in the Megolithic Suite at the Radisson on Thursday 29 September 2016. St Andrews Sporting Club organised both the contest and the evening event of which it formed part. The evening event comprised a black tie dinner followed by a number of boxing contests – the contest between Mr Towell and Mr Evans

and two additional contests. Tickets for the event were available for purchase by members of St Andrews Sporting Club at a price of £60 plus VAT and by guests at a price of £100 plus VAT. St Andrews Sporting Club entered an agreement whereby STV Glasgow would televise the fight (and the weigh-in).

Preparations for the Fight

[147] Commencing at or around the beginning of July 2016, Mr Towell took twelve weeks authorised unpaid absence from his job with Interserve to prepare for the fight with Mr Evans.

[148] In evidence, one of Mr Towell's trainers, Mr Graham, spoke to Mr Towell's preparations for the fight with Mr Evans. Mr Graham's evidence was that twelve weeks preparation was slightly more than was required. He explained that Mr Towell's training programme commenced with light training to improve his fitness; work on technical matters; and some light sparring in the first four weeks of training. There then followed a period of more intense sparring in weeks five to eight of training; with lighter sparring again and further technical work the final four weeks of training (weeks nine to twelve) to ensure that Mr Towell was in the best possible shape for the fight with Mr Evans.

[149] Mr Graham explained that whilst sparring a boxer would wear a head guard and heavier gloves than those he would fight with. Ordinarily, Mr Towell would fight with 8 ounce gloves whereas whilst sparring he would wear 16 ounce gloves. Mr Graham explained that the heavier gloves caused less damage to the sparring partner.

The Edinburgh Sparring Session

[150] The inquiry heard evidence in relation to a particular sparring session which took place at a gym in Edinburgh at the end of July 2016. Mr Graham explained that this was the first intense sparring session in which Mr Towell had participated in his preparations for the fight with Mr Evans. Previously, Mr Towell had only participated in lighter sparring. That had all taken place at the 1314 Boxing Club in Stirling.

[151] In relation to the sparring session in Edinburgh, Mr Graham described this as a “pretty typical” intense sparring session. He described it as probably the hardest session Mr Towell was involved in in the lead up to the fight with Mr Evans. Mr Graham stated that, on this occasion, Mr Towell was “rusty” and his timing was off. Mr Towell was ordinarily very intense whilst sparring. Mr Graham explained that He and Mr Coyle often needed to “rein in” Mr Towell. The fact that Mr Towell was rusty on this particular occasion was in Mr Graham’s view to be expected.

[152] Mr Graham’s recollection was that Mr Towell had fought with two separate opponents while sparring on this occasion, boxing with the first opponent for a number of rounds; then with the second opponent for a number of rounds; and finishing with the first opponent again for a number of rounds. He explained that Mr Towell had done this type of sparring before, it being a regular thing which happens all the time to teach a boxer to deal with pressure.

[153] Asked how Mr Towell was immediately after the fight, Mr Graham stated that he was “okay”, albeit he was not happy as he “did not like losing a second of anything”. Mr Graham stated that Mr Towell had “taken the huff” and said that he was not coming back to Edinburgh. Mr Graham’s evidence was that he told Mr Towell that he needed to

learn from this particular sparring session, going on to explain that Mr Towell was not happy because he did not have matters all his own way. Whilst the first opponent did not make a fool of Mr Towell, the second seemed to find it easy which Mr Towell found slightly humiliating. Mr Graham confirmed that Mr Towell looked physically well and that nothing out of the ordinary by way of injury had occurred on this occasion.

[154] In contrast to the evidence of Mr Graham, Mrs Towell gave evidence that Mr Towell had told her that he had boxed with three different opponents (not two) and had told her that “he had got a hiding”. She explained that prior to this particular sparring session Mr Towell was quite fit and healthy, however, he started to get sore heads after the sparring session in Edinburgh.

[155] Ms Ross also spoke of being told by Mr Towell that he had sparred with three separate opponents on that occasion. She described Mr Towell as being heavily bruised and not happy, saying that he would not do that again. Her evidence was that, looking back, Mr Towell started to get sore heads quite often from that point onwards. She described these as “nothing major, just a sore head”. She explained that Mr Towell took paracetamol and the sore heads would go away. She did not recall Mr Towell mentioning sore heads previously. She had to buy a lot of paracetamol and told Mr Towell that the amount he was taking was not normal, however, she accepted that the paracetamol had seemed to help him.

[156] The second of Mr Towell’s trainers, Mr Coyle, also gave evidence to the inquiry. He was present at the sparring session in Edinburgh at the end of July 2016. He named the two boxers who sparred with Mr Towell on that date. He did not regard anything about the sparring session as unusual. His view was that Mr Towell’s performance in the session was

not great. Mr Towell made no mention of a sore head. Mr Coyle's view was that Mr Towell was not in great shape at that time, describing him as "slack and lethargic". In Mr Coyle's opinion, the reason for sparring with more than one opponent was to keep pressure on the boxer. To do so, a different opponent was brought in after two or three rounds. He described this as common practice in boxing.

[157] James Watt MBE, whose evidence is considered below in Part 21, also spoke to the circumstances of the Edinburgh sparring match. He described those circumstances as "perfectly normal". That is what he did when he boxed. On a night he could spar with four different boxers. He explained that it made for good sparring.

[158] Insofar as their accounts differ, I prefer the evidence of Mr Graham and Mr Coyle to that of Mrs Towell and Ms Ross. Mr Graham and Mr Coyle were present at the sparring session; Mrs Towell and Ms Ross were not. Mr Coyle was also able to name the two opponents Mr Towell had sparred with on that occasion. I am far from persuaded that it is material, however, on a balance of probability, I am satisfied that Mr Towell sparred with two opponents on that occasion, not three.

[159] Equally, having considered the evidence of Mr Graham and Mr Coyle, together with the evidence of Mr Watt, I am satisfied that there was nothing untoward about the Edinburgh sparring session. Protective equipment, by way of a head guard, and heavier gloves were used. Mr Towell did not perform particularly well in the eyes of his trainers, however, standing the stage Mr Towell had reached in his preparations for the fight with Mr Evans, they were unconcerned by that.

17. The Boxing Doctor

[160] The background to the concept of a “boxing doctor” (also referred to in evidence as a “sporting doctor”) was spoken to in evidence by Mr Smith. Mr Smith explained that sometimes a boxer’s GP would not be prepared to do boxing medicals; some do not like boxing. Overseas boxers will not have a GP. In Mr Smith’s evidence it was easier to work within the industry, hence the BBBC does not require boxers to see their own GP for the purposes of annual medicals. Mr Smith would not expect a boxer to see the doctor who carried out his annual medical outwith the medical process. He would expect them to see their own GP in those circumstances, although accepted that there may be instances in which a boxer may see the doctor who carried out the annual medical. This created no issue for him. There may be a good relationship between that doctor and the boxer. In Mr Smith’s experience it did happen, although it was not that common.

[161] Marion Docherty was the secretary of the 1314 Boxing Club for around seven years. At the time of his death, Ms Docherty had known Mr Towell for around four or five years. For a time, Ms Docherty was the partner of Mr Coyle. Mr Towell stayed with Ms Docherty on occasions before fights; and Ms Docherty helped Mr Towell with his diet and to ensure he made the weight for fights. Ms Docherty and Mr Coyle were no longer in a relationship in September 2016. Ms Docherty had been in Ireland from June or July that year, only returning on the day of Mr Towell’s fight with Mr Evans. Ms Docherty did not assist Mr Towell with his diet and weight in relation to the fight with Mr Evans, although she did speak to him on the phone on a couple of occasions.

[162] Ms Docherty explained that Dr Henderson was what she described as the “club doctor” for the 1314 Boxing Club. She explained that she had been involved in the amateur

side of the club and that Dr Henderson performed medicals for their amateur boxers. She believed that Dr Henderson had performed medicals for professional boxers also.

[163] Ms Docherty spoke to being contacted by Mr Towell in September 2016. He had contacted her by phone. He had a pain in his side, which he described as “a stitch”. Mr Towell said that he felt sick and that he had been sick. He mentioned his neck to her also. Ms Docherty’s recollection was that Mr Towell was quite concerned about his side. He had told her that he had been out jogging and had fallen to his knees as a consequence of the pain in his side.

[164] Ms Docherty’s recollection was that this conversation took place around 8 or 9 September 2016, however, she could not be entirely sure. Mr Towell had said that his neck was a bit stiff and had asked her if she knew of anywhere he could get a massage. Asked if Mr Towell had mentioned any other complaints, Ms Docherty replied that she could not be one hundred per cent sure; Mr Towell might have mentioned a sore head. She could not be sure in relation to that. Ms Docherty had said to Mr Towell that she would try and get hold of Dr Henderson. At that time Mr Towell had sent a text message to Dr Henderson but had not been able to get hold of him. Subsequently, Ms Docherty managed to get hold of Dr Henderson and understood that Mr Towell had done also. Ms Docherty’s recollection was that she spoke to Dr Henderson either on the day of her discussion with Mr Towell or the following day.

[165] Ms Docherty explained to Dr Henderson that she was a bit worried. She told him what Mr Towell had said to her, focussing on the pain in the side that Mr Towell had complained of. Her evidence was that she had told Dr Henderson that Mr Towell had been

sick. Dr Henderson had said to Ms Docherty that Mr Towell may have gallstones or it might have been an issue with Mr Towell's appendix. Dr Henderson said he would see Mr Towell in the gym.

[166] Ms Docherty subsequently received a text message from Mr Towell saying that everything was okay; he had seen Dr Henderson at the gym. Ms Docherty's recollection was that Mr Towell had not said anything that gave her cause for concern. Ms Docherty spoke to Dr Henderson after he had seen Mr Towell. Dr Henderson told her that he had seen Mr Towell at the gym. She thought Dr Henderson was concerned about Mr Towell's neck. She thought Dr Henderson had examined Mr Towell's neck and recalled something being said about Mr Towell going to his own GP to get an ultrasound. Ms Docherty was unable to say when her conversation with Dr Henderson had taken place.

[166] Under cross-examination, Ms Docherty was certain that she had told Dr Henderson that Mr Towell had been sick. She did not accept being mistaken in this regard.

[167] Dr Scott Henderson is a GP with NHS Forth Valley. He became involved in amateur boxing in 2012, subsequently being added to the BBBC's list of doctors in or around September 2015. Dr Henderson estimated that he had carried out in the region of twenty annual medicals for professional boxers. In his experience, professional boxers tended to approach one of the BBBC's registered doctors to carry out their annual medical, rather than their own GP. Dr Henderson also had experience of being one of the doctors present at professional boxing shows. In his evidence, he probably did a show a month over a two year period. Dr Henderson had not done any shows, or any annual medicals, since the end of 2017.

[168] Dr Henderson explained his relationship with the 1314 Boxing Club. He did medicals for the amateur boxers there and supported the club with shows. Ms Docherty was the person at the 1314 Boxing Club who Mr Henderson dealt with.

[169] Dr Henderson was asked if he provided more than medicals at gyms. He explained that he did not work as a private GP, however, he had been asked at a number of gyms to see boxers in relation to what he described as muscular aches and pains. This would usually occur when he was at the gym doing an annual medical. In such circumstances, he would give the boxer appropriate medical advice, whether that was to attend accident and emergency or to see their own GP.

[170] Dr Henderson met Mr Towell through boxing. He recalled first meeting him at a show Mr Towell was fighting at, at which Dr Henderson had done the pre-fight medicals. Dr Henderson had carried out Mr Towell's annual medical in 2016 (see paragraph [115] above). Dr Henderson's recollection was that this medical had been carried out at the 1314 Boxing Club. The answers to the various medical questions in the form were completed by Dr Henderson on the basis of what he was told by Mr Towell. In particular, Mr Towell had said that he had not had any headaches. He had also said that he had not had any investigations since the date of his last medical. Asked what he would have done if Mr Towell had said he had had headaches, Dr Henderson stated that he would document the affirmative response on the form which would then go to the BBBC who, he anticipated, would request further information. That had happened previously in other medicals carried out by Dr Henderson. Dr Henderson explained that his job was to complete the medical and return the form to the BBBC; the decision as to whether they needed more information was one for the BBBC's medical people in Cardiff.

[171] Dr Henderson spoke to an e-mail he had sent to the BBBC on 6 October 2016, after Mr Towell's death. In so far as relevant, the e-mail was in the following terms:

"Around 4-5 weeks ago I was asked to talk to Mike by the team in his gym. They were concerned that he was having bouts of abdominal pain in the upper right quadrant. On talking to Mike I felt this may be in keeping with either Gallstones or Gastritis. I suggested he attend his GP for investigation. At the end of our chat he asked if some discomfort in his neck and the back of his head was related. This was mild and made worse on moving his neck and I felt was in keeping with a muscular injury. I felt the two were not connected but advised sharing this with his GP.

I contacted Mike around a week or so later to check he had been to his GP. He advised he had and (sic) a scan (ultrasound) and blood tests were normal. He said he was feeling good and had no on going symptoms at this time."

[172] Dr Henderson explained in evidence that he had been contacted by Ms Docherty, who had told him that Mr Towell had some pain. Dr Henderson attended the 1314 Boxing Club to see Mr Towell and to give him some advice. His recollection was that this had been in the first week in September 2016, he thought around 6 September 2016. Although not Mr Towell's GP, Dr Henderson regarded himself as having a wider responsibility through his role with the BBBC. He thought he owed a duty of care. He was not comfortable just re-directing Mr Towell without further information. He felt it appropriate to see Mr Towell. It may not have been appropriate for Mr Towell to fight.

[173] Dr Henderson gave an example of being contacted by another boxer who he had examined. That boxer's symptoms were such that Dr Henderson had contacted the BBBC against the boxer's wishes. He explained that the boxer had complained of double vision in the context of boxing. The BBBC decided what level of investigation they required to allow the boxer to continue boxing.

[174] Dr Henderson was asked if this had given rise to any ethical considerations.

Dr Henderson explained that he had had to breach the boxer's confidentiality. The boxer did not want the information released to the BBBC. Dr Henderson felt he had a wider duty of care, comparing the situation to HGV medicals. Dr Henderson's view is that with boxers there is a risk to others. He used Mr Evans as an example.

[175] Dr Henderson recalled seeing Mr Towell at the 1314 Boxing Club on his way home.

Dr Henderson was aware of Mr Towell's upcoming fight with Mr Evans. He saw Mr Towell in the locker room of the gym. No-one else was present. Mr Towell had described to him that a few days previously, whilst exercising, he had suffered some short localised right upper quadrant pain, between his abdomen and chest wall. Mr Towell had described it as like a stitch. He had been training at the time and had to stop. He said that the pain did not radiate; it was just localised. He had not experienced similar pains previously. Mr Towell had been actively training the day Dr Henderson reviewed him and the pain was not radiating then. There were no associated symptoms such as vomiting, diarrhoea, temperature, headache or nausea. Dr Henderson examined Mr Towell. He described the results as "completely normal".

[176] In relation to the abdominal pain, Mr Towell had wanted to know what

Dr Henderson thought. Dr Henderson had suggested that it might be gallstones or potentially gastritis. Dr Henderson's view was that if the symptoms returned they might warrant further investigation. He was not concerned. He described it as an isolated incident which had not recurred. Dr Henderson told Mr Towell that this should be followed up by Mr Towell's GP, who may do further investigations, at his or her discretion.

[177] At the end of the consultation, Mr Towell asked Dr Henderson for advice on another matter. He told Dr Henderson that he had some discomfort in his neck. Dr Henderson examined Mr Towell's neck. Dr Henderson explained that Mr Towell had complained to him of mild bilateral neck pain, which had developed that day. Mr Towell did not have it at rest and he had no restriction of movement. He had not taken any painkillers. Mr Towell had already confirmed to Dr Henderson that he was not having headaches. On examination, Dr Henderson found no numbness, weakness or tingling; and no upper limb neurological features. Dr Henderson had explained his conclusions in relation to this complaint in his e-mail to the BBBC of 6 October 2016 (see paragraph [171] above). Mr Towell had described the level of discomfort as mild. He was taking no painkillers and it was not limiting his activities. Dr Henderson described Mr Towell as very jovial and positive about his upcoming fight with Mr Evans.

[178] Dr Henderson's conclusion was that it appeared to be simple muscular neck pain. He did not believe that it was linked to the abdominal pain, however, he told Mr Towell that he should mention it to his GP. Mr Towell had answered negatively to having headaches. The neck pain was only apparent on movement. Dr Henderson did not consider it possible that Mr Towell had an undiagnosed neurological condition. There was nothing in the history or examination to suggest that. At no time did he suspect a subdural haematoma.

[179] Dr Henderson did not recall seeing Mr Towell again after the consultation in the 1314 Boxing Club on or around 6 September 2016.. At the end of the consultation, Dr Henderson had said to Mr Towell that if there was any recurrence of the symptoms Mr Towell was to phone him, after speaking to his GP. Mr Towell did not phone Dr Henderson.

[180] At the gym, referring to the abdominal pain, and before mentioning the neck pain, Mr Towell had asked Dr Henderson if he was going to contact the BBBC about the abdominal pain. Dr Henderson's view was that as this was a one-off, stitch-like symptom, there was no need to tell the BBBC. To the best of Dr Henderson's recollection, the question of Mr Towell's neck pain was raised after the discussion regarding contacting the BBBC. Dr Henderson had taken contemporaneous notes of his examination of Mr Towell, however, he did not retain these.

[181] In cross-examination, Dr Henderson confirmed that a doctor had to rely on what he or she was told by the boxer both in the course of, and outwith, the BBBC annual medical process.

[182] Leaving to one side the informality which attached to Dr Henderson's consultation with Mr Towell in September 2016, and the lack of any records associated with that consultation, I am satisfied that the action taken by Dr Henderson was entirely appropriate. In the context of this inquiry, the abdominal pain is not of significance. The same may not be said for the neck pain, however, as Mr Towell expressly stated that he had no accompanying headache when he was examined by Dr Henderson, there was no evidence before the inquiry to suggest that the conclusion reached by Dr Henderson was anything other than an appropriate one. It is notable that the position encountered by Dr Henderson was, on any view, less worrisome than that encountered by Dr Elizabeth Skelly and Dr Oswald within the following week.

[183] I am not persuaded there is any force in Dr Wallace's criticism of the examination carried out by Dr Henderson. When the evidence of Dr Henderson is considered, I am

satisfied that the factual basis upon which the criticism was based simply does not exist.

Additionally, that criticism is, I would respectfully suggest, somewhat at odds with

Dr Wallace's view that Dr Oswald was entirely correct to refer Mr Towell to his sporting doctor. Dr Henderson was that doctor and it seemed to me that Dr Wallace accepted that the sporting doctor was best placed to advise the boxer.

[184] It is significant that Dr Henderson advised Mr Towell to see his GP. Unusually, at least in the evidence before this inquiry, it appears that Mr Towell may have taken that advice. Whilst the position regarding the date of Dr Henderson's consultation was not entirely clear, it appears from the evidence that it pre-dated Mr Towell's phone call to the Coldside Medical Practice on 9 September 2016, when he spoke with Dr Joanna Boileau (who did not give evidence to the inquiry). Dr Boileau's note of the conversation is in the following terms:

"Telephone encounter 3 days ago felt pain in R front of abdomen when running (trains as a boxer). Pain eased off once rested. Today same again but more severe and had to stop running. Doesn't feel like a stitch. No nausea, vomiting, diarrhoea, constipation, urinary symptoms, fever. Sounds calm and undistressed on the phone – lots background noise sound like in a busy shopping centre or similar. Imp - ? Muscular Plan (sic) – routine appt booked for Monday. Cut back on exercise until then if required."

I anticipate that "Muscular Plan" was, in fact, intended to read as "muscular pain".

[185] Unfortunately, by the time Mr Towell spoke again with Dr Henderson the following week, he had reverted to type and did not disclose to Dr Henderson what had happened on 11 September 2016. In light of Dr Henderson's evidence, I have little doubt that had Mr Towell made such a disclosure, Dr Henderson would have breached Mr Towell's confidentiality (in the absence of Mr Towell's consent to disclose) and advised the BBBC.

