

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT PERTH

DETERMINATION

of

SHERIFF FIONA TAIT

Under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

in respect of

the Fatal Accident Inquiry into the death of

STUART ROBERT SANDEMAN (born 05.12.74)

Perth, September 2015

The Sheriff, having considered the cause, determines:

1. In terms of section 6(1)(a), Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that Stuart Robert Sandeman, born 5 December 1974, was pronounced dead at 1600 hours on 6 May 2011 at 73b Struan Road, Perth.
2. In terms of section 6(1)(b) of the said 1976 Act that the cause of death was I a) cardiac dysrhythmia; b) cardiac enlargement and adverse effects of cocaine and physical restraint and II obesity.
3. In terms of section 6(1)(e) of the said 1976 Act that other facts which are relevant to the circumstances of Stuart Robert Sandeman's death are as follows:

Medical assistance should have been summoned as soon as it was realised that Mr. Sandeman had breached the package within his mouth, the contents of that package being suspected to be cocaine.

Note

The Evidence

Evidence in the inquiry was led on 16, 17, 18, 23, 24 and 25 March and on 14, 15, 20 and 21 April 2015. Oral submissions, supported by detailed written submissions, were heard on 29 June 2015.

Mr. Alasdair MacDonald, Procurator Fiscal Depute represented the Crown. Mr. James Reid represented the Chief Constable of Scotland, Mr. Peter Watson represented eight police officers, Mr. Robert Vaughan represented Police Constable Gillian Donnelly and Miss. Catherine Smith Advocate represented Mr. Sandeman's daughter (hereinafter referred to as 'the family'). The police officers represented by Mr. Watson were Police Constable Dale Evans, Police Constable Gareth Irons, Detective Constable Jamie Abel, Detective Constable Kevin Johnstone, Detective Constable Mark Charnley, Detective Constable Melanie Scott, Police Constable Wayne Brand and Detective Sergeant Robert Prudom.

The Crown led evidence from D.S. Robert Prudom, P.C. Gareth Irons, P.C. Gillian Donnelly, D.C. Kevin Johnstone, D.C. Jamie Abel, D.C. Mark Charnley, P.C. Dale Evans, Roderick Moncrieff, Mario Foy, Steven Welsh, retired Police Sergeant Roy Kemp, Allan Stewart, Gregor Roach, Police Sergeant Mark Maclure, Dr. James Grieve, Dr. David Sadler, Professor Michael Eddleston, Arlene Earaker and Police Constable John D'Ambrosio.

On behalf of the family, evidence was led from retired Police Sergeant Danny Smith.

D.S. Robert Prudom, P.C. Gareth Irons, P.C. Gillian Donnelly, D.C. Kevin Johnstone, D.C. Jamie Abel, D.C. Mark Charnley, P.C. Dale Evans were all serving police officers and were present at or within the home address of Stuart Sandeman on the date of his death. They all continue as serving police officers although the precise roles of some have varied since the date of Mr. Sandeman's death.

Roderick Moncrieff, Mario Foy and Steven Welsh were civilian witnesses, all of whom were present within Mr. Sandeman's home address on the date of his death.

Retired Police Sergeant Roy Kemp was on duty at T in the Park in July 2000 when Mr. Sandeman was detained as part of a drugs operation. Mr. Sandeman was noted to have placed a package in his mouth, believed to be drugs, and violently resisted police officers, including by kicking out. Retired P.S. Kemp described Mr. Sandeman as tall, well built and muscular.

Allan Stewart and Gregor Roach were paramedics who attended at the home of Mr. Sandeman on the date of his death.

Police Sergeant Mark Maclure, when a Detective Constable in Central Scotland Police's Drugs and Organised Crime Unit based at police headquarters in Stirling, prepared with two colleagues a Joint Report- Statement of Opinion which is Crown production number 14.

Dr. James Grieve and Dr. David Sadler are forensic pathologists. Dr. Grieve, now retired, was based at the date of Mr. Sandeman's death at the University of Aberdeen. Dr. Sadler remains based at the University of Dundee. Together with then trainee Dr. Helen Brownlow, they undertook the *post mortem* examination of Mr. Sandeman on 11 May 2011. The *post mortem* report dated 22 June 2011 is Crown production number 22.