[186] In relation to the requirements of rule 5.7 (see paragraph [60] above), it appears to me that, on any view, that rule was engaged at the time of Mr Towell's consultation with Dr Henderson. Mr Towell was then training for a specific contest (the fight with Mr Evans was then only three weeks away); and the abdominal pain and neck pain are instances of "illness or injury". Mr Towell's brief discussion in relation to disclosure to the BBBC with Dr Henderson is curious. It is the only instance in the evidence before the inquiry in which Mr Towell was a party to a discussion about disclosure to the BBBC. From Dr Henderson's evidence, Mr Towell was clearly anxious that the BBBC were not told of his abdominal pain. One can only conclude that that was because of his wish to fight Mr Evans.

[187] In the context of rule 5.7 it is, perhaps, appropriate to add that whilst it would not be for Dr Henderson to decide whether or not to inform the promoter, standing the terms of Dr Henderson's own examination and conclusion, it is most unlikely that any examination by a doctor appointed by the BBBC would have resulted in Mr Towell being prevented from fighting Mr Evans. That is particularly so if one considers that Mr Towell insisted that all his symptoms had disappeared by the time of his phone call with Dr Henderson the following week (see paragraph [323] below). There is, however, the possibility that the events of 11 September 2016 may have come to the BBBC's attention if they had been informed of the abdominal pain and had made investigations. It must, however, be recognised that the evidence before the inquiry strongly suggests that Mr Towell would have been neither candid nor co-operative in such an investigation.

18. 11 September 2016

The Sparring Session

[188] By 11 September 2016, Mr Towell was in the third and final stage (see paragraph [148] above) of his preparations for the fight with Mr Evans. On that date, he participated in a sparring session at the 1314 Boxing Club. The inquiry heard evidence from James Wilson; Stewart Burt; and Mr Coyle in relation to this particular sparring session. The events of 11 September 2016 are significant in relation to Mr Towell's death and the issues explored in the inquiry. For that reason, I consider the evidence relative to this day in some detail.

[189] In 2016, James Wilson was a professional boxer, who was also managed by Mr Gilmour and trained by Mr Graham and Mr Coyle. Mr Wilson explained in evidence that he and Mr Towell had started at the same boxing club in Dundee and then gone their separate ways with different trainers. That changed at the start of 2016, when Mr Wilson started to be trained by Mr Graham and Mr Coyle, who also trained Mr Towell at that time. Mr Wilson also lived in Dundee. He and Mr Towell would travel from Dundee to Stirling two or three times a week to train, taking turns driving.

[190] Mr Wilson and Mr Towell travelled together to the 1314 Boxing Club on 11 September 2016, Mr Wilson's father driving them from Dundee to Stirling. In Mr Wilson's evidence, Mr Towell was his normal self on the way through to Stirling, however, he had become unwell in the course of sparring, developing a headache and being in pain. Mr Wilson could not recall who Mr Towell had sparred with that day. He described Mr Towell as a "come forward fighter", however, Mr Towell did not last long sparring that day. He was in too much pain to continue. He described Mr Towell as not the type to pull

out. His recollection was that Mr Towell had sparred for two three-minute rounds, at which stage he had had enough. Mr Wilson was not close enough to Mr Towell to hear whether it was Mr Towell or his coach who had made the decision to stop the sparring.

[191] Mr Wilson explained that he and his father had taken Mr Towell to the accident and emergency department at Ninewells. Initially, they had proposed going to the accident and emergency department in Stirling, however, Mr Towell wished to go home. Mr Wilson described Mr Towell as being in a fair bit of discomfort on the journey back to Dundee. He said that Mr Towell was lying in the back of the car with his head in his hands. Mr Towell had told him that he had a sore head but did not know what was going on with it.

Mr Towell met his mother at Ninewells. Asked why Mr Towell wished to go to hospital, Mr Wilson said it was because of the “sheer pain” Mr Towell was then in. Mr Wilson confirmed that prior to 11 September 2016, he had no recollection of Mr Towell ever mentioning having headaches.

[192] Mr Wilson’s evidence was that he spoke to Mr Towell either that evening or the following day at which time Mr Towell told him that he had been prescribed painkillers and was to go and see his GP. It was not disputed that Mr Towell was prescribed co-codamol by Dr Skelly (see paragraphs [227] and [238] below) and that Mr Towell had an appointment with his GP, Dr Oswald, the following day. Taken together, these facts suggest that this particular conversation between Mr Wilson and Mr Towell took place on the evening of 11 September 2016.

[193] Stewart Burt, a professional boxer who trained in Glasgow, spoke of regularly travelling to other gyms to spar with other boxers. He would spar with opponents who fought at his weight category, namely, welterweight. Mr Burt knew Mr Towell.

[194] Prior to 11 September 2016, Mr Burt had sparred with Mr Towell on a number of occasions, either in Stirling or in Glasgow. In the four week period prior to 11 September 2016, Mr Burt's recollection was that he had sparred with Mr Towell, between Stirling one week and Glasgow the next. They sparred on a weekly basis, probably once a week.

[195] Mr Burt was the boxer who sparred with Mr Towell on 11 September 2016. In relation to that sparring match, Mr Burt described it as being nothing out of the ordinary. It was a regular spar. Whilst not certain, Mr Burt's recollection was that the sparring session had ended early. Mr Towell had gone to his corner whereupon Mr Towell's coach shouted over to Mr Burt that the session was over. There was mention of an injury of some sort. Mr Burt recalled there being some mention of a headache. Mr Burt thought that it was probably Mr Towell's coach who first mentioned Mr Towell having a headache. Mr Burt did not question Mr Towell on this. He described headaches as being common in boxers. He explained that at this stage of training, close to the fight and ensuring you make the weight, whilst a sore head was not routine, it was quite common.

[196] Mr Burt confirmed that Mr Towell had been hit on the head "multiple times" during the sparring session. He confirmed that he and Mr Towell were both wearing head guards whilst sparring. Asked if he recalled seeing Mr Towell in pain, Mr Burt replied that he saw nothing out of the ordinary. A headache was mentioned in passing and Mr Burt recalled asking how Mr Towell's preparations for the fight with Mr Evans were going. Stopping

sparring in such circumstances only tended to happen if someone could not continue.

Mr Burt described those circumstances as “not uncommon”. Mr Towell had not complained of headaches to Mr Burt before the sparring session.

[197] Mr Burt’s evidence was that he had last sparred with Mr Towell around a couple of weeks before the fight with Mr Evans. It appears likely that the final session was, in fact, the one on 11 September 2016. His recollection was that the most rounds they had ever sparred in a session in this period was six; none of the previous sessions were stopped early; and that the first mention of a headache was on the occasion of the last sparring session.

[198] Mr Coyle’s recollection of 11 September 2016 was that it was a Sunday morning training session at which Mr Towell had taken a “bad sore head”. Mr Coyle was unaware of any health issues that Mr Towell may have had prior to that date. He explained that Mr Towell had come to his house that morning and they had left from there together to go to the gym. Mr Towell was his usual self.

[199] Mr Coyle recalled Mr Towell sparring with Mr Burt. He described Mr Towell as being slow and lethargic in the first round. Mr Coyle had asked Mr Towell what was wrong. Mr Towell replied that he would be alright. The second round was as bad. Whilst Mr Towell was not taking any punishment from Mr Burt, he was slow and flat. Mr Coyle again asked Mr Towell what was wrong. Mr Towell replied that his head was “banging”. Mr Coyle told Mr Towell to get out of the ring and gave him some water. Mr Towell sat with a towel over his head.

[200] Other boxers were sparring in the 1314 Boxing Club that day. Mr Coyle spoke with Mr Towell between rounds and asked him how he was. Once Mr Coyle was finished with

the other boxers, he again asked Mr Towell how he was. Mr Towell again said that his head was “banging”. Mr Coyle offered to return to Dundee with Mr Towell, who replied, “It’s not that sore”. Mr Coyle’s recollection was that there was a period of around 40 minutes between Mr Towell stopping sparring and leaving the gym. Mr Coyle told Mr Towell to have his head looked at by a doctor. Mr Towell assured him he would do so. Mr Coyle thought that Mr Towell planned on seeing his GP. Mr Coyle told Mr Towell to phone him and that if the headaches continued he should see his doctor as soon as he could. Mr Coyle did not speak again to Mr Towell on 11 September 2016.

[201] Mr Coyle spoke of Mr Towell taking a break of approximately ten days from sparring. It was Mr Towell’s decision to do this. Mr Coyle’s evidence in this regard was somewhat confused. Initially he thought that Mr Towell did not spar for around ten days after 11 September 2016; thereafter he was unsure when the break was; and finally he thought the period may have been prior to the sparring on 11 September 2016 (i.e. the sparring session on 11 September 2016 was the first one to take place after the break). On one occasion, Mr Towell had sent a text message to Mr Graham saying that someone was coming to see his car and putting off sparring that day; on another occasion Mr Towell sent a text message to Mr Graham saying that he did not have any petrol money.

[202] While the position is not free from doubt, the evidence of Ms Docherty and Dr Henderson (set out in Part 17 above), coupled with the documented phone call to Dr Boileau on 9 September 2016 and the evidence that Mr Towell returned to training on 13 September 2016 causes me to conclude that Mr Towell’s break from sparring pre-dated the sparring session on 11 September 2016.

[203] Ms Ross' recollection (based on what she had been told at the time by Mr Towell) was that he only managed to spar for three rounds on 11 September 2016. He was then driven back to Dundee by Mr Wilson's father and met Mrs Towell at Ninewells. Ms Ross did not attend Ninewells with Mr Towell on 11 September 2016.

[204] Ms Ross spoke to speaking with Mr Towell by phone on 11 September 2016 at which time he either said to her that he was going to accident and emergency at Ninewells or that he was there when he phoned. He told Ms Ross that he had been hit on the head and been pulled out from sparring.

[205] Ms Ross spoke to receiving text messages from Mr Towell to the effect that he was waiting to be seen by the senior doctor; she spoke also to text messages Mr Towell had exchanged with a friend the following morning, prior to his consultation with Dr Oswald.

The Hospital Visit

[206] The events at Ninewells on 11 September 2016 are also significant in relation to Mr Towell's death and the issues explored in the inquiry. For that reason, I consider the evidence relative to Mr Towell's hospital visit that day in some detail. The inquiry heard evidence from Mrs Towell; Louise Whyte; Dr Elizabeth Skelly; and Dr Ron Cook in this regard.

[207] Mrs Towell met Mr Towell at Ninewells. The accident and emergency department documentation records Mr Towell's arrival there at 15:04. Mrs Towell's evidence was that Mr Towell had been feeling fine that morning, however, he had only been able to spar for three rounds. When she met him, he was in absolute agony, "in bits". Mrs Towell's

evidence was that the pain was so bad Mr Towell had tears in his eyes. She stated that he was sitting on the ground with a jumper wrapped around his head, in agony. At this time, Mrs Towell's evidence was that they were sitting in the waiting area close to the triage room. Her evidence was that a nurse had taken Mr Towell in to be triaged out of order due to his condition.

[208] Mrs Towell's evidence was that she was present during triage. She stated that Mr Towell had said to the triage nurse that "something really bad" was going on and that she needed to help him. He said he had really bad headaches. The nurse said that Mr Towell's own doctor should refer him for a scan. In response Mrs Towell's evidence was that Mr Towell said something "really, really, wrong" was going on in his head. He had described it as a "whooshing".

[209] Mrs Towell explained that they had then waited to see what she described as a "senior doctor". Mrs Towell's evidence was that Mr Towell's condition had not changed at this time. She said he was "in agony".

[210] Mrs Towell stated that upon seeing the doctor (Dr Skelly) Mr Towell had asked the doctor to scan him. The doctor had refused. She thought that Mr Towell was under a lot of pressure with the fight coming up. She put his headaches down to stress and gave him painkillers. Mrs Towell's evidence was that Mr Towell was "in agony". She stated that Mr Towell had told Dr Skelly that there was something "really, really wrong" with him.

[211] Mrs Towell's evidence was that Mr Towell explained to Dr Skelly that he had been sparring, but had to stop after three rounds. He thought his head was going to explode.

Mrs Towell confirmed that the history noted by Dr Skelly (see paragraph [231] below) was an accurate reflection of what Mr Towell had told Dr Skelly.

[212] Mrs Towell explained that Dr Skelly had switched the lights out in the consulting room and had looked in Mr Towell's eyes. Asked if Mr Towell had said that he had had a headache for one and a half weeks, Mrs Towell could not recall him saying that (albeit that is within the history that Mrs Towell had previously agreed was accurate). Mrs Towell's evidence was that Dr Skelly said that the headache had been caused by the pressure of the upcoming fight and that Mr Towell had "a really bad migraine". No further checks were carried out and Mr Towell was not scanned on 11 September 2016. Mr Towell had asked for a scan. Dr Skelly said it was a really bad migraine and prescribed him co-codamol.

[213] Asked by the court why there was no mention within Dr Skelly's handwritten notes of either migraines or the upcoming fight, Mrs Towell insisted that Dr Skelly had made mention of both of those things in the course of the consultation.

[214] In the course of the consultation on 11 September 2016, Dr Skelly was told that Mr Towell had an appointment with his GP the following day. Mrs Towell's evidence was that she thought she had made that appointment for Mr Towell. The terms of the GP notes were then put to Mrs Towell. The entry of 9 September 2016 is set out in full at paragraph [184] above. The terms of the GP notes having been put to Mrs Towell, she accepted that it appeared that it was Mr Towell who had contacted the GP in relation to abdominal pain, not her. This is another example of Mrs Towell saying something in evidence that was contradicted by contemporaneous documentation.

[215] The terms of the hospital records were then put to Mrs Towell. Dr Skelly had noted that Mr Towell, "Has GP appt tomorrow for headache." In light of this entry, Mrs Towell was asked what had been discussed with Dr Skelly regarding the GP appointment the following day. Mrs Towell thought that it was for Mr Towell's head, although conceded that it may have been to see the GP about his running and the stitch he had suffered from. Mrs Towell did not recall Dr Skelly giving Mr Towell any advice regarding the GP appointment, notwithstanding the fact that the hospital notes record, "GP tomorrow as planned."

[216] The hospital notes also record the giving of "HI advice". "HI" is a reference to "head injury". Asked if Mr Towell had been given advice in relation to head injuries, Mrs Towell chose not to answer the question and responded that he was not given a leaflet and that he was sick during the night. The court asked Mrs Towell if Mr Towell had been given verbal advice in relation to head injury. Mrs Towell could not recall that.

[217] Mrs Towell's stated that Mr Towell was not happy that Dr Skelly had refused to scan him. Her evidence was that Mr Towell had said that this was not right and that Dr Skelly had to help him. Mrs Towell's evidence was that Mr Towell left the hospital and went to her house, rather than his own, to sleep. Mr Towell got up at around 9 pm and went back to his own house. Mrs Towell's evidence as to Mr Towell's condition at that time was contradictory. At first she said he was "much the same", however, she then said that Mr Towell had told her that the pain was not so severe, it having eased off after he had taken the painkillers prescribed by Dr Skelly.

[218] Louise Whyte is currently a charge nurse within the accident and emergency department at Ninewells. In September 2016 she was a staff nurse working there. She had worked in the accident and emergency department at Ninewells for 18 years at the time of giving evidence. Ms Whyte was working in triage on the afternoon of 11 September 2016. She described it as an extremely busy afternoon. People were sitting on chairs, on the floor and on the steps leading up to the fire exit. The waiting room was full.

[219] Ms Whyte spoke to the terms of the accident and emergency department receiving sheet. The initial information on the receiving sheet had been completed by one of the accident and emergency receptionists, Mary Reid (who did not give evidence to the inquiry). The sections of the receiving sheet entitled "Triage Interventions" and "Nursing Assessment" were completed by Ms Whyte. The "Triage Interventions" section was in the following terms:

"3 day guideline / primary care problem explained and given laminated explanation, Advice – verbal."

The "Nursing Assessment" section was in the following terms:

"Senior review, pain to head for 3 wks, was boxing today has become worse."

Ms Whyte explained that the Triage Category (the number "5") had been entered by her.

Mr Towell had been assessed within Triage Category 5, which Ms Whyte explained was the least serious category.

[220] Ms Whyte saw Mr Towell in the triage room which was situated at the front of the department next to the waiting room. The purpose of triage was to ensure that patients were directed to the correct area for treatment. If a patient was placed in the waiting room, they were triaged in time order (i.e. on the basis of their time of arrival within the

department). Ms Whyte had not been aware of Mr Towell prior to meeting with him. She did not take him out of order. Her recollection was that Mr Towell was sitting on the steps at the side of the triage room when she went out to get him. She did not notice anyone with Mr Towell, however, she was not paying attention for that. She did not recall Mrs Towell being present during triage although conceded that she may have been and Ms Whyte had forgotten.

[221] Ms Whyte's evidence was that Mr Towell had told her that he had been sparring, he had had headaches for a number of weeks and they were slightly worse that day. Ms Whyte had a conversation with Mr Towell in relation to NHS Tayside's re-direction policy. She advised Mr Towell that because his presenting complaint was more than three days old, a senior member of staff would review him and advise on the best treatment. In practice, either a consultant or a registrar would see Mr Towell and decide if he was to be seen in the department or should attend his GP. Ms Whyte explained that a leaflet was available in relation to the re-direction policy. She offers that leaflet to all patients who may fall within the terms of the policy, however, some of them do not take a copy. In her assessment, Mr Towell fell within the terms of the policy. The terms of the "Triage Interventions" section, "given laminated explanation, Advice - verbal" told Ms Whyte that Mr Towell had not taken a copy of the leaflet. In relation to the "Nursing Assessment", Ms Whyte was certain that Mr Towell had said he was sparring. She could not say why she put "boxing" in the "Nursing Assessment".

[222] Asked how Mr Towell had presented, Ms Whyte explained that Mr Towell had come in; had explained what had been happening; he was not crying; and did not come across as overly anxious. He was not in tears in the triage room. He did not have clothing wrapped

around his head when he was triaged. Ms Whyte had no recollection of a scan being discussed. Mr Towell was with Ms Whyte for no longer than five minutes; Ms Whyte could not say exactly how long the triage had lasted. At the end of the triage, Mr Towell went back to the waiting room.

[223] Under cross-examination, Ms Whyte explained the circumstances in which patients would be seen “out of order”. She gave examples, such as a patient who was bleeding heavily or one who was patently unwell and in distress. She indicated that the public were very aware of what was going on in the accident and emergency department waiting room. They would come into the triage room and tell the triage nurse if someone was particularly unwell.

[224] Mr Towell had not come to Ms Whyte’s attention prior to her calling him into the triage room. Ms Whyte explained that the waiting area in the accident and emergency department was not particularly large. The nature of her role required her to go out and call people in. If Mr Towell had been in distress in the waiting room, Ms Whyte was confident she would have seen that and dealt with it appropriately. Mr Towell did not appear distressed to Ms Whyte, who explained that she had had a very quick, normal conversation with him. Mr Towell was not unhappy with what Ms Whyte said to him. Ms Whyte described him as “animated”. He was neither slurring his words nor gripping his head. Ms Whyte did not discuss Mr Towell’s case with Dr Skelly. If she had had concerns she would have spoken to Dr Skelly or Dr Cook, the other consultant on duty at the time.

[225] Ms Whyte explained that if a patient had said they were in extreme pain she would have recorded that. Mr Towell did not say to her that he was in extreme pain. He did not

appear to be from her perspective. If Mr Towell obviously had been, or had said that he was, in extreme pain, he would have been triaged differently. Ms Whyte had worked with Dr Skelly for a number of years. She expected that the notes Dr Skelly had taken on 11 September 2016 would be carefully recorded. She agreed with a suggestion that Dr Skelly was meticulous.

[226] Dr Elizabeth Skelly qualified as a doctor in 2000; she has worked in the accident and emergency department at Ninewells since 2007, becoming a consultant there in 2011.

Dr Skelly was one of three consultants on duty on 11 September 2016. The three consultants worked overlapping shifts. Dr Skelly was scheduled to work from 8 am until 8 pm; Dr Ron Cook from 8 am to 4 pm; and Dr Shobhan Thakore, from 2 pm until 9 pm.

[227] Dr Skelly saw Mr Towell in the late afternoon of 11 September 2016. Before seeing him she would have seen the accident and emergency department receiving sheet completed by the receptionist and Ms Whyte. She had not been aware of Mr Towell's presence in the accident and emergency department before she consulted with him.

Dr Skelly's recollection, from a consideration of the once only prescription form (which noted a time given of 16:50) and her own contemporaneous notes (made at 17:20), was that she probably saw Mr Towell for the first time shortly before the prescription of co-codamol at 16:50 and, in total, had consulted with Mr Towell for around 35 minutes.

[228] Dr Skelly first saw Mr Towell as he had been deemed suitable at triage for the NHS Tayside re-direction policy, because he had stated that he had been suffering from headaches for a period of three weeks. Dr Skelly did not have the opportunity to review any of Mr Towell's past medical history. She would not normally do so before seeing a patient

in the accident and emergency department. She takes patients at face value; she would not wish to see someone with a preconceived idea as to what may be wrong with them.

[229] Dr Skelly first spoke to Mr Towell in the triage room of the accident and emergency department. Mrs Towell was present at the time. Dr Skelly's evidence was that Mr Towell had walked in from the waiting room. She had explained to him that she had been asked to see him in relation to the re-direction policy. Dr Skelly's recollection was that she thought she had first apologised to Mr Towell for his wait. Mr Towell told Dr Skelly that he was a boxer. He asked her for a CT scan. From Dr Skelly's perspective, there was nothing noteworthy in his demeanour. She described him as looking "very well".

[230] Dr Skelly then discussed re-direction with Mr Towell. She explained that this had been highlighted as a possibility in his case as he had had headaches for three weeks. Mr Towell's response to this was to tell Dr Skelly that he had not had headaches for three weeks. He stated to her that he had only had a headache for one and a half weeks. He stated that he had been sparring that day and thought his headache had become worse.

[231] Dr Skelly spoke to the notes she had made of her consultation with Mr Towell. She explained that these had been made from her discussions with him in the triage room and her further discussions in the eye room when she examined him there. Dr Skelly noted that Mr Towell's presenting complaint was one of a headache. He had had a headache for one and a half weeks. He had had no headache that morning. He had gone boxing that day, he was a professional boxer. He was hit on the head and was now complaining of a left sided headache. There was no loss of consciousness or vomiting. There was no visual disturbance

or confusion. There was no relevant family history. He took no regular medication. He took regular paracetamol.

[232] In relation to the duration of Mr Towell's headaches, Dr Skelly was asked if she had raised with Mr Towell the inconsistency between what he had said to the triage nurse (three weeks) and what he had said to Dr Skelly (one and a half weeks). Dr Skelly did not recall raising this. She stated it was not uncommon for patients to say one thing at triage and another when they spoke with a doctor.

[233] Dr Skelly initially did not realise that Mr Towell had been hit on the head. Mrs Towell had explained what sparring involved. Dr Skelly's recollection was that she was told that Mr Towell had been hit to both sides of the head, but had not been knocked to the ground or knocked out. Mr Towell had described a left sided headache, but not in any detail: asked where his head was sore, he had rubbed the left-hand side. On hearing that Mr Towell had not had a headache that morning, Dr Skelly decided that Mr Towell was not suitable for the re-direction policy. There was the potential for a head injury and Dr Skelly's view was that Mr Towell warranted a full history and examination. The possibility of injury (from having been struck to the head) was the determinative factor in Dr Skelly deciding that Mr Towell was not suitable for the re-direction policy.

[234] Dr Skelly took Mr Towell to the eye room at the other end of the accident and emergency department, it being the only room that was free at that time. Mrs Towell accompanied them. Dr Skelly took a full history from Mr Towell. Mr Towell told her that he was normally well. Dr Skelly asked him in relation to past problems. He told her that he had none. This was, of course, untrue. Mr Towell told Dr Skelly that he was not on any

medication. They discussed boxing. Mr Towell told Dr Skelly about what she described in evidence as a “grumbly pain in (his) tummy”, which he had spoken to his “boxing doctor” about. Dr Skelly asked Mr Towell why he had not spoken to his boxing doctor about his headaches. Mr Towell replied that he had not thought to do that.

[235] Dr Skelly proceeded to carry out a full neurological examination of Mr Towell. On examination, Dr Skelly noted Mr Towell as looking well. He was alert and his Glasgow Coma Scale (hereinafter referred to as “GCS”) score was 15 out of 15. His pupils were equal and reactive to light and accommodation. Dr Skelly explained that this was ascertained by shining a light into the pupil of each eye. The pupil should dilate. When the light is removed, the eye constricts. Dr Skelly noted that Mr Towell was orientated in relation to time, place and person. His cranial nerves were intact. Dr Skelly explained that these nerves govern facial expression and eye movement. There were no battle signs – that is bruising behind the ear. There was no blood behind the ear or in the ear canal. Mr Towell’s fundi were normal. Dr Skelly checked Mr Towell’s tone, power, reflex, sensation and co-ordination. All were normal. On the basis of her clinical examination, Dr Skelly had no concerns about Mr Towell.

[236] At the end of the consultation, the issue of a CT scan was raised again. Dr Skelly discussed imaging and guidelines with Mr Towell. Dr Skelly’s assessment was that there were no criteria present which would justify an emergency CT scan at that time. She reached that conclusion on the basis of the findings of her examination; the NICE and SIGN Guidance (considered below at paragraphs [258] to [262]) and her clinical experience. Dr Skelly took into account the fact that Mr Towell had been sparring that day. Her examination findings were normal; there was no mechanism of injury; and Mr Towell

looked well. Dr Skelly concluded that Mr Towell did not meet the criteria for an emergency CT scan.

[237] Dr Skelly was asked if she considered if it was part of her function to consider Mr Towell's fitness to box. Dr Skelly explained that she had discussed that matter with Mr Towell who said he would speak to his sporting doctor about that (the terms "sporting doctor" and "boxing doctor" were used synonymously in the evidence before the inquiry). The name of the sporting doctor was not mentioned by Mr Towell when talking to Dr Skelly. Dr Skelly had never previously contacted a sporting doctor. Dr Skelly did not know who the regulatory body for boxing in the UK was. Asked if any ethical issue would have arisen if she had known who the sporting doctor and regulatory body were, Dr Skelly explained that she put her trust in Mr Towell to contact his sporting doctor. For her to have done so (without his consent) would have been a breach of the duty of confidentiality.

[238] Dr Skelly prescribed co-codamol to Mr Towell. She offered him that as Mr Towell told her that paracetamol did not work for him. Dr Skelly recalled discussing with Mr Towell whether he could take codeine. As far as Dr Skelly was aware Mr Towell then contacted someone by phone (she could not say if it was by way of a phone call or text message) whilst she went to get a box of co-codamol. When Dr Skelly returned, Mr Towell told her that he could take co-codamol.

[239] Mr Towell told Dr Skelly that he had an appointment to see his GP the following morning (i.e. 12 September 2016). That did not influence Dr Skelly's approach, however, she was reassured that Mr Towell had what she described as "safety netting" in place. Dr Skelly

would not have done anything differently if Mr Towell had not had a GP appointment arranged for the following day.

[240] Dr Skelly discharged Mr Towell with verbal and written head injury advice. She could not recall precisely what she had said to Mr Towell, however, her normal practice in such cases is to tell the patient to rest, to take regular analgesia, to return to hospital if they vomited; and to go home with someone. If they become confused they are to phone back. Dr Skelly's recollection was that the head injury leaflet said something very similar. Dr Skelly was absolutely certain that she had given head injury advice to Mr Towell. Her contemporaneous note of the consultation records the giving of "HI (i.e. head injury) advice". I am satisfied from Dr Skelly's evidence and her contemporaneous notes that she gave Mr Towell head injury advice.

[241] Dr Skelly wrote to Dr Bullions the following day. Dr Skelly's letter noted the following:

"bump to head boxing. clinically well, no features of significant headache. concern regarding chronic headaches. given co-codamol. has appt to see own GP tomorrow – advised to keep this appointment."

Dr Skelly was not entirely sure why she had used the word "bump". It was perhaps the mechanism she had then felt best described Mr Towell's injury.

[242] Under cross-examination, it was put to Dr Skelly that Mr Towell had said to her that he knew about headaches and the one he had that day was different. Dr Skelly had no recollection of this. It was put to Dr Skelly that Mr Towell was keen for a scan to take place. Dr Skelly's impression was that Mr Towell had spoken to someone at his gym who had recommended a scan. Dr Skelly explained that once she had had a discussion with, and

explained her findings to, Mr Towell he understood her reasoning for not requesting a scan. She did not recall Mr Towell using the term “banging” to describe his headache. Dr Skelly fairly accepted that initially she did not know what sparring was, however, that had been explained to her by Mr Towell and his mother.

[243] It was suggested to Dr Skelly that she could have admitted Mr Towell for observation. Dr Skelly explained that at the time she saw Mr Towell it was a number of hours after the sparring session and he was clinically well. She would not have considered admitting him for observation.

[244] In cross-examination by her own solicitor, Dr Skelly was asked further questions in relation to her examination of Mr Towell. To look for battle signs, she had pulled forward both Mr Towell’s ears. In relation to tone, she had checked grip strength, having Mr Towell push and pull. She also checked that Mr Towell could feel her touch him. In terms of co-ordination, she had asked Mr Towell to touch his nose, to touch her finger and to do heel and toe walking. Dr Skelly had no concerns in relation to the checks she performed. She could see no rashes and no meningism, explaining that with raised cranial pressure you would see this. If she had had any concern that Mr Towell had sustained a serious head injury she would have noted that. If she had been told of a major impact to Mr Towell’s head when sparring she would have written that down. She wrote down neither. She was clear that she gave head injury advice to Mr Towell.

[245] Dr Skelly’s evidence was that Mr Towell had told her that he had been in contact with his sporting doctor prior to seeing her. Dr Skelly reiterated that she was quite surprised that Mr Towell had not mentioned headaches to his sporting doctor. She had told

Mr Towell that the sporting doctor would be best placed to advise him on this. Mr Towell assured Dr Skelly that he would speak to his sporting doctor.

[246] Asked about the extent of her interactions with Mrs Towell, Dr Skelly stated that Mrs Towell was concerned and asked a lot of questions about migraines. Dr Skelly said that she did not think that Mr Towell had a migraine and had discussed how they usually presented. Mrs Towell also asked about stress headaches. Dr Skelly told her that she did not think that Mr Towell had a stress headache. She had a discussion with Mr Towell and Mrs Towell about types of headaches and told them that Mr Towell's GP would be best placed to follow up on this.

[247] Dr Ron Cook is a consultant emergency physician based at Ninewells. He was also on duty in the accident and emergency department on 11 September 2016 (see paragraph [226] above). Whilst he was scheduled to finish at 4 pm, Dr Cook's recollection was that he left after 6 pm that day.

[248] Dr Cook described the set-up of the accident and emergency department in September 2016. He recalled that the afternoon of 11 September 2016 was very busy with a lot of minor injuries and, he believed, a lot of patients on trolleys. The waiting room was busy. Dr Cook's recollection is that people were probably standing; it is not a particularly large room. It can be cramped at times. He recalled nothing out of the ordinary happening in the waiting room. He was in and out of it repeatedly all afternoon. His recollection was that he saw somewhere between 30 and 50 patients on that particular day.

[249] Dr Cook did not recall seeing anyone in the waiting room in obvious pain that day. When working in the minor injuries stream (as Dr Cook and Dr Skelly were on that day),

Dr Cook's evidence was that you would tend to notice someone in obvious pain. He added that the assessment nurses were also very good at picking up such things. If he had noticed something of that nature he would have acted upon it. Asked if he thought he would have noticed someone on the floor with clothing around their head, Dr Cook believed he would. He described that as being quite obvious and something which would create a reaction amongst staff and other patients. Other patients would draw attention to such circumstances. Dr Cook did not recall discussing Mr Towell with Dr Skelly.

[250] Under cross-examination, Dr Cook accepted that if someone was sitting quietly with clothing around their head it is not something you would necessarily notice, if they were doing nothing else to draw attention. He described a close relationship with the assessment nurses, stating that it was not uncommon for someone to be on the floor in pain. That would trigger a response in what he described as a "pretty obvious situation".

[251] Dr Cook was the clinical lead in accident and emergency at Ninewells in 2016. He described NHS Tayside re-direction policy. The policy attempts to identify people who would be better served by seeking advice or care elsewhere. This would be explained by the triage nurse and, thereafter, a senior doctor would talk to the patient and determine whether they would be better seen in the accident and emergency department or elsewhere.

[252] Asked under cross-examination if, in the case of a patient not treated in the emergency department, who may have some kind of neurological issue, would they be referred directly to neurology or returned to their GP for referral, Dr Cook explained that, in such circumstances, it would be for the GP to refer, to ensure continuity of care. In his evidence, if a referral is not urgent, it is much better informed by the relationship that a GP

will have with their patient. The GP may have been in this situation before with the patient, or may be able to guide the referral far better than the emergency physician could.

[253] Dr Cook was asked about the management in the accident and emergency department of patients who presented with a headache, outwith injury or trauma. He was asked what considerations would arise. In response, Dr Cook referred to what he described as red flags, such as very sudden onset, distress caused by the severity of the headache; associated vomiting; or associated neurological signs found on examination. These factors were the crux of whether the headache required treatment in the accident and emergency department. A neurological examination was vital in cases of this type. Dr Cook explained that headaches were related to the neurological system. The doctor would examine and test the patient's eyes, check their response to light, test the nerves that supply facial muscles, swallow reflex, general reflexes, vital signs and observations. If that examination was performed and no abnormal signs were found that would be reassuring.

[254] Asked about the circumstances in which a patient presented and were, in turn, referred for a CT scan, Dr Cook explained that he would look for direct damage to the brain or pressure on the brain. The appropriateness of a CT scan would be predominantly a decision for a senior doctor, following the SIGN or NICE Guidance (considered below at paragraphs [258] to [262]).

[255] Dr Cook confirmed that, in 2016, if a CT scan had been required out of hours or at the weekend that could be arranged. Ninewells has two CT scanners, one of which operates out of hours and at weekends. If a scan was required, the doctor would call the radiologist and arrange for the scan to be carried out.

[256] Dr Cook had reviewed the notes and other material available in relation to Mr Towell's case. He had spoken to Dr Skelly. She had undertaken a re-direction assessment and thereafter a full clinical examination. Dr Cook described this as well documented. From the notes and assessment he regarded Dr Skelly's decision as quite appropriate. Asked how he might have managed Mr Towell, he would not have reached a different conclusion to that reached by Dr Skelly.

[257] Ms Ross told the inquiry that after Mr Towell had been discharged from Ninewells, he had gone to his mother's house. Ms Ross had told him he would be best to stay there as he would be able to sleep better; their son being only two years of age at the time. Mr Towell came home at around 10 pm. He told Ms Ross that he felt better and went to bed.

SIGN and NICE Guidelines

[258] Dr Skelly's decision not to request a CT scan of Mr Towell was informed by the SIGN and NICE guidelines. In addition to the evidence of Dr Cook and Dr Skelly, the inquiry heard from two further witnesses (Dr Martin McKechnie and Mr Rudy Crawford) who gave opinion evidence in relation to the treatment Mr Towell received in the accident and emergency department at Ninewells on 11 September 2016. In evidence, all four witnesses spoke to the SIGN and NICE guidelines. Before turning to the evidence of those witnesses, it is helpful to consider the terms of the SIGN and NICE guidelines, as they stood on 11 September 2016.

[259] SIGN is an abbreviation of Scottish Intercollegiate Guidelines Network, which is part of NHS Quality Improvement Scotland. Their guideline number 110, entitled "*Early*

management of patients with a head injury” was published in May 2009. The relevant section of the SIGN guideline (paragraph 5.1.1) is in the following terms:

“Immediate CT scanning should be done in an adult patient who has any of the following features:

- eye opening only to pain or not conversing (*GCS 12/15 or less*)
- confusion or drowsiness (*GCS 13/15 or 14/15*) followed by failure to improve within at most one hour of clinical observation or within two hours of injury (*whether or not intoxication from drugs or alcohol is a possible contributory factor*)
- base of skull or depressed skull fracture and/or suspected penetrating injuries
- a deteriorating level of consciousness or new focal neurological signs
- full consciousness (*GCS 15/15*) with no fracture but other features, e.g.
 - severe and persistent headache
 - two distinct episodes of vomiting
- a history of coagulopathy (*e.g. warfarin use*) and loss of consciousness, amnesia or any neurological feature

CT scanning should be performed within eight hours in an adult patient who is otherwise well but has any of the following features:

- age >65 (*with loss of consciousness or amnesia*)
- clinical evidence of a skull fracture (*e.g. boggy scalp haematoma*) but no clinical features indicative of an immediate CT scan
- any seizure activity
- significant retrograde amnesia (*>30 minutes*)
- dangerous mechanism of injury (*pedestrian struck by motor vehicle, occupant ejected from motor vehicle, significant fall from height*) or significant assault (*e.g. blunt trauma with a weapon*)”

[260] NICE is an abbreviation of National Institute for Health and Care Excellence, a non-departmental public body established by the Health and Social Care Act 2012. As health is a devolved matter, strictly speaking, NICE guidance only applies in England, however, it was clear from each of the witnesses who spoke to this guidance in evidence that it is given great respect in Scotland.

[261] NICE clinical guideline number 176, entitled “*Head injury: assessment and early management*” was first published in January 2014. The relevant sections of the NICE guideline (paragraphs 1.4.7 and 1.4.8) are in the following terms:

“Criteria for performing a CT head scan

Adults

1.4.7 For adults who have sustained a head injury and have any of the following risk factors, perform a CT head scan within 1 hour of the risk factor being identified:

- GCS less than 13 on initial assessment in the emergency department.
- GCS less than 15 at 2 hours after the injury on assessment in the emergency department.
- Suspected open or depressed skull fracture.
- Any sign of basal skull fracture (haemotympanum, 'panda' eyes, cerebrospinal fluid leakage from the ear or nose, Battle's sign).
- Post-traumatic seizure.
- Focal neurological deficit.
- More than 1 episode of vomiting.

....

1.4.8 For adults with any of the following risk factors who have experienced some loss of consciousness or amnesia since the injury, perform a CT head scan within 8 hours of the head injury:

- Age 65 years or older.
- Any history of bleeding or clotting disorders.

- Dangerous mechanism of injury (a pedestrian or cyclist struck by a motor vehicle, an occupant ejected from a motor vehicle or a fall from a height of greater than 1 metre or 5 stairs).
 - More than 30 minutes' retrograde amnesia of events immediately before the head injury.
-"

[262] The context in which the SIGN and NICE guidelines fall to be considered was helpfully discussed in evidence by Dr Cook. He explained that the sets of guidance were not exactly the same; there are some subtle differences; however, they are similar. Dr Cook described the SIGN and NICE guidelines as clinical guidance, not absolute hard and fast rules. His view was that if a doctor was not going to follow the guidance they would want to be able to clinically justify such a decision. Evidence in similar terms was also given by Mr Crawford (see paragraph [271] below).

Expert Evidence

[263] Dr Martin McKechnie is a consultant in emergency medicine with NHS Lothian. He was asked by NHS Tayside to contribute to their local adverse event into Mr Towell's death, by reviewing Mr Towell's care within the emergency department at Ninewells on 11 September 2016. In that regard he attended a number of meetings, speaking with the receptionists, nurses and doctors who had been involved with Mr Towell on that date, interviewing them and reviewing records. In the context of Mr McKechnie's evidence, it is important to note, at the outset, that he spoke also with Mrs Towell and Ms Ross as part of his review.

[264] In terms of the guidelines, Dr McKechnie's view was that the SIGN guidelines are now generally thought to be out of date, most people operating by the NICE guidelines,

however, there were still some areas of the SIGN Guidelines that people might practice by. He would expect a consultant to interpret the symptoms against the patient, looking for red flags. In his view Mr Towell had something other than a minor headache.