Professor Michael Eddleston is Professor of Clinical Toxicology at the University of Edinburgh, consultant clinical toxicologist and pharmacologist with NHS Lothian and Director of the National Poisons Information Service, Edinburgh. He produced a report dated 9 November 2014 which is Crown production number 24. He was instructed by the Crown to provide a report on the following question:

"Given the level of cocaine which was in the stomach as a consequence of the quantity of cocaine which the deceased voluntarily ingested but was as yet unabsorbed at the time of his death- was his death in any event inevitable?

In other words, if the deceased had not been apprehended and restrained by the police would the quantity of cocaine, in his particular circumstances, inevitably proved (*sic*) fatal or might there have been any reasonable precaution eg immediate medical intervention etc which might have prevented his death?"

Professor Eddleston was provided with various documents but for the purpose of his report focussed upon the *post-mortem report*, Crown production number 22, the toxicology reports respectively from the Centre for Forensic and Legal Medicine, Dundee, Crown production number 25, and from Roar Forensics Ltd, Crown production number 26, and a letter from Dr. Sadler dated 29 August 2011 addressed to the Procurator Fiscal commenting on the Roar Forensics Ltd report, Crown Production number 27.

Arlene Earaker is a practice nurse at the Whitefriars surgery in Perth where Mr. Sandeman was a patient. She has been qualified for 25 years. She spoke to Mr. Sandeman's medical records held at the GP practice which are Crown production number 7. Ms. Earaker had met with Mr. Sandeman in the surgery earlier on 6 May 2011, the date of his death. She described Mr. Sandeman's legs as very oedematous and so weeping. Mr. Sandeman had seen one of her colleagues a few days earlier. Ms. Earaker had dressed Mr. Sandeman's legs and arranged a further appointment for review.

Retired Police Sergeant Danny Smith produced a report which is Family production number 3. He was instructed by Messrs. Culley McAlpine solicitors in February 2015 on behalf of the family to review material and to prepare a report relating to the sudden death of Mr. Sandeman. He was asked to state an opinion as to whether the force employed by police officers was reasonable, proportionate and in accordance with officer safety training, in all of the circumstances.

A Joint Minute of Agreement was entered into on behalf of the parties and lodged on the first day of the Inquiry. In terms thereof, the date and place of Mr. Sandeman's death were agreed, together with drug concentrations in his body discovered at autopsy, drugs and drug related items recovered from his flat and the previous convictions of Mr. Sandeman and the three civilians present within his flat. A second Joint Minute was entered into and lodged prior to conclusion of the Inquiry. In terms thereof the replacement of and construction of the door to Mr. Sandeman's flat were agreed.

No evidence was led on behalf of the Chief Constable or any of the police officers.

The inquiry was mandatory in terms of section 1(1)(a)(ii) of the 1976 Act in respect that Mr. Sandeman was in legal custody at the time of his death. In advance of the Inquiry a Statement of Issues was lodged on behalf of the family.

In terms of that Statement, I was invited to consider:

1. What procedures were in place for the officers executing the search warrant to follow with respect to the treatment of, and potential restraining of, suspects with known or obvious health problems.
2. What procedures were in place for the officers executing the search warrant to follow with respect to the treatment of, and potential restraining of, overweight and obese suspects.
3. What procedures were in place for the officers executing the search warrant to follow with respect to the actions of Mr. Sandeman in attempting to swallow a package of cocaine.
4. What other options would have been reasonably open to the officers in dealing with the actions of Mr. Sandeman in attempting to swallow a package of cocaine and whether these options may or would have prevented death.
5. What training the officers executing the search warrant had with respect to the treatment of, and potential restraining of, suspects with known or obvious health problems.
6. What training the officers executing the search warrant had with respect to the treatment of, and potential restraining of, overweight and obese subjects.
7. What training the officers executing the search warrant had with respect to the actions of Mr. Sandeman in attempting to swallow a package of cocaine.
8. What knowledge the police had about Mr. Sandeman's state of health prior to the execution of the search warrant.
9. Whether use of force, and the type of force, exercised in restraining Mr. Sandeman by police officers was reasonable in the circumstances.
10. Whether the force used by police officers in restraining Mr. Sandeman contributed to his death to any extent.