[265] Dr McKechnie described the red flag in this case as Mr Towell, a professional boxer used to being hit to the head, presenting with a new and different headache after being hit on the head that day. Dr McKechnie asked why Mr Towell would stop sparring: in his opinion, there was clearly sufficient reason to do so that caused him to go to hospital.

[266] Asked to consider the NICE Guidelines, Dr McKechnie agreed that the clinical care Mr Towell had received was reasonable and in accordance with the guidelines. It was, however, known that not every clinical situation was covered by the guidelines. A clinician would be expected to use their experience to decide whether to operate outside the guidelines. Dr McKechnie's conclusion was that Mr Towell's care was reasonable in the sense that the guidelines had been followed.

[267] Agreeing that clinical presentation was absolutely a matter for the consultant, Dr McKechnie did, however, disagree with Dr Skelly's assessment of Mr Towell. He did so on the basis that not all clinical examinations which are normal mean that everything is normal. The subtlety of head injury presentation caused him to conclude that there should have been a CT scan. A normal examination does not exclude the possibility of something going on in the brain. His opinion was that a CT scan that day would have been appropriate and reasonable in Mr Towell's circumstances.

[268] Under cross-examination, Dr McKechnie ultimately conceded that the decision not to do a CT scan was a reasonable one. Dr McKechnie accepted that the fact that this was a

“new and different headache” was not stated in the notes – this information appears to have emanated from Mrs Towell and Ms Ross as part of his investigations. Dr McKechnie conceded that there was nothing within the hospital notes to suggest a headache of unusual severity. He conceded that he would have expected that to have been noted if it had been present.

[269] Mr Rudy Crawford is a retired consultant in accident and emergency medicine and surgery. He retired in 2016, having been a consultant at the Glasgow Royal Infirmary for 26 years. Mr Crawford’s view was that Dr Skelly had taken an appropriate and relevant history of Mr Towell; and carried out both a general and a neurological assessment, particularly looking for a head injury. The neurological assessment was normal and, based on that, Dr Skelly assessed a minor head injury with a background of chronic headache. In Mr Crawford’s opinion, Dr Skelly had made an appropriate assessment and conducted an appropriate clinical examination in the circumstances.

[270] Mr Crawford spoke to the NHS Tayside re-direction policy. In his view, Dr Skelly had been correct not to apply the re-direction policy in Mr Towell’s case and to proceed with a full assessment in the accident and emergency department. Mr Crawford described the concept of red flags. He particularly observed that Dr Skelly’s examination of Mr Towell’s ears was something which lots of doctors would not do. The worrying feature that was present was the history of headaches, whether that was for one and a half weeks or for three weeks. Mr Crawford described headaches as incredibly common and very common for presentation in accident and emergency departments, albeit GPs see more. The vast majority are not a sign of brain injury or disease. Mr Towell’s presentation would have rung

alarm bells with Mr Crawford, however, in his opinion, Dr Skelly had been aware of the circumstances and had taken account of them in her assessment.

[271] Mr Crawford spoke to the NICE and SIGN Guidelines. In his opinion these spell out best practice, however, they are guidelines, not protocols. They do not remove responsibility from the doctor. In his opinion people often hide behind guidelines. It was appropriate for a doctor to use their clinical experience and judgement. In his opinion, doctors should be aware of the guidelines and if they choose to deviate they should be able to justify that decision. In Mr Crawford's evidence the threshold for CT scanning in the NICE Guidelines was slightly higher than in the SIGN Guidelines. Mr Crawford spoke in evidence to the fact that the SIGN Guidelines were not followed in Edinburgh, where the threshold for CT scanning was slightly higher than that in the SIGN Guidelines. In Mr Crawford's opinion, the NICE guidelines are not as good as the SIGN guidelines.

[272] In Mr Crawford's opinion Mr Towell did not meet the criteria for an immediate CT scan. Using his experience, he would have said that Mr Towell should have had a scan; the question was one of timing. Mr Towell's risk of significant head injury may have been higher than the average person. Mr Crawford's view was that Mr Towell did not meet the criteria for a scan "there and then" or meet the criteria for a scan within eight hours. In this case, Mr Towell already had an appointment with his GP. The GP had the ability to refer Mr Towell back for a scan. In Mr Crawford's opinion, it was not unreasonable for Dr Skelly to tell Mr Towell to see his GP and to give him advice in relation to a change in his condition. In Mr Crawford's opinion, a lot of doctors in this situation would have done the same thing.

[273] Mr Crawford's opinion was that the circumstances that led to Mr Towell's presentation, namely, the sparring which had stopped, could not be regarded as a dangerous mechanism of injury or a significant assault. He did not think boxing fell within that category.

[274] In Mr Crawford's opinion, after many years of boxing, a boxer can sustain low grade chronic injuries to their brain. He would have a concern if there had been evidence of concussion, a loss of consciousness or memory or retrograde amnesia. In such circumstances, he would quite often admit for observation and scan if appropriate. In this particular case, he would not have expected admission for observation. Mr Towell had none of these features. All he had were symptoms of a headache. He was completely well when seen and examined.

[275] Mr Towell's request for a scan was put to Mr Crawford. In his evidence patients ask for scans all the time, often when inappropriate and not clinically indicated. His evidence was that care should be provided to patients on the basis of what they need, not what they want. Scanning is not a benign process. While the risks associated with it are small, they are not insignificant. The benefits of scanning must outweigh those risks. In Mr Crawford's opinion if there had been a scan which detected a small bleed on the brain, he could not imagine sending anyone away in those circumstances. They would be admitted and referred to a neurosurgeon as appropriate.

[276] In Mr Crawford's view, the fact that Mr Towell was a boxer was not a red flag, it was a factor that Dr Skelly would have had regard to in making her decision. There was no clinical indication to do a scan. Mr Crawford described Dr Skelly's actions as reasonable in

the circumstances. Mr Towell was completely well (in Mr Crawford's view) and there were no clinical indicators for a scan. The only feature was a history of headaches. There was no immediate need to do a scan either that day or the following day, however, as Mr Towell was a boxer, Mr Crawford would have wanted a scan done at some point.

[277] In Mr Crawford's opinion, on balance, Mr Towell was appropriately managed by Dr Skelly. Mr Crawford noted that Mr Towell did not tell Dr Skelly about his history of epilepsy / seizures. Mr Crawford's view was that if Dr Skelly had been told this, she may have acted differently. In Mr Crawford's view, Dr Skelly was misled by Mr Towell in relation to his history of seizures and of alcohol and drug use. Mr Crawford noted that if one looked at Mr Towell's medical records, he refused to accept diagnosis or treatment. He did not take the advice given. The "sugar rush" explanation (see paragraphs [72] and [101] above) was, in medical terms, "complete garbage". Mr Crawford was clear in his view that, if asked, Mr Towell would not have given consent to Dr Skelly to discuss matters with the BBBC.

Discussion

[278] There was no evidence before the inquiry to contradict the position that Mr Towell had to stop sparring on 11 September 2016, due to a headache. There are, however, two particular matters arising from that evidence which merit noting. Firstly, the chapter of evidence relative to Mr Coyle's offer to go home with Mr Towell and Mr Towell's response to that offer (noted at paragraph [200] above) are not suggestive of someone in the type of pain described by Mrs Towell. Secondly, the evidence of Mr Wilson that he and his father had suggested to Mr Towell that they would take him to the accident and emergency

department in Stirling, however, the fact that Mr Towell wished to go back to Dundee is not consistent with someone being in the type of pain described by Mrs Towell.

[279] The first issue to consider in relation to the events of 11 September 2016 is how Mr Towell presented at Ninewells on that date. In this regard, I have no hesitation in accepting the evidence of Ms Whyte and Dr Skelly over that given by Mrs Towell.

Mrs Towell's position in relation to Mr Towell's condition when he presented at Ninewells is one I am incapable of accepting. Whilst her evidence was at times self-serving and was also frequently supportive of Mr Towell's unwillingness to accept his health issues, it reached an extraordinary conclusion in relation to Mr Towell's condition in the accident and emergency department waiting room when, under cross-examination, she asserted that Mr Towell had been "rolling about the floor in agony".

[280] From the evidence of Ms Whyte, Dr Skelly and Dr Cook, there are instances when such circumstances arise, however, the fact that Mrs Towell omitted to mention this in examination in chief, accompanied by the fact that neither Ms Whyte, nor Dr Skelly, nor Dr Cook saw anything of that nature in what was described as a small waiting room drives me to the conclusion that Mrs Towell's evidence in this regard is simply untrue. For that reason, I prefer the accounts of Mr Towell's presentation given by Ms Whyte and Dr Skelly.

[281] The second issue to consider is whether Dr Skelly's actions on 11 September 2016 were appropriate. Ultimately, there was little between the evidence of Dr McKechnie and Mr Crawford. For Dr McKechnie, the mere fact that Mr Towell was a boxer was a red flag; for Mr Crawford, that was a factor that Dr Skelly would have had regard to in making her decision; it was not a red flag. Both Dr McKechnie and Mr Crawford agreed that there was

no apparent clinical indication to require a scan immediately or within eight hours.

Mr Crawford would have wished a scan done at some point in time, however, there was no basis to carry one out on 11 September 2016.

[282] In light of the concessions Dr McKechnie fairly made in evidence, I am satisfied that there is no basis upon which the inquiry can criticise Dr Skelly's decision not to request a CT scan of Mr Towell on 11 September 2016. It was an appropriate decision to make on the basis of the information before her. It was arrived at by applying the SIGN and NICE guidelines and exercising clinical judgment. It was a binary decision, not one whereby she was presented with two or more options and could not know which was in the patient's best interests (see, for example, *Sutherland v Lord Advocate* 2017 SLT 333).

[283] I should add that I have considerable sympathy for Mr Crawford's opinion that had Mr Towell disclosed to Dr Skelly his prior history of epilepsy / seizures she may have acted differently and decided to request a CT scan of Mr Towell. There is no dispute that Mr Towell asked for a CT scan on 11 September 2016. What such a scan might have disclosed on 11 September 2016 is considered below in Part 25, however, ultimately, Mr Towell's lack of candour ensured he did not get one.

[284] In conclusion in relation to the events within the accident and emergency department of Ninewells on 11 September 2016, I am satisfied that no additional or different action should have been taken by the staff of NHS Tayside. On the basis of the information provided to them by Mr Towell, and the examination carried out by Dr Skelly, I am satisfied that Mr Towell was appropriately assessed and treated by the staff of NHS Tayside.

19. 12 September 2016

The GP Appointment

[285] Ms Ross spoke to Mr Towell wakening at around 4 am on 12 September 2016 and being sick. Her evidence was that she sat on the end of their bed and “googled” sore head / sick. The search result she received suggested migraines. Ms Ross’ evidence was that Mr Towell had said to her that the doctor (presumably Dr Skelly) had said that migraines were a possibility. Mr Towell had a sore neck as well. Ms Ross thought it was a migraine at that point. Regrettably, Mr Towell failed to have regard to the head injury advice I have concluded he was given by Dr Skelly on 11 September 2016 (see paragraph [285] above). Had he taken that advice and returned to Ninewells after he had vomited in the early hours of 12 September 2016, at the very least, further investigations would have been carried out. Standing the proximity of this episode to the fight with Mr Evans, I anticipate that had Mr Towell returned to Ninewells on 12 September 2016, the fight would not have proceeded on 29 September 2016. In those circumstances, his death might realistically been avoided.

[286] Mr Towell’s GP appointment for 12 September 2016 had been arranged three days earlier – see paragraph [184] above. At the time it was arranged, it appears from the GP notes that no mention was made of headaches. Mrs Towell attended the appointment on 12 September 2016 with Mr Towell. Broadly put, Mrs Towell’s position was that Dr Oswald accepted everything that the hospital had said the previous day and proceeded to prescribe aspirin to Mr Towell.

[287] Under cross-examination, Mrs Towell stated that she could not recall if Mr Towell had told Dr Oswald that he had been sick that day. She conceded that it was possible that Mr Towell had not mentioned this. Her position was that she did not know that Mr Towell had been sick until after he had seen Dr Oswald. She accepted that Dr Oswald had

examined Mr Towell. She did not accept that Dr Oswald had told Mr Towell that he did not think there was a worrisome cause for the headache. Mrs Towell's evidence was that she had explained what had happened at hospital, namely, that the consultant had said that Mr Towell had had a severe migraine and was suffering from stress; and that Dr Oswald agreed that this was possible and would prescribe aspirin, which he regarded as the best treatment for a migraine.

[288] Dr Oswald had the opportunity to briefly consider Mr Towell's notes prior to seeing him. Dr Oswald thought Mr Towell was coming in with abdominal pain. He was aware that Mr Towell trained as a boxer from the terms of Dr Boileau's note. Mr Towell attended the consultation with his mother.

[289] Dr Oswald explained that a combination of Mr Towell and his mother had explained to him that the reason for Mr Towell attending was headaches. He was told that Mr Towell had been to the accident and emergency department at Ninewells in this regard, the previous day. Dr Oswald spoke to the terms of the note he made in Mr Towell's GP records, which is in the following terms:

"Headache 2w on & off with headaches left sided predom --- NECK sx also, worse when turns neck been sparring lots while building up to British fight says no meningism normotensive Eyes—nad try Aspirin check bloods boxing dr had suggested gallstones as he has had occ RUQ pain"

[290] Dr Oswald explained that he noted sparring because he thought that might have something to do with the neck pain. His recollection was that he thought that he had judged the head and the neck pain as connected. Dr Oswald explained that the communication from the accident and emergency department at Ninewells (see paragraph [241] above) had not arrived at this point in time. He looked in the NHS portal and accessed the letter from

Dr Skelly. He did so because he was surprised that Mr Towell had presented with headaches. Dr Oswald was reassured that Mr Towell had been seen by an accident and emergency consultant.

[291] Dr Oswald carried out a detailed examination of Mr Towell. He examined Mr Towell's neck. That was when Mr Towell complained of both headache and neck pain. Dr Oswald checked Mr Towell's pulse and blood pressure (both of which were normal); he examined his eyes, finding no abnormality – Mr Towell's pupils were equal and symmetrical and gave a normal response to light. Dr Oswald examined Mr Towell's retinas looking for congestion of the optic disc and for haemorrhages. He did not find anything of concern. Dr Oswald explained that he then stood up, came behind Mr Towell and flexed his neck forward onto his chin, checking for meningism. There was no sign of any. He then asked Mr Towell to rotate his head, asking if it was sore. Mr Towell indicated it was, indicating to Dr Oswald the left-hand side of his head, behind his ear and the neck below that.

[292] Based on the history he had been given and his examination, Dr Oswald's feeling was that Mr Towell's headaches were related to his neck pain. He said to Mr Towell that he did not think there was "anything worrisome going on". Dr Oswald considered that to be the case for a number of reasons. His conclusion came from the history given to him and his examination of Mr Towell, moreover, Mr Towell had been seen by an accident and emergency consultant who thought there was nothing worrisome; Mr Towell's headaches pre-dated his accident and emergency attendance; and Mr Towell had related a short history of headaches which were intermittent. He was able to walk and talk normally and the

examination showed nothing untoward. On that basis, Dr Oswald concluded that there was nothing worrisome in Mr Towell's presentation.

[293] Mr Towell mentioned his boxing (or sporting) doctor in the context of his abdominal pain the consultation had been arranged in relation to. Mr Towell indicated to Dr Oswald that his boxing doctor thought this pain was gallstones. It appeared to Dr Oswald that Mr Towell had not mentioned headaches to the boxing doctor. Dr Oswald told him that he thought Mr Towell should speak to his boxing doctor about his headaches. Mention had been made of a British boxing fight which Dr Oswald described as having been portrayed as significant by Mr Towell. Dr Oswald's view was that, from a boxing point of view, the headaches were more significant than the gallstones.

[294] Dr Oswald's recollection was that Mr Towell had mentioned a CT scan in the earlier part of the consultation. Mr Towell wondered if he needed a CT scan. Dr Oswald's recollection was that he had asked if this was not something Mr Towell's boxing doctor would arrange for him. In Dr Oswald's assessment, on the basis of the information before him on 12 September 2016, a CT scan was not needed.

[295] The possibility of migraines was mentioned by Mrs Towell. She said that she thought Mr Towell had been having migraines and went on to discuss the pressure Mr Towell had been under in the lead up to the fight with Mr Evans. Dr Oswald recalled saying that the most common cause of one sided headache was migraine. He did not regard this as an unreasonable diagnosis. He prescribed aspirin to cover both migraine and neck pain, explaining that aspirin is used in NHS Tayside for migraine and also as a non-steroidal anti-inflammatory for musculo-skeletal pain.

[296] Dr Oswald carried out an examination in relation to the abdominal pain. He found no abnormality. In relation to the suggestion by Mr Towell's boxing doctor that Mr Towell may have gallstones, Dr Oswald did not regard that as likely to be the case, however, he took blood to be certain. His recollection was that blood was taken the following day and that the results were normal.

[297] If Dr Oswald had considered an urgent scan was required, he would have sent Mr Towell to hospital that day. Dr Oswald explained that in September 2016 a non-urgent CT scan would have taken approximately four weeks to be carried out with another week to be reported. That is of significance in that if a non-urgent scan had been requested on 12 September 2016, it would not have taken place before Mr Towell's death.

[298] One particular aspect of the opinion of Dr Wallace in relation to the consultation between Mr Towell and Dr Oswald on 12 September 2016 was put to Dr Oswald. It was Dr Wallace's opinion that there was a clear red flag, namely, Mr Towell's history of boxing trauma. Dr Oswald's position was that he had not judged there to be any red flags. When he saw Mr Towell there seemed to be an explanation for the headache; and Mr Towell had been seen by an accident and emergency consultant the previous day, who had judged him to be clinically well. Dr Oswald agreed with Dr Skelly's conclusions. Dr Oswald did not agree with Dr Wallace's conclusion that it was inappropriate to prescribe aspirin to someone with a history of previous head trauma.

[299] Under cross-examination, Dr Oswald explained that he had been able to replicate the pain Mr Towell said he had been suffering from for the previous two weeks in the course of his examination. From the history he had been given and his examination, Dr Oswald

reiterated that he had been able to exclude any “worrisome cause”, such as meningitis, bleed to the brain or tumour. If he had thought there had been a bleed to the brain he would have sent Mr Towell to hospital immediately.

[300] Mr Coyle and Mr Towell spoke again after Mr Towell had consulted with Dr Oswald. Whilst Mr Coyle could not recall if their phone call had been on the Monday evening (12 September 2016) or the following day, it appears likely from the whole evidence that the conversation took place on the evening of 12 September 2016, as Mr Towell returned to training the following day. Mr Coyle’s recollection was that Mr Towell had told him that he had been to see his GP who had said the headaches were being caused by stress; and that Mr Towell was trying to find out about acupuncture or hot pebbles for his neck. Mr Coyle’s recollection was that Mr Towell was involved in some television work in advance of the fight with Mr Evans. As far as Mr Coyle was aware, everything went ahead as planned.

Expert Evidence

[301] The inquiry heard from three witnesses (Dr Norman Gourlay; Dr Norman Wallace; and Dr Niall Cameron) who gave opinion evidence in relation to Mr Towell’s GP consultation with Dr Oswald on 12 September 2016.

[302] Dr Norman Gourlay is a retired GP. He retired in 2016 after 36 years’ experience in general practice. Dr Gourlay prepared a report, which he spoke to in evidence. In his evidence, Dr Gourlay stated that, in his opinion, the understanding of an ordinary GP from Dr Skelly’s letter of 12 September 2016 (see paragraph [241] above), seen by Dr Oswald in the course of his consultation with Mr Towell on that date, was that Dr Skelly did not consider that Mr Towell had suffered a significant bump to the head; that the accident and

emergency department had not taken any action; and that it did not appear that Mr Towell had suffered a significant head injury. In relation to Dr Oswald's view that there was a connection between Mr Towell's head pain and neck pain, Dr Gourlay's view was that it was rare in general practice to be certain as to the cause of a headache. If symptoms were associated with musculo-skeletal pain, that would be a working diagnosis. In Dr Gourlay's view it was reasonable to consider the possibility of migraine. He regarded Dr Oswald's conclusion that the headaches were "not worrisome" as a reasonable and ordinary one to reach in the circumstances. He did not view there being any red flags in the history given by Mr Towell.

[303] Dr Gourlay saw no basis, from a GP's point of view, to request a CT scan, agreeing with Dr Oswald's conclusion that one was not necessary. There was nothing before Dr Oswald to suggest that a CT scan was appropriate. The arranging of a blood test; prescription of aspirin; and telling Mr Towell to speak to his boxing doctor were, in Dr Gourlay's view, all reasonable actions in the circumstances. He regarded it as reasonable to prescribe aspirin in the circumstances of this case, pointing out that simply because it was first in your formulary that did not mean that you had to prescribe it. Dr Gourlay did not regard it as reasonable for a GP to go further than to advise a boxer to speak to his boxing doctor. In his view, telling a boxer not to box could be seen as overbearing and paternalistic, without a basis to do so. In his view, Dr Oswald would have required to have encountered something remarkably different from the circumstances that had presented in the accident and emergency department the previous day, to request a CT scan on 12 September 2016.

[304] Dr Gourlay did not agree with Dr Norman Wallace's conclusion that there was a clear red flag, namely, a history of boxing trauma. Dr Gourlay's view was that this opinion

appeared to be based upon Mr Towell having suffered a significant head injury followed by a headache. He did not regard that as the case with Mr Towell.

[305] Dr Norman Wallace is also a retired GP, having retired in July 2011 after 31 years of clinical practice. He has been preparing medical legal reports since around 1994.

Dr Wallace spoke to two reports he had prepared for the purposes of the inquiry. He had seen and considered Dr Gourlay's report and generally agreed with it. The point upon which he and Dr Gourlay differed was whether or not there was a red flag. In his view, any blows to the head should be considered a risk factor in a patient who presents with a headache without previously having done so. Mr Towell was a fit young man and in Dr Wallace's view further investigation should have been carried out. Dr Wallace's view was that Dr Oswald should have considered the possibility of an underlying brain injury and taken advice from a doctor normally involved in boxing. If that was not a possibility, his view was that Dr Oswald should have taken advice from the on-call neurosurgeon.

[306] In his view, when Mr Towell had a headache the cause of which was not known, prior to a significant fight, the cause of the headache should have been investigated.

Dr Wallace had sympathy with the position Dr Oswald found himself in. Dr Oswald had been "falsely reassured" by the outcome of the accident and emergency consultation. He described Dr Oswald's advice to Mr Towell to discuss matters with his sporting doctor as "excellent and appropriate advice". His only criticism of Dr Oswald in this regard was a failure to record that advice within Mr Towell's notes.

[307] Dr Wallace's recommendation in relation to the Consent is worthy of mention. At paragraph 2.9 of his supplementary report of 16 June 2018 he said this:

“With regard to GP consent ideally as part of the medical assessment process the boxer should have been invited to give consent for the BBBC or any medical representative acting on their behalf to contact the GP inviting an update and offering advice on any relevant medical conditions. Such a consent form should also specify that the GP could inform the BBBC of any relevant medical issues.”

I return below to the suggestion made by Dr Wallace.

[308] Ultimately, Dr Wallace’s position was that Dr Oswald’s firm advice to Mr Towell to discuss his headaches with his boxing doctor was sufficient; he regarded the history taken by Dr Oswald as “sub-standard”, however, regarded the differential diagnosis reached by Dr Oswald as perfectly reasonable. It should, however, have included the risk of intracranial bleeding. His view was that Dr Oswald had placed too much weight on the reassurance of Mr Towell’s visit to the accident and emergency department the previous day.

[309] Dr Wallace disagreed with Dr Gourlay’s view that it would have been overly paternalistic to tell Mr Towell not to box. In Dr Wallace’s view, a duty of care was owed to Mr Towell. Dr Wallace would have expected Dr Oswald to indicate to Mr Towell that there was no clear diagnosis; that he did not know what the cause of the headaches was; and that Mr Towell should not box until the matter had been looked into further. Asked by the court whether, in his opinion, Mr Towell would have taken such advice, Dr Wallace replied, “I think almost certainly not.”

[310] Dr Niall Cameron is a practicing GP in Glasgow. He became a GP in 1986. He was asked by NHS Tayside to contribute to their local adverse event review, in the context of which he considered GP records and comments from Dr Oswald.

[311] In relation to the consultation on 12 September 2016, Dr Cameron described this as a fairly routine consultation. In his opinion, Dr Oswald had acted appropriately. Mr Towell had attended the accident and emergency department at Ninewells and had been seen by a consultant there. No significant features had been found and Mr Towell had been discharged. In Dr Cameron's view there was no reason for Dr Oswald to consider anything else.

[312] Asked about red flags, Dr Cameron did not regard a "bump to the head" as one. In his view there was no history of acute head injury. The fact that Mr Towell had been seen at accident and emergency was a reassurance to Dr Oswald, who had sought to find an explanation for the headaches. On examination, Mr Towell had a painful neck. Dr Cameron described headaches as a frequent symptom of such a condition. The possibility of trauma would have been well down Dr Cameron's list of possible differential diagnoses. The advice given by Dr Oswald to Mr Towell that Mr Towell should discuss the matter with his boxing doctor was, in Dr Cameron's view, appropriate advice and the advice he would give to anyone involved in sport. Dr Cameron did not believe it was for a GP to tell Mr Towell not to box. In his opinion, a GP would not have sufficient expertise to offer that opinion. Dr Cameron disagreed with Dr Wallace's opinion. In Dr Cameron's view the diagnosis reached was entirely reasonable on the basis of the examination and findings. There was nothing to suggest that Mr Towell had a bleed.

Discussion

[313] The difference between the view of Dr Wallace and those of Dr Gourlay and Dr Cameron is, in many ways, the same issue as existed between Dr McKechnie and Mr Crawford. Dr Wallace's analysis of the position was similar to Dr McKechnie's. The

evidence of Dr Gourlay and Dr Cameron was to all intents and purposes unchallenged.

Unlike the position regarding Dr Skelly's decision on whether or not to scan Mr Towell, the position which confronted Dr Oswald was far more complicated. There was, however, amongst Drs Gourlay, Wallace and Cameron consensus that the advice given by Dr Oswald that Mr Towell should speak to his boxing doctor, as the person best placed to advise Mr Towell in a sporting context, was entirely appropriate.

[314] Whilst the approach advocated by Dr Wallace (i.e. that Mr Towell should not box until the cause of his headaches had been identified) is superficially attractive, it needs to be viewed against the circumstances Dr Oswald was confronted by, namely, a patient who had been seen and discharged by an accident and emergency consultant the previous day; and who presented as well and, upon examination, appeared to have symptoms associated with musculo-skeletal pain, which Dr Oswald was able to replicate upon examination. Notably, Mr Towell elected not to tell Dr Oswald that he had been sick that morning. That, I suggest, would have resulted in a quite different outcome. Even had Dr Oswald tendered the advice advocated by Dr Wallace, the whole evidence before the inquiry suggests that Mr Towell would have simply ignored it.

[315] In conclusion in relation to Mr Towell's consultation with Dr Oswald on 12 September 2016, I am satisfied that no additional or different action should have been taken by Dr Oswald. On the basis of the information provided to Dr Oswald by Mr Towell, and the examination carried out by Dr Oswald, I conclude that Mr Towell was appropriately assessed and treated.

20. 13 – 27 September 2016

[316] Mr Coyle's evidence was that Mr Towell returned to training on 13 September 2016. Mr Coyle asked Mr Towell how he was. Mr Towell replied that he was all right and that he thought it was stress which had caused the headaches. Mr Coyle explained that sparring is tapered down in the last couple of weeks of training. Mr Coyle's recollection, in evidence, was that he thought that Mr Towell had only sparred with boxers from the 1314 Boxing Club after 11 September 2016.

[317] There was put to Mr Coyle a statement he had given to a police officer in October 2016 in which he had stated that Mr Towell did not spar with anyone, other than Mr Graham wearing body pads, after 11 September 2016. In evidence, Mr Coyle explained that what he had meant was that after 11 September 2016 Mr Towell had not gone to Glasgow or Edinburgh to spar. He meant that what had happened was that Mr Towell had predominantly worked with Mr Graham on the body bag.

[318] Mr Coyle asked Mr Towell if he had had another headache. Mr Towell said no. Mr Towell put the headache on 11 September 2016 down to stress and found out about acupuncture and hot stones to relieve the pressure.

[319] Mr Wilson was positive that after 11 September 2016 Mr Towell stopped sparring. Mr Wilson's recollection was that Mr Towell said he did not want to go through pain in advance of the fight with Mr Evans and would "get through it" on the night.

[320] Mr Wilson recalled speaking to Mr Towell after Mr Towell's visit to the GP (on 12 September 2016). His recollection was that Mr Towell told him that the GP believed that his condition was due to stress because of the impending fight with Mr Evans. Mr Wilson was

positive that Mr Towell was receiving acupuncture also. He believed that this was for stress and that it had been recommended by Mr Towell's GP.

[321] Mr Wilson saw Mr Towell again at training; both of them were then training for fights. Mr Wilson's recollection was that Mr Towell did everything bar sparring. He explained that they travelled together on a few occasions and that their coaches had come to Dundee also. He talked of them doing hill sprints and working on body bags with Mr Graham. Asked how Mr Towell felt at this time, Mr Wilson replied that Mr Towell "seemed okay" and, as far as he was aware, when Mr Towell was not sparring he was not in pain.

[322] The evidence of Chloe Ross was that after Mr Towell had attended Ninewells on 11 September 2016 he said to her that he was not going to spar again prior to the fight with Mr Evans. As far as Ms Ross was aware Mr Towell did not spar between 11 September 2016 and the fight with Mr Evans. Mr Towell told her that he was working with Mr Graham who had the body bag on, punching that rather than someone in the ring.

[323] Dr Henderson spoke with Mr Towell, by phone, on or about 13 September 2016. At that time Mr Towell told him that he had been to see his GP. He said he had had blood taken; and had had an ultrasound; both were normal. Dr Henderson suspected that Mr Towell had not had an ultrasound, which would have been very quick for the NHS. He thought that Mr Towell had, perhaps, misunderstood the position regarding an ultrasound, albeit Dr Henderson did not know if there was an expedited route to one in NHS Tayside. There was no evidence before Dr Henderson to suggest that Mr Towell was lying to him. In the course of the phone call, Mr Towell told Dr Henderson that all his symptoms had gone;

he was feeling great; and was looking forward to the fight. He felt confident and was ready to box.

[324] Under cross-examination, in relation to his phone call with Mr Towell, Dr Henderson confirmed that Mr Towell had not mentioned to him the fact that he had attended the accident and emergency department at Ninewells on 11 September 2016. If headaches had been mentioned to Dr Henderson he would have been required to consider whether or not, in the absence of Mr Towell's consent, to breach confidentiality and report the matter to the BBBC. There may have been a question of concussion which would have led to a 30 day suspension from boxing. If headaches had been raised with Dr Henderson, he would have told Mr Towell not to spar; and would have advised the BBBC of the position. In such circumstances, it would have been for the BBBC to make a decision regarding Mr Towell's licence. In my view, had Mr Towell disclosed to Dr Henderson the circumstances of his hospital attendance on 11 September 2016, it is probable that Dr Henderson would have advised the BBBC. In light of Mr Towell's medical history, were Dr Henderson to have done so, it is likely that the BBBC would have made further investigations and, had they done so, it is probable that Mr Towell's licence would have been suspended as a consequence of which the fight with Mr Evans would not have proceeded on 29 September 2016 and Mr Towell's death might realistically have been avoided.

[325] Mr Burt recalled seeing Mr Towell in the week leading up to Mr Towell's fight with Mr Evans. Mr Burt was at the 1314 Boxing Club sparring with someone else. Mr Burt spoke to Mr Towell there and recalled asking him about his training and making the weight. Mr Burt's recollection was that Mr Towell had said he was doing the weight quite well and easier than normal.

[326] Mrs Towell's position was that Mr Towell started to get headaches after the Edinburgh sparring session (see paragraph [150] above). Mrs Towell's evidence was that, from then and prior to 11 September 2016, Mr Towell would get a sore head after training, for which he would take paracetamol and it would clear up. Her recollection was that Mr Towell did not say that the headaches were always on a particular side of his head. Her evidence was that Mr Towell had said that they kept moving. Asked if she was aware if Mr Towell had discussed the headaches he was suffering from, she replied that he told everybody. I regret that this is another example of exaggeration on the part of Mrs Towell. It is demonstrably untrue.

[327] Ian McLeod is a former professional boxer who assists the St Andrew's Sporting Club on a consultancy basis. He was involved in the organisation of the event at the Radisson on 29 September 2016 and dealt with the television coverage. Mr McLeod's job was to promote the event. He was also one of the commentators on the television broadcast. Mr Towell had attended all the scheduled events in the lead up to the fight. Mr McLeod described him as being in good spirits.

[328] Mr McLeod recalled speaking to Mr Towell on the phone one day to set up some media work with a newspaper. He recalled Mr Towell saying that he was not training that day because he had a sore head. This did not mean anything to Mr McLeod at the time. Looking back, he recalled Mr Towell having a trial weigh-in and this being the day after that. Mr McLeod's initial thought was that the headache was a result of dehydration. He could not recall precisely when the trial weigh-in was. From Mr McLeod's own experience, fighters tended to dehydrate themselves. Mr McLeod attached no significance to this discussion at the time.

[328] Mr Graham also spoke to Mr Towell returning to training on 13 September 2016. He and Mr Coyle had asked Mr Towell how he was. They had eased him back into training. It was not a huge issue from Mr Graham's perspective. Mr Towell had been seen at hospital, by his own GP and by Dr Henderson. Mr Graham's evidence was that they had ticked all the boxes medically. If Mr Towell had said he had a sore head they would have stopped and addressed the situation. They would have called the BBBC doctor back in and spoken to Mr Towell's manager.

[329] The evidence of Mr Graham and Mr Coyle, which I accept, was that after the incident on 11 September 2016, they asked Mr Towell constantly about his health and he assured them he was fine. I accept the evidence of Dr Henderson that Mr Towell did not raise the issue of headaches with him at the consultation on or around 6 September 2016. I accept also that Mr Towell told Dr Henderson that all his symptoms had gone; and that he was feeling great in the course of their phone call around 13 September 2017. Additionally, it is notable that in the pre-fight medical in relation to the contest with Mr Evans (see paragraph [359] below) Mr Towell made no mention of headaches.

[330] Thomas Gilmour MBE was Mr Towell's manager throughout his professional career. Mr Gilmour managed his first boxer in 1979 and subsequently managed "hundreds" of boxers. He is now retired. He described Mr Towell as a "tough young lad with great ambition to make it to the top." By 2016 Mr Gilmour had sold the promotion part of his business. It was his intention to retire, however, he continued to manage a handful of boxers, Mr Towell being one. Mr Gilmour's aim was to see if he could get these boxers to championship level, it being his intention to then retire completely from management.

[331] Mr Gilmour's spoke to his relationship with Mr Towell's trainers, Mr Graham and Mr Coyle. Mr Coyle was one of Mr Gilmour's former boxers, who Mr Gilmour had managed throughout his career. Mr Graham had trained other boxers for Mr Gilmour. Mr Gilmour explained that there were lots of doctors who, for their own reasons, would not carry out medicals on boxers. For that reason, annual medicals were often done by BBBC registered doctors. Mr Gilmour explained that it was the responsibility of the boxer and his trainer to make sure the boxer made the weight for a fight. His expectation was that if a boxer had a problem making the weight then the trainer should tell the manager.

[332] Mr Gilmour was not aware of Mr Towell having any health issues. Mr Towell had passed all his BBBC medicals. Never at any time had Mr Towell said to Mr Gilmour there was a reason why he might not be able to box. Mr Gilmour was not aware that Mr Towell suffered from seizures. If Mr Towell had mentioned that to Mr Gilmour, Mr Gilmour would have told him that it was highly unlikely he would get a licence from the BBBC. Mr Gilmour was not aware that Mr Towell had been given medical advice not to box. He was not aware of the events of May 2016 (see Part 15 above).

[333] Mr Gilmour spoke to the significance of the fight on 29 September 2016. Mr Towell was one fight away from a British title fight, which he wanted more than anything. Mr Gilmour had spoken to Mr Towell on the phone in the lead up to the fight. Mr Towell told him he was feeling great. Mr Gilmour's recollection was that he had seen Mr Towell once or twice in the course of his training for the fight. When Mr Gilmour had spoken to Mr Towell's trainers they had told him that everything was going well. Mr Gilmour's evidence was that he had not discussed headaches with Mr Towell. If he had had any concerns he would have told Mr Towell to contact his own doctor and report back to him

anything that he was told. If the doctor had decided Mr Towell should not fight confirmation could have been given to the BBBC. The fight could have been postponed or further investigations made.

[334] Prior to 28 September 2016, Mr Gilmour had been aware of no issues regarding Mr Towell's weight. Mr Gilmour was present at the weigh-in that day. Initially, Mr Towell did not make the weight. He was annoyed with himself. Mr Towell went downstairs to the gym in the hotel and went on the running machine. Mr Gilmour stood beside him whilst he did. They had a general discussion. There was no anxiety. Mr Gilmour's recollection was that Mr Towell had run for 20 to 25 minutes. Mr Gilmour was not aware that Mr Towell had gone to the sauna to lose weight.

[335] One of the matters the Crown identified as likely to be in dispute in the inquiry was whether Mr Towell's manager (Mr Gilmour) and trainers (Mr Graham and Mr Coyle) should have ensured that the BBBC were notified of Mr Towell's recent history of headaches in the lead up to the fight with Mr Evans.

[336] Whilst, as noted above, the requirements of the BBBC's rule 5.7 were undoubtedly engaged in this period it imposes no obligation upon the trainer. It is the boxer or his manager who must immediately inform the promoter. In light of the medical attention that Mr Towell received from, and the conclusions reached by, Dr Skelly; Dr Oswald; and Dr Henderson, it is difficult to be critical of Mr Graham and Mr Coyle for not raising the matter with Mr Gilmour. Mr Towell had been seen by three separate doctors, none of whom were of the view he was not fit to box.

[337] On the basis of the evidence of Mr Gilmour, which I accept on this point, he was unaware of the issues Mr Towell had with headaches in the lead up to the fight with Mr Evans. Accordingly, he could not inform the promoter. There is no doubt that the BBBC rules envisaged the BBBC being made aware of events such as those of 11 and 12 September 2016. On my reading of the relevant BBBC rules, if there is fault in this regard, it rests entirely with Mr Towell. If his condition was truly as described by Mrs Towell (which I do not accept for the reasons set out above at paragraphs [279] and [280]), Mr Towell should have informed both his manager and the promoter (in addition to his trainers).

21. The Weigh-In

[338] The weigh-in in respect of the fight between Mr Towell and Mr Evans took place in the Radisson on 28 September 2016 at 5 pm. The weigh-in was broadcast live on STV Glasgow.

[339] The relevant BBBC rules which govern weigh-ins are as follows:

“3.2.2 All Boxers must weigh-in not less than 24 hours or more than 36 hours before the commencement of a tournament. Permission may be granted by the (BBBC) for Boxers to weigh-in on the day of a tournament provided that no Boxer reduces weight following the weigh-in.

3.2.4 When a contestant is overweight, he is allowed 1 hour from the time of the weigh-in to achieve the correct weight. If still overweight after such hour, no further weigh-in is allowed.

22.1(b) Following the announcement or contracting of a Championship or Official Eliminating contest both Boxers will be required to attend a check weigh-in before a designated official of the (BBBC) or Area Council at a time and place to be determined by the (BBBC) or Area Council.

22.1(c) Three days prior to the contest both Boxers will have to submit to a further check weigh-in before a designated official of the (BBBC) or Area Council at a time and place to be determined by the (BBBC) or Area Council. A Boxer weighing more than 3% above the relevant Championship limit three days prior

to the date of the contest will require the sanction of the (BBBC) before being permitted to box for that Championship on the contracted contest date.”