11. Any other issues that arise prior to or during the Inquiry that to the family appear pertinent for inquiry.

At the request of Miss. Smith on behalf of the family, the Crown identified the issues for the Inquiry as:

1. Whether, given the quantity of cocaine ingested by Mr. Sandeman on 6 May 2011, there were any reasonable precautions whereby his death thereafter might have been avoided?
2. Whether, if that quantity of cocaine was voluntarily ingested by Mr. Sandeman in his home prior to the entry of any police officer, there was any defect in a system of working by officers of Tayside Police which contributed to the death?

The Submissions

In submissions, all parties were agreed on the findings in terms of section 6(1)(a) which reflected paragraph 1 of the Joint Minute of Agreement. It was agreed that on 6 May 2011, Mr. Sandeman, then aged 36 years and residing at 73b, Struan Road, Perth, PH1 2NJ, died at 1600 hours at his home during the execution of a search warrant by officers of Tayside Police and at the time of his death he was detained by the officers under the powers conferred by section 23, Misuse of Drugs Act 1971.

In terms of section 6(1)(b), the proposed findings on behalf of the Chief Constable, of the eight named police officers, of P.C. Gillian Donnelly and of the family reflected the conclusion of the *post mortem* report, Crown production number 22, that the medical cause of death was recorded as I (a) adverse effects of cocaine and physical restraint and II obesity.

I was not invited by the Crown or on behalf of the Chief Constable, the eight named police officers or P.C. Gillian Donnelly to make any findings in terms of section 6(1)(c),(d) or (e). It was commonly submitted that section 6(1)(c) and (d) are not applicable in the present case and that in terms of section 6(1)(e) that there are no other facts relevant to the circumstances of the death.

Crown Submission

Section 6(1)(b): Cause of Death

In terms of any findings under section 6(1)(b), it was submitted that I am bound neither by the terms of the death certificate nor the conclusions set out in the *post mortem* report, Crown production number 22.

Drs. Grieve and Sadler and Professor Eddleston were agreed in their reports and in their evidence that the cause of death was a disturbance in the rhythm of the heart variously described as an arrhythmia or a dysrhythmia causing cardiac arrest. It then falls to me to determine the likely cause of that disturbance and it was submitted that I should do so having regard to the undisputed evidence in respect of Mr. Sandeman's obesity and cocaine intoxication.

Mr. Sandeman had a body mass index of 62. Dr. Grieve's evidence set this in context by explaining that a body mass index of 25 to 30, although classed as overweight, would not necessarily carry an increased risk of death. However a body mass index of twice that amount would certainly carry a risk of death because of the general associated health problems of diabetes, hypertension and difficulty in movement. In Mr. Sandeman's case the specific risk arose from cardiac enlargement. Cardiac enlargement could lead to death from cardiac arrhythmia with sudden death particularly likely during exercise, exertion or any other physiological stress.

In his evidence, Dr. Sadler described Mr. Sandeman as the largest man he had encountered in approximately 5000 autopsies and his heart as grossly enlarged and what he termed, 'off the scale of the charts'. Dr. Grieve spoke to Mr. Sandeman's obesity affecting his ability to breathe, particularly at a time of increased oxygen demand due to physiological stress. His heart and subsequently his brain would receive insufficient oxygen, the cycle would enter a downward spiral whereby the enlarged heart would not be able to work effectively, its rhythm would become disturbed and death would follow.

In relation to cocaine intoxication, the Joint Minute agreed the drug concentrations found in Mr. Sandeman's body at autopsy examination and Professor Eddleston concluded that Mr. Sandeman had taken cocaine in the hours before the police entered his home. This conclusion was supported by the evidence of P.S. Mark Maclure that examination of a quantity of blood stained tissue found in Mr. Sandeman's kitchen bin indicated previous cocaine abuse. Police intelligence and the evidence of retired P.S. Roy Kemp entitled me to infer a history of chronic cocaine abuse prior to the date of Mr. Sandeman's death. Such chronic abuse would in turn predispose him to cardiac enlargement.

Dr. Grieve's opinion was that the level of cocaine ingested at the time of the police raid, in addition to that previously consumed, would be sufficient to account for death. Professor Eddleston spoke to Mr. Sandeman having ingested 283 mg of cocaine which was within the reportedly lethal range. Further, at the time of his death he had already absorbed at least 100 mg of cocaine. He died from cardiac dysrhythmia that occurred within 20 minutes of ingestion. Professor Eddleston described Mr. Sandeman as at very high risk of death from the cocaine ingested.

The Crown drew support for its submission from the report of Professor Busuttill which is Family production number 1. In his Commentary at paragraph 9, Professor Busuttill stated:

"Given the pre-morbid features in his heart, it is very likely, and I would even say that it would have been inevitable, that he would have died of acute heart failure within minutes of the taking of the cocaine as a result of a tachyarrhythmia due to the effects of cocaine on his heart."

This was endorsed by Dr. Grieve when the report was put to him for comment.

It was submitted that I should then consider the significance of the third factor mentioned in the pathologists' conclusions, namely the adverse effects of physical restraint. The Crown submitted that the phraseology was perhaps ambiguous but that it was adequately amplified and clarified by the pathologists, Drs. Grieve and Sadler, in their evidence. I was invited to be satisfied that the adjective 'adverse' was used to describe and qualify the 'effects' rather than the 'restraint'. In other words, it meant that for Mr. Sandeman the effects of his restraint were adverse. It should not, on the evidence of the pathologists, be

interpreted as implying that Mr. Sandeman was in any sense restrained in an adverse manner.

The submission was amplified under reference to Dr. Grieve's evidence that Mr. Sandeman was caught up in what was for him a challenging event given his fragile state of health and it provoked for him an adverse physiological response. Further Professor Eddleston noted that physiological stress would have resulted from the raid itself. Reliance was also placed on Professor Busuttil's observation in his Commentary at paragraph 9:

"The agitation and restraint involved in the drugs raid by the police perhaps anticipated his death by a few minutes by adding more stress, increasing the heart rate and blood pressure and perhaps additionally with some difficulty with his breathing even although overt features of asphyxia were not present."

Consequently, although the events which occurred immediately prior to Mr. Sandeman's death cannot be ignored they can be viewed as circumstances coincidental to his death. On the basis of the expert evidence before the Inquiry, I was invited to determine the cause of death to be I a) cardiac dysrhythmia; b) cocaine intoxication and cardiac enlargement; II obesity.

Section 6(1)(c): Reasonable Precautions

The Crown submission in terms of section 6(1)(c) referred to Sheriff Kearney's Determination in James McAlpine wherein he opined on the legal framework for findings under subsection (c) as follows:

"In relation to making a finding as to the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided (s.6(1)(c)) it is clearly not necessary for the court to be satisfied that the proposed precaution would in fact have avoided the accident or the death, only that it might have done, but the court must, as well as being satisfied that the precaution might have prevented the accident or death, be satisfied that the precaution was a reasonable one...The phrase 'might have been avoided' is a wide one which has not, so far as I am aware, been made the subject of judicial interpretation. It means less that 'would, on the probabilities have been avoided' and rather directs one's mind in the direction of lively possibilities".