[340] Derry Treanor was the weigh-in steward for the fight between Mr Towell and Mr Evans. In his estimation, he had previously acted in that role for at least 100 fights. Mr Treanor was taken to and explained the BBBC rules in relation to weigh-ins. The relevant rules are those set out in the preceding paragraph.

[341] The BBBC championship check-weight sheet in relation to the fight between Mr Towell and Mr Evans was put to Mr Treanor. It shows a first weight for Mr Towell of 10 st 9½ lbs on 26 September 2016. Mr Treanor’s name appears after the date (his surname is misspelt). In evidence, Mr Treanor advised that it was not his signature. He had no recollection of carrying out a check weigh-in for Mr Towell on 26 September 2016.

[342] Mr Treanor explained that Mr Towell had been accompanied at the weigh-in on 28 September 2016 by his manager, Tommy Gilmour. He could not recall Mr Towell’s weight in evidence, however, his recollection was that Mr Towell was a couple of pounds over, the championship weight limit being 10 st 7 lbs. Mr Treanor had written a note subsequent to Mr Towell’s death in relation to the weigh-in process. He spoke to that note in evidence. The note is in the following terms:

“I Derry Treanor was the weight (sic) in official for the eliminator for the British Welterweight Title Mike Towell v Dale Evans. I spoke to Mike Towell and gave him a check weight-in (sic) and he weighed 10 st 9 lbs 4 oz. He was over the championship weight. I spoke to Tommy Gilmour about this and we agreed he would go to the gym in the hotel which he did as he had one hour to make the weight. He returned to the scales to a weight (sic) again and he weighed 10 st 6 lbs 8 oz. I was satisfied that he was inside c/ship weight and I left the hotel.”

[343] Mr Treanor supplemented the terms of his note in evidence. The reference to a “check weigh-in” appears to be an error, having regard to the reference of having an hour to make the weight (see rule 3.2.4). Mr Treanor explained that Mr Towell had returned within the hour but was still over the weight. He went away again. Mr Treanor gave him scales to take with him so that he did not need to come back and forward to check his weight. That was something Mr Treanor had not done before. Mr Treanor had no discussion with either Mr Gilmour or Mr Towell about how Mr Towell intended to lose weight. He did not see Mr Towell do anything to lose the weight. Mr Treanor confirmed that the rules of the BBBC prohibited using a sauna to lose weight. Mr Treanor did not discuss the use of a sauna with either Mr Gilmour or Mr Towell.

[344] Mr Treanor confirmed that the rules did not stipulate a limit to the amount of weight that can be lost. Mr Treanor expressed concern at the amount of weight Mr Towell had lost (approximately 2½ pounds). He had seen several boxers lose that amount of weight previously. In Mr Treanor’s evidence it would have been appropriate for him to have told the BBBC of this weight loss. He was not sure if he had done that. Having regard to Mr Treanor’s evidence that he was keen to get home, and the absence of any documentation from the BBBC on this issue, I am satisfied that he did not do so.

[345] Mr Graham was at the official weigh-in which he said was at 3 pm on 28 September 2016. That evidence was contradicted by the terms of the joint minute of agreement which stated that the weigh-in was at 5 pm on 28 September 2016. Mr Gilmour had phoned Mr Graham shortly after 2 pm, at which time in the pre-check weigh-in Mr Towell was found to be overweight. Mr Graham was en route to the venue from his work. He was ten to fifteen minutes away when he received the call from Mr Gilmour. Mr Graham’s evidence

was that Mr Towell's weight had been checked that morning and that Mr Coyle had told Mr Graham that Mr Towell was on the weight.

[346] Mr Graham arrived at the Radisson. At that time, he did not know how much weight Mr Towell had to lose. When he came into the hotel gym, Mr Towell was on the running machine. Mr Gilmour was present in the gym. The weight issue was not a matter of concern to Mr Graham. Mr Graham explained that Mr Towell was on the treadmill for around ten minutes and then went to the sauna for five minutes. Mr Graham saw Mr Towell go into the sauna. Mr Gilmour was there also. It was put to Mr Graham that the BBBC position was that saunas should not be used by boxers to lose weight. In response, Mr Graham stated that it was done all the time. Mr Towell had been in the sauna for only five minutes. Mr Graham explained there could be "running abuse", where you ran too much. Mr Graham explained that Mr Towell made the weight in fifteen minutes. He simply did not accept that the amount Mr Towell was said to have been overweight (2 lbs 12 oz) was accurate. In Mr Graham's view Mr Towell made the weight too easily for him to have been that much over.

[347] Mr Graham was asked, both in examination in chief and in cross-examination by the solicitor-advocate for the BBBC, whether Mr Towell had previously used a sauna to make the weight. As I have noted Mr Graham's answers, on neither occasion did he actually answer the question. I take, however, from his answer that saunas were used "all the time" that a sauna had previously been used by Mr Towell as a means of losing weight.

Mr Graham insisted that Mr Towell had never had an issue with weight; Mr Towell was on the weight at 10 am on 28 September 2016; and took the excess weight off easily.

Mr Graham did not recall the use of a sauna being discussed at the BBBC first aid course he

had attended. He did, however, recall the issue of dehydration of boxers being discussed, saying that all boxers were dehydrated.

[348] James Watt MBE is, arguably, Scotland's greatest ever boxer. He was British, European and World Champion at lightweight, boxing professionally between 1968 and 1981. He continued to be involved in sport after retirement as a television commentator. He is an honorary member of the St Andrew's Sporting Club, having boxed there several times. He attended the fight between Mr Towell and Mr Evans as a guest.

[349] In his evidence to the inquiry, Mr Watt offered certain views in relation to the weigh-in process. When he had boxed, the weigh-in was carried out at 1 pm on the day of the fight. That is no longer the case. Mr Watt believed this had happened on the advice of doctors; to allow boxers sufficient time to re-hydrate the weigh-in was moved to the day before the fight. Mr Watt explained that, in his view, whilst medically this may be the best idea, it was the worst possible idea for boxing. A weigh-in so far before the fight encourages a boxer to take off weight they should not. In Mr Watt's view it would be more sensible to bring the weigh-in nearer to the contest. Mr Watt explained that most boxers want to box at the lightest weight possible. His view was that the current system encourages boxers to fight at weights lower than they should, giving an example of a Manchester fighter who was 10 stone at weigh-in and 11 stone 2 pounds at the time of the fight. In Mr Watt's view, however, the weigh-in process had nothing to do with what happened to Mr Towell.

[350] In Mr Watt's view, it was the responsibility of the boxer and his trainers to ensure he was at the correct weight to fight. It was not really a matter for the boxer's manager. Mr Watt's understanding was that when Mr Towell first stood on the scales on the day of

the weigh-in he made the weight. In his evidence, if Mr Towell had been two and a half pounds over at the weigh-in and managed to take that off, that was normal in boxing today. If Mr Towell had been badly dehydrated he could not have lost almost three pounds. If a boxer was over the weight limit at the official weigh-in that would be a bit disappointing and unprofessional, however it would show that he had plenty of fluid in his body if he was able to take the weight off in the manner Mr Towell did. In Mr Watt's view, he did not think weight had much bearing on what happened to Mr Towell.

[351] In relation to the use of saunas to lose weight, Mr Watt explained that that was probably done back in his day, however, there was no need for it now. He described it as "bad". A fighter going to a sauna was "bad news". In his view, he imagined that all fighters who are a little bit tight to the weight will go to the gym on the day to lose weight, which happens more often than not. Mr Towell using a sauna did not tie in with him losing three pounds in an hour. It surprised Mr Watt.

[352] Mr Smith explained that the championship check-weight sheet had been completed by Dennis Gilmartin, who assisted Mr Smith with shows. Mr Smith anticipated that Mr Treanor had taken the check-weight and then phoned it in to the BBBC office in Cardiff, hence the sheet was in Mr Gilmartin's writing. In Mr Smith's view, a loss of weight to the extent of that which Mr Towell appeared to have achieved was manageable. The BBBC's boxer's information pack deals with weight reduction. A sauna should never be used prior to a contest to reduce weight as it will dehydrate the boxer and lead to injuries. Mr Smith explained that similar advice was given to managers and trainers.

[353] There was no evidence before the inquiry to suggest that the pre-fight weigh-in was conducted inappropriately. That said, the evidence in relation to this Part was less than satisfactory. In his own evidence, Mr Treanor was anxious to get home. In light of the candid acceptance by Mr Graham that Mr Towell had used a sauna to lose weight, a practice deprecated by the BBBC, I confess to having some difficulty accepting Mr Gilmour's evidence that he was not aware that Mr Towell had used the sauna to lose weight on 28 September 2016.

[354] The extent of the weight loss achieved by Mr Towell was disputed by Mr Graham. I reach no conclusion in relation to this. Mr Graham was not present initially and, therefore, it is possible that his view is somewhat tainted by the fact that a boxer he trained did not make the weight at the scheduled weigh-in. In light of Mr Graham's evidence which, to a point, was supported by Mr Watt from his own experience (albeit some time ago) there may well be an issue with sauna use. I return to this below in Part 33. It is, however, important to stress at this point that the evidence of Professor Colin Smith and of Stephen Cooke (considered below in Part 25) was that dehydration had played no part in Mr Towell's death.

22. Dale Evans Fight

[355] As previously noted, the fight between Mr Towell and Mr Evans took place in the Megolithic Suite at the Radisson on 29 September 2016. Two additional rooms in the hotel were provided for boxers changing. The chief medical officer in relation to the casualty department at Glasgow Royal Infirmary had been advised by the BBBC that a professional boxing tournament would take place at the Radisson on 29 September 2016. St Andrews

Sporting Club arranged for ABC Private Ambulances to service the event. Mr Towell stayed overnight in the Radisson on the evening of 28 September 2016.

[356] The fight between Mr Towell and Mr Evans was the main event. Two other boxing matches were also scheduled to take place – one before and one after the main event. The boxing match prior to the main event ended in the first round. The boxing match subsequent to the main event did not take place. 340 people attended said event.

[357] Ms Docherty returned from Ireland on the day of Mr Towell's fight with Mr Evans. She met Mr Towell and Mr Coyle in Glasgow. They went for something to eat. Her recollection was that Mr Towell was a bit quieter than he would usually be. She recalled him saying that he just wanted to get the fight over and done with.

[358] In their evidence to the inquiry, Ms Ross, Mr Coyle and Mr Graham all gave evidence in relation to how Mr Towell was prior to the fight with Mr Evans. Ms Ross described Mr Towell as appearing to be okay in the week before the fight. Mr Coyle spent the evening prior to the fight in the Radisson with Mr Towell. He described Mr Towell as being his usual, jovial self, having a carry on. Mr Coyle described Mr Towell as "just the usual" prior to the fight. Mr Graham described Mr Towell as being a bit nervous immediately prior to the fight, putting this down to the fact that Mr Towell was going to be on television and that it was a very good opportunity for him.

[359] Mr Towell's pre-contest medical was carried out by Dr Ronald Sydney, a GP since 1999, who was one of the BBBC doctors who were present at the event on 29 September 2016, the other being Dr Greenhalgh. In evidence, Dr Sydney explained that Mr Towell was quite pumped up and ready to box. He recalled Mr Towell not saying a great deal when he

had been examined. In the “Boxer’s Pre-Contest Medical” form, Mr Towell answered Question 7 “No”; and Question 8 “Yes”. Dr Sydney confirmed that the form had been completed on the basis of answers given to him by Mr Towell. Dr Sydney also described the process of examining Mr Towell, particularly his eyes and ears, both of which were normal. Whilst he could not recall specifically, Dr Sydney thought he would have asked Mr Towell about headaches.

[360] The fight between Mr Towell and Mr Evans was scheduled to take place over twelve three minute rounds. The fight was refereed by Victor Loughlin; and the judges were Kenneth Pringle, Howard Foster and David Parris. Mr Loughlin gave evidence to the inquiry; none of the judges did so. Mr Towell was knocked down in the first round. He got up and continued fighting. He was ahead on points at the end of the fourth round. The scores of the judges for rounds one to four formed part of the joint minute of agreement: they are set out in Appendix 2 below. One of Mr Towell’s trainers, Mr Graham, described rounds two, three and four as the best Mr Towell had ever fought.

[361] The television footage of the fight shows that almost exactly halfway through the fifth round Mr Evans landed a number of blows on Mr Towell, knocking him to the canvas. Mr Towell returned to his feet midway through a count by the referee, Mr Loughlin. Mr Loughlin was satisfied that Mr Towell was fit to continue boxing. The boxers resumed the contest. The contest only lasted a further four seconds, Mr Evans landing a further five blows to Mr Towell then the referee stopping the fight.

[362] The inquiry heard evidence from Mr Loughlin. He is the only Class “A” star referee in Scotland. He has been in that class for 13 years and has refereed more than 300 fights.

Mr Loughlin had refereed both Mr Towell and Mr Evans previously. He felt it was an evenly matched contest.

[363] Mr Loughlin described the fight from his perspective and, in particular, the circumstances in which it had ended in the fifth round. He had noticed nothing unusual about Mr Towell's demeanour. After Mr Towell had taken the count in the fifth round, he had nodded to Mr Loughlin that he was able to continue. The fight re-started but lasted only seconds before it was stopped by Mr Loughlin. Mr Loughlin had stopped the fight as Mr Towell was going down, he recalled that Mr Towell's legs had started to go from under him. In his opinion, stopping the fight had been the right thing to do.

[364] The inquiry also heard evidence from Mickey Vann. Mr Vann became a boxing referee in 1976, only retiring in 2016. He attained Class "A" star grade as a referee in 1986. He also had experience as a judge of boxing. Mr Vann spoke to officiating in something in the order of 1,480 fights, with between 200 and 250 as a judge and being involved (as referee or judge) in 176 world title fights.

[365] The footage of the contest between Mr Towell and Mr Evans was shown to Mr Vann. Mr Vann offered comment on Mr Loughlin's performance, as referee. Mr Vann's view was that it had been "a good stoppage" by Mr Loughlin. Mr Vann's opinion was that Mr Loughlin stepped in at the correct time. He also described Mr Loughlin assisting Mr Towell to the canvas as good refereeing. Mr Vann was satisfied that the fight had been appropriately refereed by Mr Loughlin.

[366] Having considered the evidence of Mr Loughlin and Mr Vann, I am satisfied that the refereeing of the contest between Mr Towell and Mr Evans was entirely appropriate.

23. Post-Fight

[367] The television footage of the fight shows that, on the fight being stopped, Mr Towell immediately went down to the canvas, supported by the referee. A doctor entered the ring to attend to him. After being down for almost exactly one minute, Mr Towell can be seen kneeling up. He was then helped to his feet. Mr Towell was clearly unsteady on his feet. No further footage of Mr Towell within the ring was broadcast on the evening (or shown to the inquiry). Mr Towell was removed from the ring on a stretcher less than nine minutes after the contest had been stopped.

[368] Dr Greenhalgh was the second medical officer on duty on 29 September 2016. He spoke to the terms of a note he had prepared in the early hours of 30 September 2016. During the contest, watching at ringside from a neutral corner, Dr Greenhalgh saw no evidence of concussion or impaired consciousness on the part of Mr Towell. Mr Towell's movements were purposeful; he was able to defend himself; he competed well with his opponent; his gait was steady; and he appeared alert and attentive to both the referee and his trainer.

[369] After the contest was stopped in the fifth round, Dr Greenhalgh immediately entered the ring with Dr Sydney to assess Mr Towell who was conscious and, on direct questioning, answered correctly as to location (Radisson, Glasgow) and was able to name the day of the week (Thursday). In Dr Greenhalgh's assessment Mr Towell's GCS score at this stage was 14.

[370] Mr Towell was seated on a corner stool. A paramedic arrived in the ring. Initially Mr Towell obeyed instructions to inhale deeply but he then hung his head and appeared

unsteady. His speech became incoherent. Dr Greenhalgh called for oxygen and a face mask. Dr Sydney and Dr Greenhalgh lay Mr Towell flat on the canvas. Mr Towell did not respond to questioning and became unconscious. Dr Greenhalgh applied oxygen at high flow to Mr Towell via mask and began jaw thrust manoeuvre to assist the patency of Mr Towell's airway. Mr Towell exhibited signs of motor extension with his arms and increased muscle tone in his jaw muscles. Dr Greenhalgh assessed Mr Towell's GCS score at this stage as 4.

[371] Dr Greenhalgh called for a stretcher and informed the medical and paramedic staff of the need to transfer Mr Towell immediately to hospital. Mr Towell was placed and secured on a hard board; lifted from the ring; placed on a stretcher outside the ring; and wheeled to an ambulance via the pre-arranged emergency exit route where an Ambu bag was applied to Mr Towell to deliver one hundred per cent oxygen by bag and mask. Dr Greenhalgh was accompanied by another consultant anaesthetist, Dr Lee Riddell, who had been a spectator at the event, and Dr Sydney.

[372] Mr Towell maintained spontaneous ventilation at all times with a jaw thrust applied to assist in maintaining airway patency. He was continuously breathing in an unobstructed manner and did not require manual or assisted ventilation at any time. Mr Towell's gloves were removed during the transfer in the ambulance to facilitate intravenous access and palpitation of radial pulse. Mr Towell remained clinically well oxygenated throughout the transfer to Glasgow Royal Infirmary. Pulse volume on palpitation of radial and carotid arteries was clinically normal. Intravenous access was obtained in the ambulance by cannula in the right forearm. The transfer time from hotel to hospital was approximately ten minutes. No delays were encountered en route.

[373] On arrival in the resuscitation room at Glasgow Royal Infirmary, Dr Greenhalgh assisted in the transfer of Mr Towell to a hospital bed. Standard clinical monitors (ECG, non-invasive blood pressure cuff and a saturation monitor) were applied. Dr Greenhalgh was unable to insert an oral airway due to muscle tone therefore he inserted a left nasal airway without difficulty. Mr Towell's GSC score remained at 4. Dr Greenhalgh briefed and transferred care of Mr Towell to Dr Ryan Connelly, an accident and emergency consultant at the Glasgow Royal Infirmary. An agreed decision was made to secure Mr Towell's airway with an endotracheal tube and to ventilate, sedate and conduct a CT scan of Mr Towell's head. Mr Towell was intubated without difficulty. An arterial line was inserted in Mr Towell's right radial artery.

[374] Dr Connelly was a consultant on duty in the accident and emergency department of the Glasgow Royal Infirmary on the evening of 29 September 2016. Without any prior warning to Dr Connelly, Mr Towell arrived through the ambulance door of the accident and emergency department at 10.37 pm. Dr Connelly was provided with all relevant and necessary background by the doctors who accompanied Mr Towell. It was very obvious to Dr Connelly that Mr Towell needed an emergency CT head scan, as a significant brain injury was suspected. Mr Towell was deeply unconscious. He did not open his eyes in response to mild pain. Dr Connelly explained in evidence that the way Mr Towell was moving his arms was consistent with a serious brain injury.

[375] Dr Connelly accompanied Mr Towell when he went for a scan. Dr Connelly saw the scan images. He was very quickly aware of the significant nature of the injury to Mr Towell's brain. Speaking to the summary of the CT head scan, Dr Connelly explained there was a large bleed inside the top line of Mr Towell's brain. The 13 mm of midline shift

reported showed significant intracranial pressure. It was a very serious injury which Dr Connelly felt needed immediate neurosurgical evacuation, if it was, in fact, amenable to neurosurgery at all. The injury was much more serious than Dr Connelly had expected.

[376] Dr Connelly phoned the neurosurgical registrar at the Queen Elizabeth University Hospital, Dr Kevin Agyemanog. Dr Connelly gave a brief history and relevant information to Dr Agyemanog, who agreed to review Mr Towell's scan and revert to Dr Connelly. At about 11.20 pm on 29 September 2016, Dr Edward St-George, the on-call consultant neurosurgeon at the Queen Elizabeth University Hospital, was contacted by his registrar, Dr Agyemanog, regarding Mr Towell.

[377] Dr Connelly subsequently received a phone call from the neurosurgeons at the Queen Elizabeth University Hospital advising that, due to the extent of the injury sustained by Mr Towell and his low GCS score prior to anaesthesia, the neurosurgeons viewed the injury as unsurvivable and not amenable to neurosurgery.

[378] Dr Connelly described himself as being quite surprised and disappointed by this, albeit deferring to the opinion of the neurosurgeons. The inquiry heard evidence from Stephen Cooke, a consultant neurosurgeon based at the Royal Victoria Hospital in Belfast. In Mr Cooke's opinion, the conclusion reached by the neurosurgeons at the Queen Elizabeth University Hospital was entirely appropriate. Mr Cooke would have made the same decision in the circumstances. After discussion, it was agreed that Mr Towell would be transferred to the neurosurgical intensive care unit at the Queen Elizabeth University Hospital.

[379] Mr Towell arrived at the neurosurgical intensive care unit at 1:20am on 30 September 2016. Dr St-George examined Mr Towell and found him to be intubated and ventilated with abrasions around both eyes. Both pupils were unreactive, size 8 mm and Mr Towell was hypertensive. No Doll's eye reflex was present. It was felt that surgical decompression would be futile in the clinical context. This was explained to Mr Towell's family. The decision was made to withdraw ventilating support and Mr Towell was started on intravenous midazolam and morphine.

[380] Mr Towell died at the Queen Elizabeth University Hospital, Glasgow at 11:20 pm on 30 September 2016. I have determined accordingly in terms of section 26(2)(a) of the Act (see paragraph D1 above). His family were with him when he died.

24. Cause of Death

[381] A post mortem examination was carried out on the body of Mr Towell on 4 October 2016 at the Queen Elizabeth University Hospital by Dr Christopher Johnson, locum forensic pathologist and Dr Marjorie Turner, forensic pathologist both of the University of Glasgow. The terms of the post mortem report dated 2 December 2016 pertaining to said examination were agreed by way of the joint minute of agreement. External examination revealed superficial injuries to the head which were in keeping with injuries that would be expected in a boxing match. Mr Towell's brain was swollen and there was a small left sided subdural haematoma.

[382] The pathologists noted (with reference to Baird LC, Newman CB, Volk H, Svinth JR, Conklin J and Levy ML "*Mortality resulting from head injury in professional boxing*", *Neurosurgery* 2010 Nov; 67(5):1444-50; discussion 1450) that the majority of boxing related

fatalities result from traumatic brain injury most commonly acute subdural haematoma (i.e. bleeding between the coverings of the brain and brain surface) and diffuse axonal injury (i.e. damage to the nerve fibres in the brain). In terms of other findings Mr Towell had narrowing of two coronary arteries caused by atherosclerosis. However this did not cause or contribute to his death. In addition there were pulmonary thromboemboli which were caused by a deep vein thrombosis of the left calf. This arose secondary to a period of immobility as would occur secondary to a head injury. Neuropathology examination and toxicology examination was instructed, the results of which were taken into consideration.

[383] The cause of Mr Towell's death was found to have been head injury. I have determined accordingly in terms of section 26(2)(c) of the Act (see paragraph D3 above). For the reasons set out below in Part 25, I have declined to follow the Crown's suggestion that the head injury was due to Second Impact Syndrome.

[384] Toxicology examination was undertaken by Dr Hazel Torrance and Dr Fiona Wylie, both forensic toxicologists with the University of Glasgow, on a hospital sample of Mr Towell's blood taken at 22:40 on 29 September 2016. This sample was tested for alcohol, basic drugs, salicylic acid (an important active metabolite of aspirin), benzodiazepines and drugs of abuse. All analyses gave negative results.

25. Second Impact Syndrome

[385] I turn to consider the issue of Second Impact Syndrome and certain necessarily related issues. In relation to these matters, the inquiry heard evidence from Dr Gavin Main, a consultant radiologist with an interest in neuroradiology based at Ninewells at the time of Mr Towell's death (Dr Main retired in 2018); Professor Colin Smith, a consultant

neuropathologist based at the University of Edinburgh; Stephen Cooke, a consultant neurosurgeon based at the Royal Victoria Hospital in Belfast; and Dr Curtis Offiah, a consultant clinical and forensic neuroradiologist based at the Royal London Hospital in London.

[386] A convenient starting point is the evidence of Professor Smith, who was asked by Dr Johnson, one of the forensic pathologists who carried out the post mortem examination of Mr Towell's body (see paragraph [381] above), to examine Mr Towell's brain. As part of that, Professor Smith carried out a microscopical examination of sections from the dura of Mr Towell's brain, which showed a small chronic subdural haematoma which was several cells thick. Professor Smith suggested in his report that consideration had to be given to the possibility of Second Impact Syndrome. In Professor Smith's opinion, the presence of a small chronic subdural haematoma may have been the cause of Mr Towell's headaches, however, Professor Smith was uncertain as to whether this haematoma was sufficiently large to have been identified by imaging, it being only a few cells thick.

[387] In his report Professor Smith said this of Second Impact Syndrome:

"There are a number of reported cases in the literature describing malignant brain swelling following impact in the sport setting including in boxing. These cases typically present with a thin subdural haemorrhage and unilateral vascular engorgement causing brain swelling. In some of these cases a small chronic subdural haematoma is also identified. This pattern of unilateral subdural haemorrhage with subsequent unilateral brain swelling is better recognised in paediatric practice and goes under the term "big black brain". However the actual pathophysiology of this is poorly defined and it has been suggested that the brain swelling is due to dysautoregulation of the cerebral vasculature of the damaged hemisphere."

[388] As correctly identified in the submissions made at the conclusion of the inquiry on behalf of Dr Skelly, it is, to say the least, extremely difficult to determine when the chronic

subdural haematoma identified by Professor Smith first appeared. Professor Smith's evidence was that the haematoma was at least seven to ten days old and was possibly up to a few months old. Mr Cooke's view was that it was very difficult to say when the haematoma had formed. He thought it most likely that it had done so around three weeks before Mr Towell's attendance at the accident and emergency at Ninewells on 11 September 2016, however, that timescale appears to have been influenced by the history given by Mr Towell to Ms Whyte (see paragraph [219] above) and it should be borne in mind that a different timescale (one and a half weeks) was given by Mr Towell to Dr Skelly on 11 September 2016 (see paragraph [230] above). Dr Offiah's view was that the haematoma was certainly older than a week but less than two to three months. The evidence of each of the experts was that the haematoma would ordinarily have resolved itself, without a subsequent episode such as that which occurred on 29 September 2016.

[389] In evidence Dr Offiah told the inquiry that people with subdural haemorrhages can present with headaches. The difficulty that follows from that is that it is impossible to conclude from the evidence when Mr Towell began to suffer from chronic headaches, as opposed to "ordinary" headaches which the inquiry heard many boxers get as a consequence of the very nature of the sport (see the evidence of Mr Burt at paragraph [195] above). Simply because someone has a headache, that does not mean they have a chronic subdural haematoma.

[390] On a balance of probabilities, the evidence before the inquiry does not permit me to determine when the chronic subdural haematoma first occurred. The evidence from Professor Smith and Dr Offiah suggests that it could have happened either before or after Mr Towell consulted with Dr Skelly on 11 September 2016, and requested a CT scan.

[391] If one proceeds on the assumption that the chronic subdural haematoma was present on 11 September 2016, the question then arises as to whether it would have been visible on a CT scan, had one been carried out. The starting point in addressing this question is the size of the cells in question. Professor Smith spoke to this. He described the cells as quite flat, being in the region of 50 to 60 microns in depth and 150 to 200 microns in length. It is worthy of note that 200 microns is 0.2 mm. Put another way, utilising the greatest length of cell indicated by Professor Smith (200 microns) and assuming five such cells laid end to end would give a length of 1 mm.

[392] Viewed in that context, the evidence of Professor Smith and Mr Cooke that this particular haematoma may not have shown on a CT scan is readily understandable. Of the three experts, Dr Offiah was best qualified to interpret the scans. He had been able to identify the haematoma, however, accepted that identification would, in part, be down to the skill of the radiologist. Dr Main was a consultant radiologist at Ninewells in 2016. His view was that even if a CT head scan had been performed on Mr Towell at Ninewells on 11 September 2016 and the chronic subdural haematoma had been present at that time, the staff at Ninewells would not have been able to identify it on a CT scan. It is also noteworthy that the report of the CT head scan carried out at Glasgow Royal Infirmary on the evening of 29 September 2016 did not identify the chronic subdural haematoma.

[393] Having regard to the foregoing, on a balance of probabilities, had a CT head scan of Mr Towell been performed on 11 September 2016 at Ninewells; and assuming the chronic subdural haematoma was present at that time, I conclude that it would not have been identified by the staff at Ninewells due to its size.

[394] The experts were agreed that the cause of death was an acute traumatic brain injury.

Professor Smith's view was that the chronic subdural haematoma was unconnected to Mr Towell's death. Mr Cooke's view was that it may have contributed to the death.

Dr Offiah supported a finding of Second Impact Syndrome, in terms of which the chronic subdural haematoma would be connected to Mr Towell's death. Professor Smith's conclusion in evidence was that a single blow could have caused Mr Towell's death.

Dr Offiah disagreed with that conclusion. Mr Cooke's difficulty with Second Impact Syndrome was that it was not universally accepted as a condition. Professor Smith had referred to it as the "so called" Second Impact Syndrome in his report. Mr Cooke did not believe the circumstances fulfilled the criteria for Second Impact Syndrome. Dr Offiah disagreed.

[395] Against a backdrop of divergent views from three most impressive experts, I have declined to follow the Crown's suggestion that the head injury was due to Second Impact Syndrome. It is a rare condition. Whether or not it was a contributory factor in Mr Towell's death is, in my view, of very limited significance in light of the consensus among the experts that the cause of death was head injury.

26. Accident or Not?

[396] The Crown gave notice of the inquiry under section 2(3) of the Act, namely, on the basis that Mr Towell's death was the result of an accident which occurred in Scotland and while Mr Towell was acting in the course of his employment or occupation. Whilst the death occurred in Scotland and the events which gave rise to the death arose in the course of Mr Towell's occupation as a professional boxer, the question arises as to whether or not Mr Towell's death was the result of an accident.

[397] Whilst some may view it otherwise, this is not an academic issue. It is a matter that requires to be addressed in a determination – see section 26(1) of the Act. If the court concludes that the death was the result of an accident, the determination must set out (i) when and where that accident occurred (see section 26(2)(b) of the Act); and (ii) the cause or causes of that accident (see section 26(2)(d) of the Act). In submissions, there was a divergence of views between parties as to whether Mr Towell’s death was the result of an accident, albeit no party addressed this particular issue in any detail.

[398] The term “accident” is not defined by the Act. The most relevant definition of the word found within the Shorter Oxford English Dictionary is “an event that is without apparent cause or unexpected; an unfortunate event esp. one causing injury or damage.”

[399] It is, perhaps, worth considering the law of assault in the context of sporting events. Helpful guidance is to be found in the opinion of the High Court in *Smart v HM Advocate* 1975 JC 30. An assault is an attack on the person of another; the crime of assault requires evil intention. Delivering the opinion of the court at page 33, the Lord Justice Clerk (Wheatley) said this:

“So too if persons engage in sporting activities governed by rules, then, although some form of violence may be involved within the rules, there is no assault because the intention is to engage in the sporting activity and not evilly to do harm to the opponent.”

[400] As stated by the Criminal Division of the Court of Appeal in *R v Barnes* [2005] 2 All ER 113 at paragraph [15]:

“... the fact that the play is within the rules and practice of the game and does not go beyond them, will be a firm indication that what has happened is not criminal”.

[401] From a consideration of the recording of the fight between Mr Towell and Mr Evans, and from the evidence of Mr Loughlin and Mr Vann, I am satisfied that Mr Evans' actings fell entirely within the rules. There was nothing untoward about his actings. However, what occurred in the Radisson on 29 September 2016 cannot be described as accidental. In a situation in which persons intentionally strike each other, an injury such as that sustained by Mr Towell is neither without apparent cause nor unexpected.

[402] In these circumstances, I have determined that, in terms of section 26(2)(b) and (d) of the Act, there was no accident resulting in Mr Towell's death (see paragraph D2 above). The event which led to Mr Towell's death was a blow or blows delivered by Mr Evans in the fifth round of the contest between him and Mr Towell in the Megolithic Suite at the Radisson Blu Hotel, 301 Argyle Street, Glasgow on 29 September 2016.

27. Reasonable Precautions

[403] I am required, by virtue of section 26(2)(e) of the Act to include within my determination any precautions which (i) could reasonably have been taken, and (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided. I have identified six such precautions (see paragraph D4 above).

[404] All but one of the precautions involve the doing by Mr Towell of something that he did not do. In each case, I am satisfied that the precaution in question could reasonably have been taken. That Mr Towell chose not to is of no relevance to this part of my determination. In relation to each precaution, it is necessary to assess whether, if it had been taken, Mr Towell's death might realistically have been avoided. For the reasons set out in Part 26 above, no question of "accident" arises.

[405] The first precaution is for Mr Towell to have disclosed to Dr Brian Tansey any of the episodes subsequently disclosed by Mr Towell and his mother to Dr Anne Coker on 17 September 2013 which had occurred by the time of Dr Tansey's examination of Mr Towell on 14 November 2012 in connection with Mr Towell's application for a professional boxer's licence. The circumstances relevant to this precaution are to be found in Part 6 above. On the evidence before the inquiry, if this precaution had been taken, Mr Towell's death might realistically have been avoided.

[406] The second precaution is for Mr Towell to have followed the advice not to box which was given to him by three separate doctors in September and October 2013. The circumstances relevant to this precaution are to be found in Part 9 above. On the evidence before the inquiry, if this precaution had been taken, Mr Towell's death might realistically have been avoided.

[407] The third precaution is for Mr Towell to have disclosed to the doctor who carried out the pre-contest medical on 11 October 2013 that he had received a diagnosis of temporal lobe epilepsy. The circumstances relevant to this precaution are also to be found in Part 9 above. On the evidence before the inquiry, if this precaution had been taken, Mr Towell's death might realistically have been avoided.

[408] The fourth precaution is for the BBBC to have utilised the consent given by Mr Towell in 2014 and 2015 to contact Mr Towell's doctor to obtain medical information pertaining to his application to box. The circumstances relevant to this precaution are to be found in Parts 12 and 13 above. On the evidence before the inquiry, if this precaution had been taken, Mr Towell's death might realistically have been avoided.

[409] The fifth precaution is for Mr Towell to have followed the head injury advice given to him by Dr Skelly on 11 September 2016 and returned to Ninewells after he had vomited in the early hours of 12 September 2016. The circumstances relevant to this precaution are to be found in Parts 18 and 19 above. On the evidence before the inquiry, if this precaution had been taken, Mr Towell's death might realistically have been avoided.

[410] The sixth precaution is for Mr Towell to have disclosed to Dr Henderson on or about 13 September 2016 the circumstances of his hospital attendance on 11 September 2016. The circumstances relevant to this precaution are to be found in Part 20 above. On the evidence before the inquiry, if this precaution had been taken, Mr Towell's death might realistically have been avoided.

28. Defects in any System of Working

[411] The BBBC's rules and processes in relation to the medical examination of a boxer constitute a system of working for the purposes of section 26(2)(f) of the Act. It is a system that places too much reliance upon the candour of the boxer, a factor which was candidly accepted in evidence by the general secretary of the BBBC, Mr Smith. In my opinion, these rules and processes are not sufficient and appropriate to ensure that boxers are well enough to fight. I am unable to identify any provision within the BBBC rules which requires a boxer to disclose to the BBBC matters relevant to their fitness to box, such as those which affected Mr Towell, outwith the initial and annual medicals; the pre-contest medicals; and the requirements of rule 5.7. That is a defect in the BBBC's system of working.

[412] The current system is vulnerable to the withholding and concealing of relevant information by boxers. It is a system which is clearly defective. The BBBC appear to accept

the boxer's account of his previous medical history, without reference to his GP. In evidence, Mr Smith conceded that there may well be a reluctance on the part of certain boxers to be honest with themselves and others regarding their health. He accepted that some would do what they could to fight, recognising that if they were honest about their health it might jeopardise their ability to do so. Mr Smith conceded that there was a risk that boxers may not tell the truth. In the face of the tragic circumstances of Mr Towell's case, such a concession was inevitable. Mr Smith's evidence was that the BBBC had worked hard to make boxing safe. There was a duty on boxers, managers and trainers to be "honest and up front". The defects in this system contributed to Mr Towell's death to the extent that, had a more robust system been in place in 2016, it is likely that Mr Towell's licence would, at the very least, have been suspended and he would never have fought Mr Evans.

[413] Save for the updated "Boxer's Pre-Contest Medical" form, the BBBC have chosen to await the outcome of this inquiry before reviewing their systems. That is regrettable.

Mr Towell died more than two years ago. The inquiry was told that there are 1,200 professional boxers in the United Kingdom. It should not have been left to this inquiry to make recommendations for improvements to the BBBC's system of obtaining complete and accurate medical information relative to the boxers they licence. The evidence of Mr Smith strongly suggests that the BBBC were well aware of the risks that existed in this regard. In my view the BBBC have singularly failed to take steps to mitigate those risks. There are obvious changes that could, and should, have been made to this system before now. I have made certain recommendations in relation to this system. These are set out in Part 33 below.

29. Other Relevant Facts

[414] I am required, by virtue of section 26(2)(g) of the Act, to include within my determination any other facts which are relevant to the circumstances of Mr Towell's death. I have identified four such facts (see paragraph D5 above).

[415] The first relevant fact is that Mr Towell should have been re-referred to neurology by the Coldside Medical Practice following his attendance at Ninewells Hospital, Dundee on 21 May 2016. No such referral was made. Had such a referral been made, it is probable that Mr Towell would not have attended. In any event, had a referral had been made in May 2016, it is unlikely that Mr Towell would have been offered a neurology appointment prior to his death. The circumstances relevant to this relevant fact are to be found in Part 15 above.

[416] The second relevant fact is that no additional or different action should have been taken by the staff of NHS Tayside in relation to Mr Towell when he attended Ninewells Hospital, Dundee on 11 September 2016. Mr Towell was appropriately assessed and treated that day by the staff at Ninewells Hospital. The circumstances relevant to this relevant fact are to be found in Part 18 above.

[417] The third relevant fact is that assuming the chronic subdural haematoma suffered by Mr Towell and discovered in the post-mortem examination was present on 11 September 2016, due to its size, it would not have been identified by the staff at Ninewells if they had carried out a CT scan of Mr Towell's head on that date. The circumstances relevant to this relevant fact are to be found in Part 25 above.

[418] The fourth relevant fact is that no additional or different action should have been taken by Dr Oswald of the Coldside Medical Practice, Dundee at or subsequent to his

consultation with Mr Towell on 12 September 2016. Mr Towell was appropriately assessed and treated that day by Dr Oswald. The circumstances relevant to this relevant fact are to be found in Part 19 above.

30. DVLA Reporting

[419] In evidence, speaking of Mr Towell's work as an apprentice scaffolder for Interserve, Mrs Towell confirmed that Mr Towell travelled daily between Dundee and Aberdeen. Mr Towell was one of four scaffolders who travelled between Dundee and Aberdeen each day. Mrs Towell's evidence was that either Mr Towell would drive the works van, or one of the other scaffolders would and Mr Towell would be picked up. Additionally, the inquiry heard evidence from James Wilson that he and Mr Towell shared the driving on the occasions they travelled together from Dundee to Stirling to train at the 1314 Boxing Club.

[420] Of particular concern is the fact that the episode of 9 September 2013 had occurred in Mr Towell's works van on the way back from Aberdeen (see paragraph [38] above). Most fortunately on that occasion someone other than Mr Towell was driving.

[421] Michael Towell never made a medical declaration to DVLA. The evidence before the inquiry suggests that he continued to drive after he had been repeatedly told not to and to advise DVLA accordingly. The fact that he lied to Dr Black, stating that he did not possess and had never possessed a driving licence (see paragraph [133] above), is strongly suggestive of Mr Towell continuing to drive.

[422] Driving played no part in Mr Towell's death. Nevertheless, the evidence before the inquiry brings into sharp focus the dangers associated with driving when subject to a medical condition which could cause the driver to lose control of the vehicle. Had Mr Towell

been driving the works van on 9 September 2013, it appears highly probable that that is exactly what would have happened. It serves no useful purpose to speculate as to the consequences of such an event.

[423] Regrettably, this issue is one which this court has had to address previously in tragic circumstances. I refer to the determination of Sheriff Normand of 14 November 2014 in the Fatal Accident Inquiry into the deaths of Mhairi Convy and Laura Stewart¹; and to the determination of Sheriff Beckett (as he then was) of 7 December 2015 in the Fatal Accident Inquiry into the deaths of John Sweeney and others².

[424] By my reckoning, Mr Towell was told not to drive and to report his condition to DVLA on no less than five separate occasions, culminating in Dr Oswald's subsequent letter to Mr Towell dated 30 April 2014. Mr Towell chose not to report his condition to DVLA. Notwithstanding Dr Oswald's warning to Mr Towell that, in the absence of confirmation that Mr Towell's condition had been reported to DVLA he would be obliged to contact DVLA directly and inform them of events in order that they could establish whether Mr Towell was then fit to drive (see paragraph [97] above), it appears that Dr Oswald neither received confirmation nor informed DVLA directly. That is regrettable.

31. Confidentiality

[425] The issue of confidentiality was touched upon by a number of the medical witnesses who gave evidence to the inquiry. Put shortly, with the exception of Dr Henderson, those

¹ See <http://www.scotcourts.gov.uk/search-judgments/judgment?id=95eab5a6-8980-69d2-b500-ff0000d74aa7>

² See <http://www.scotcourts.gov.uk/search-judgments/judgment?id=e916fba6-8980-69d2-b500-ff0000d74aa7>

who spoke to this issue were of the view that, absent Mr Towell's consent, medical professionals could not have made a disclosure to the BBBC.

[426] Dr Henderson's position in this regard is somewhat different. The question of confidentiality was explored with him in evidence. He spoke to the General Medical Council guidance which was in force in September 2016. Dr Henderson's view was that in appropriate circumstances, confidentiality could be breached and a disclosure made in the public interest. Dr Henderson would seek consent to disclose initially, however, if the boxer refused he would still report relevant circumstances to the BBBC. He regarded there being a wider duty not only to the boxer, but to their opponent, spectators and the wider public with an interest in the sport.

[427] The relevant General Medical Council guidance on confidentiality in force at the time of Mr Towell's death was agreed by way of the joint minute of agreement. It is found in the document entitled "*Confidentiality*", which came into effect on 12 October 2009 and was withdrawn on 25 April 2017. That document was replaced by "*Confidentiality: good practice in handling patient information*", which came into effect on 25 April 2017.

[428] Dr Henderson's view was that, absent consent, disclosure could be made, in the public interest, in the case of boxers with medical conditions. I express no concluded view on the correctness of this view, however, I confess to having certain reservations about it. My impression is that the view advanced by Dr Wallace, namely, that it would be difficult to justify such a disclosure as being in the public interest, is preferable, however, as the issue of confidentiality was of limited significance in the inquiry, and having regard to the terms of the recommendations I make in this determination, I say no more upon it.

32. Other Matters

[429] In the joint minute of agreement, parties agreed certain evidence that would have been given by James Millar, Company director of the Scottish Karate Governing Body. I confess that the relevance of this evidence is lost on me, however, as it was a matter of agreement, I have reproduced the relevant paragraph of the joint minute of agreement at Appendix 3 below.

33. Recommendations

[430] In a determination following a fatal accident inquiry, a sheriff is entitled to set out recommendations as to (a) the taking of reasonable precautions; (b) the making of improvements to any system of working; (c) the introduction of a system of working; and (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances. I commence this Part with a consideration of the recommendations which were proposed by the participants in the inquiry.

[431] The Crown submitted that a way to protect against the BBBC being misled by a boxer as to their medical history would be to require a doctor with access to the boxer's medical records to conduct the annual BBBC medical examination. A second recommendation proposed by the Crown is that the BBBC cross-check the medical history provided by the boxer to the BBBC against the medical history known to the boxer's GP in the period shortly before a fight. The Crown say that in Mr Towell's case, this would have ensured that the BBBC was aware of Mr Towell's history of headaches, a contraindication for boxing, which, in turn, would have resulted in Mr Towell not being permitted to fight Mr Evans on 29 September 2016. Thirdly, the Crown submit that an appropriate recommendation would be for the BBBC to seek up to date information from a boxer's GP prior to a bout to ensure that

the GP does not hold information that has not been declared by the boxer to the BBBC, which could be a contraindication to boxing. In my assessment, there is no material difference between the second and third recommendations made by the Crown.

[432] Mrs Towell invited the court to give consideration to recommending that the BBBC take steps to improve communication between the doctors engaged on its behalf and boxers' GPs, including a consideration of more pro-active steps on the part of "sports association doctors" (which I take to mean "boxing doctors") to communicate with a boxer's GP to assess the boxer's ongoing fitness to participate in the sport. Furthermore, Mrs Towell invited the court to give consideration to recommending that the BBBC increase the frequency of mandatory brain scanning of boxers as a condition of their continuing licence from annual to more regularly. The remaining participants in the inquiry did not propose any recommendations.

[433] I consider, firstly, the recommendations proposed by Mrs Towell. The issue of communication between boxing doctors and boxers' GPs gives rise to a significant issue in relation to consent. To proceed in the manner proposed by Mrs Towell would require the consent of the boxer. Even if there is enhanced communication between the boxing doctor and the boxer's GP, the issue remains as to how the information is then passed to the BBBC. Again, that raises an issue of consent. I do not propose to make a recommendation in this regard. It is, however, a matter that the BBBC may wish to consider, in conjunction with the recommendations I have made.

[434] In relation to Mrs Towell's suggestion that there should be an increased frequency of brain scanning for boxers, such a recommendation was not supported by Dr Greenhalgh.

His view was that if the annual scan was “clear”, additional scanning may amount to an unnecessary test. The observations made by Mr Crawford about the risks associated with scanning (see paragraph [275] above) are of relevance to this proposal. The question also arises as to how frequently a scan should be required, if it is more than annually. In these circumstances, I do not propose to make a recommendation in this regard.

[435] Turning to consider the recommendations proposed by the Crown, whilst initially attractive, a recommendation that a doctor with access to the boxer’s medical records to conduct the annual medical examination may, on the evidence before the inquiry, be difficult to give effect to. In evidence, Dr Greenhalgh agreed that the boxer’s GP carrying out the annual medical examination may be a superior way of proceeding. There is, however, the complication raised in evidence that a number of GPs may not be prepared to perform boxing medicals (see paragraph [160] above). Notwithstanding this issue, which may or may not be one of significance, it is in my view essential that a means by which the current potential for relevant medical information to be withheld from the BBBC by the boxer is overcome. A means by which this might be achieved is set out in recommendations R3 and R5 (see paragraphs [444] and [448] below).

[436] The Crown’s proposed recommendation that the BBBC seek up to date information from a boxer’s GP prior to a fight, with a view to ensuring that the GP does not hold information that has not been declared by the boxer to the BBBC and which could be a contraindication to boxing was supported, in evidence, by Dr Greenhalgh. Dr Greenhalgh advised the inquiry that he had made a suggestion to the BBBC’s chief medical officer, Dr Roger Evans that, as many injuries occur in longer fights, the BBBC should obtain a letter from a boxer’s GP approximately two weeks prior to the fight, confirming his fitness to box.

He did not regard that as being likely to give rise to any major practical problem; he viewed it as an exercise of designing an appropriate form.

[437] It appears to me that there may be a number of practical issues in relation to obtaining a letter from a boxer's GP within the time window proposed by Dr Greenhalgh. Firstly, there is the possibility of a GP simply not being able or willing to respond within that period (if at all) and the resultant question of what happens in the absence of a letter from the GP. Secondly, there is the possibility that the boxer has not, in fact, seen his GP in some time. In those circumstances, the letter would add little, if anything. Thirdly, and I recognise at the outset that this potential issue arises in relation to the recommendations I have made, there is the possibility that if a boxer is carrying an injury and knows an enquiry will be made of his GP, he will simply not disclose the injury. Fourthly, there is the possibility of the boxer sustaining an injury between the date of the letter written by the GP and the fight in question. For these reasons, I do not propose to make the suggested recommendation.

[438] The current system operated by the BBBC is susceptible to manipulation by boxers with medical conditions that will not be picked up by the tests that form part of the annual medical examination. Merely adding questions to the pre-contest medical form (see paragraph [21] above) will have no effect, whatsoever, in the case of a boxer who has such a medical condition of concern and yet is determined to fight at all costs.

[439] The evidence before the inquiry into Mr Towell's death has caused me to conclude that certain recommendations should be made, firstly to the BBBC, a participant in the inquiry, and, secondly, to the British Medical Association (hereinafter referred to as "the

BMA”), who appear to me to have an interest in the prevention of deaths in similar circumstances. I make seven recommendations. Six relate to the BBBC and the seventh, which is intended to assist compliance with two of the recommendations that relate to the BBBC, is related to the BMA.

[440] The first recommendation is that the BBBC should, as soon as reasonably practicable, obtain from each boxer presently licensed by them details of their current GP and of any other medical professional from whom they have received treatment in the past twelve months.

[441] The current version of the “Boxer’s Medical Examination Form” (see paragraph [16] above), somewhat surprisingly, does not require the boxer to provide details of either their current GP or of any other medical professional from whom they have received treatment in the past twelve months (i.e. from the approximate date of the preceding annual medical). With that in mind, the consent contained within the form, that which permits the BBBC to contact the boxer’s doctor, is of limited value unless the BBBC know who to direct enquiries to. Recommendation R1 addresses this.

[442] The second recommendation is that the BBBC should give consideration to suspending the licence of any boxer who does not provide the details required in terms of recommendation R1 within 21 days of being requested to do so.

[443] The purpose of this recommendation, recommendation R2, is to address the circumstances of the boxer, should they exist, who has withheld relevant medical history from the BBBC and the doctors who have examined him for the purpose of the annual medical examination. It is not unrealistic to anticipate that such a boxer may delay or refuse

to provide details of their current GP or of any other medical professional from whom they have received treatment in the past twelve months. The risk associated with such unwillingness would, in my view, be mitigated by suspending the licence of any boxer who does not provide the necessary details within a relatively short timescale. I have suggested a period of 21 days. The recommendation is to the effect that the BBBC should *give consideration to* suspending the licence of a boxer to account for genuine circumstances in which the required information is not capable of being produced within the relevant timescale or is provided shortly after the expiry of the time limit that is imposed.

[444] The third recommendation is that the BBBC should, as soon as reasonably practicable, send to each boxer's GP and to any other relevant medical professional a copy of the boxer's latest medical examination form and obtain from them (a) confirmation that the information therein contained is, to the best of their knowledge and belief, complete and accurate; and (b) either (i) details of any relevant medical history of the boxer which may be relevant to his fitness to box; or (ii) confirmation that there is nothing within the boxer's medical history that is relevant to his fitness to box.

[445] This recommendation, recommendation R3, is intended to give effect to a variant of the second recommendation proposed by the Crown (it is not limited to "the period shortly before a fight"), to the extent that it is designed to facilitate a cross-check of the medical history provided by the boxer to the BBBC against the medical history known to the boxer's GP. The evidence before this inquiry has demonstrated that medical conditions that were known to Mr Towell's GP practice and to other medical professionals who treated him were concealed from the BBBC. It may be that Mr Towell's case is an isolated one, however, it may not. Indeed, the evidence of Mr Smith (see paragraph [412] above) tends to suggest that

it may not be. It would, in my opinion, be unconscionable not to take urgent steps to identify such other examples of this as may exist among the 1,200 or so professional boxers in the United Kingdom. To facilitate this, having first obtained details of each boxer's current GP and of any other medical professional from whom they have received treatment in the past 12 months in terms of recommendation R1, as soon as reasonably practicable thereafter, the BBBC should utilise the consent they already hold in relation to each licensed boxer (by way of the latest Boxer's Medical Examination Form) and obtain from each boxer's GP and any other relevant medical professional the information set out in recommendation R3.

[446] The fourth recommendation is that the BBBC should, as soon as reasonably practicable, revise their medical examination form to require the provision of the details of the boxer's current GP and of any other medical professional from whom they have received treatment in the previous 12 months.

[447] I have already referred to this somewhat surprising omission (see paragraph [441] above). The purpose of this recommendation R4 is to ensure that the specified information is provided to the BBBC on an annual basis. The BBBC may also consider requiring boxers to update them if they change GP or commence treatment from any other medical professional between annual medicals. Beyond the recommendation I have made, however, it is appropriate that the design of the medical examination form is left to the BBBC.

[448] The fifth recommendation is that in the case of a boxer applying for a new licence or for the renewal of an existing licence, prior to granting or renewing a licence the BBBC should send to the boxer's GP and to any other relevant medical professional a copy of the

boxer's latest medical examination form and obtain from them (a) confirmation that the information therein contained is, to the best of their knowledge and belief, complete and accurate; and (b) either (i) details of any relevant medical history of the boxer which may be relevant to his fitness to box; or (ii) confirmation that there is nothing within the boxer's medical history that is relevant to his fitness to box.

[449] This recommendation, recommendation R5, mirrors recommendation R3 in relation to the granting or renewing of boxers' licences by the BBBC in the future, after the immediate exercise I recommend by way of recommendation R3 is carried out. It is intended to ensure that circumstances such as those which pertained in this inquiry are avoided, if at all possible. It is also informed by the suggestion made by Dr Wallace which I refer to at paragraph [307] above.

[450] The sixth recommendation is that the British Medical Association should actively encourage all of their members to respond promptly to any request they may receive from the BBBC to provide the information set out in recommendations R3 and R5.

[451] This recommendation, recommendation R6, is designed to give practical effect to recommendations R3 and R5. Those recommendations relating to the BBBC are, in effect, recommendations that the BBBC should make certain requests for information. Only if that information is provided to the BBBC will they be in a position to act upon it. The BMA's opposition to boxing was referred to in evidence. The BMA were not represented in the inquiry, therefore, they are not compelled to respond to this recommendation. I would, however, hope that they were prepared to embrace it and take steps to actively encourage all of their members to respond promptly to requests of the type envisaged in terms of

recommendations R3 and R5, assuming always that those recommendations are accepted by the BBBC. Ultimately, I accept entirely that it will be a matter for individual GPs as to whether they do respond. I anticipate that there will be a cost associated with them doing so. My firm view is that that cost should be borne by the boxer.

[452] The seventh recommendation is that the BBBC should revise their rule 5.7 (a) to remove the reference to the illness or injury being sustained during training for any specific contest; and (b) to require all boxers; trainers; managers; and promoters to immediately inform the BBBC of the illness or injury in question.

[453] This recommendation, recommendation R7, relates to the specific terms of rule 5.7, which I commented upon above in Part 10. In my view, any illness or injury should be reported to the BBBC, not the promoter. I accept that this recommendation gives rise to the possibility of a considerable amount of information regarding illnesses and injuries being passed to the BBBC, however, that does not detract from the fact that it is only the BBBC who can independently determine what steps should be taken in the event of illness or injury. In the modern age, there is no reason why information regarding illnesses and injuries cannot be communicated electronically. I have little doubt that a suitable form for reporting could be easily designed.

[454] In light of Mr Graham's evidence which, to a point, was supported by Mr Watt from his own experience (albeit some time ago) there may well be an issue with sauna use by boxers. In this case, two experts confirmed that dehydration played no part in Mr Towell's death. There was limited evidence on this issue, therefore I am not minded to make a recommendation relative to it. If there is an issue in practice, it could easily be addressed by

the weigh-in steward being in the presence of the boxer for the one hour period permitted by the BBBC's rules for the boxer to make the weight. There is, of course, potentially an issue if both boxers failed to meet the weight at the first opportunity, however, that is a situation that could be provided for. It would be open to the BBBC to adjust their rules, as appropriate, to allow the weigh-in steward to prevent certain methods of weight loss.

34. Conclusion

[455] In the words of his mother, boxing was Mr Towell's life. It was what he lived for. Regrettably, it appears that Mr Towell's love of boxing caused him to ignore the advice of doctors and not to accept the medical condition he had been diagnosed as suffering from. It is hard not to conclude that the very drive and commitment to boxing which Mr Towell demonstrated in his ascent to a final eliminator contest for the British welterweight championship in only his thirteenth professional fight is what led to his untimely death.

[456] The fight against Mr Evans should never have taken place. Had Mr Towell been open and honest with the doctors who carried out his annual BBBC medical examinations, it is highly likely that he would not have been licensed to box from at least 2014 onwards. Indeed, it is possible, although not certain, that he may never have been licensed to box professionally.

[457] The inquiry did not hear evidence from Dale Evans, Mr Towell's opponent on that fateful evening in Glasgow. It was, of course, Mr Evans who delivered the fatal blow or blows, in the fifth round of the fight. Although he did not give evidence, I imagine that the events of 29 September 2013 will haunt Mr Evans for the rest of his life. Whilst I am sure that it will be of little comfort to him, it is important to record that Mr Evans is blameless. He

participated in a sporting contest and did so in accordance with the rules of boxing. As I have said, the fight should never have taken place. It did so because Mr Towell deliberately hid his medical condition from the BBBC; and because the BBBC's systems were reliant upon boxers undergoing medical examinations being honest.

[458] The purpose of this inquiry was to establish the circumstances of Mr Towell's death; and to consider what steps might be taken to prevent other deaths in similar circumstances. It was not about the appropriateness or otherwise of the sport of boxing. I sincerely hope that the recommendations I have made will be embraced by those to whom they are directed.

[459] I conclude by recording the court's sincere condolences to the family and friends of Mr Towell.

APPENDIX 1*Witnesses*

- 1 Derry Treanor
- 2 Tracey Towell
- 3 Chloe Ross
- 4 Robert Smith
- 5 James Wilson
- 6 Stewart Burt
- 7 Stephen Graham
- 8 James Coyle
- 9 James Watt
- 10 Ian McLeod
- 11 Marion Docherty
- 12 Victor Loughlin
- 13 Dr Christopher Greenhalgh
- 14 Dr Ronald Sydney
- 15 Dr Ryan Connelly
- 16 Dr Angus Oswald
- 17 Dr Fiona Bullions
- 18 Dr Scott Henderson
- 19 Dr Anne Coker
- 20 Louise Whyte
- 21 Dr Ron Cook
- 22 Dr Elizabeth Skelly

- 23 Dr Gavin Main
- 24 Mickey Vann
- 25 Professor Colin Smith
- 26 Dr Martin McKechnie
- 27 Thomas Gilmour
- 28 Stephen Cooke
- 29 Rudy Crawford
- 30 Dr Curtis Offiah
- 31 Dr Norman Gurlay
- 32 Dr Norman Wallace
- 33 Dr Niall Cameron

APPENDIX 2*Judges' Scores*

	Kenneth Pringle		Howard Foster		David Parris	
	Michael Towell	Dale Evans	Michael Towell	Dale Evans	Michael Towell	Dale Evans
Round 1	8	10	8	10	8	10
Round 2	10	9	10	9	10	9
Round 3	10	9	10	9	10	9
Round 4	10	9	10	9	9	10
Total	38	37	38	37	37	38

APPENDIX 3

Karate

James Millar, Company director of the Scottish Karate Governing Body states that the Karate Governing Body does not require athletes to undertake fitness testing. Athletes wear shin, and hand mitts but no head guards as there should be no excessive blows to the head. Athletes are only allowed to touch the head. If there was excessive contact with the head the athlete would be disqualified. Karate is not a contact sport like boxing or rugby. The witness described it as a 'light contact sport'. There is no reason for fitness tests as the sparring matches only last 2-3 minutes. There are not rounds as such like in boxing, there is just one fight. One is not allowed to cause injuries in karate. Medical personnel called trauma sisters are in attendance at competitions. The common injuries that occur are staved toes, pulled groins but nothing serious. Normally the trauma sisters do not have to do anything at competitions. Athletes do not take part in any medicals. Their fitness is not tested. There is no contact with GPs about fitness. Athletes do not make any medical declarations; they do not have a medical before they fight and there is no annual medical carried out. The witness says this is not necessary for this sport.