My attention was also directed to the Determination of Sheriff Reith in the Inquiry into the death of Sharman Weir:

“In my opinion a Fatal Accident Inquiry is very much an exercise in applying the wisdom of hindsight. It is for the Sheriff to identify the reasonable precautions if any whereby the death might have been avoided. The Sheriff is required to proceed on the basis of the evidence adduced without any regard to any questions of the state of knowledge at the time of the death. The statutory provisions are concerned with the existence of reasonable precautions at the time of the death and are not concerned with whether they could or should have been recognised. They do not relate to the question of foreseeability of risk at the time of death which would be a concept relevant in the context of a fault finding exercise which this is not. The statutory provisions are widely drawn and are intended to permit retrospective consideration of matters with the benefit of hindsight and on the basis of information and evidence available at the time of the Inquiry. – In my opinion the purpose of a Fatal Accident Inquiry is to look back as at the date of the Inquiry to determine what can now be seen as the reasonable precautions, if any, whereby the death might have been avoided and any other facts which are relevant to the circumstances of the death. The purpose of any conclusions drawn is to assist those legitimately interested in the circumstances of the death to look to the future. They armed with the benefit of hindsight, the evidence led at the Inquiry and the Determination of the Inquiry may be persuaded to take steps to prevent any recurrence of such a death in the future.”

Thereafter the Crown identified two principal factors for consideration, namely Mr. Sandeman’s weight and cocaine abuse.

Mr. Sandeman's weight and its effect on his heart were submitted to be factors initially at least entirely under his control and which he failed to address. Similarly cocaine abuse was described as a lifestyle choice with the ingestion of approximately one ounce of cocaine at the time of police arrival described as a premeditated act, deliberate and unpreventable. The evidence variously of Mario Foy, P.C. Gillian Donnelly and P.C. Gareth Irons was that, on the warning of the approach of the police, Mr. Sandeman locked the front door, placed a golf ball sized package of cocaine in his mouth and commenced chewing and grinding the bag despite instructions to cease and spit the package out. It became obvious that the package had burst as remnants of its contents and packaging spilled from Mr. Sandeman’s mouth.

Professor Eddleston’s evidence was that once the powdered drug was exposed to the mucous membranes of the mouth and gums it would be rapidly absorbed into the blood at a rate equivalent to insufflation with Mr. Sandeman immediately being exposed to the toxic effects of the drug. Professor Eddleston described in his report, Crown production number 24, that Mr. Sandeman was at:

"a very high risk of death from the cocaine he had ingested. Swallowing the cocaine resulted in a chain of events which were likely to result in death."

As such the Crown submitted that Mr. Sandeman's premeditated, deliberate decision to ingest a significant quantity of cocaine despite strenuous efforts to prevent him rendered his death inevitable. There was no evidence of any reasonable precaution whereby Mr. Sandeman's death might have been avoided and no basis to determine any recommendation under section 6(1)(c).

Section 6(1)(d): Defects in System of Working

The Crown submission in terms of section 6(1)(d) referred to the comments of Sheriff Scott in his Determination in the Inquiry into the death of James Bell Stephen:

"In my view the Sheriff should take care not to stray into this area without good cause. If he desiderates precautions they must be reasonable precautions whereby the death or accident might have been avoided. If he detects a defect in a system it must be one which contributed to the death or accident."

Further he referred to Sheriff Holligan's Determination in John Kelly:

"In particular the provisions of Section 6(1)(c) and (d) seem to me to proceed upon the basis that there will be in most cases a process or event which falls to be examined in order to see what led to the accident. Having established such a process or event it is then possible to see what steps might have been taken to avoid the outcome or what defects there were. In my opinion the provisions of Section 6(1)(c) and (d) fall to be applied objectively and with the benefit of hindsight."

It was submitted that the only evidence which was both critical and potentially relevant for the purposes of subsection (d) came from retired P.S. Danny Smith. His evidence encompassed two criticisms, namely delayed entry and control by the police and delayed medical assistance.

The Crown accepted that the operation was not meticulously planned. However that was in the context of what was perceived to be a regular and routine operation and, it was submitted, the senior officer D.S. Prudom was to an extent entitled to rely upon the initiative and experience of his team. Appropriate reconnaissance had been carried out by P.C. Irons and D.C. Johnstone to gain advance information of potential obstacles and the nature of the door fitted to the flat. The fitting and construction of the door became the subject of agreement at paragraph 1 of the second Joint Minute of Agreement. It was not information

which could have been available to the reconnaissance officers. Although P.C. Irons had identified the door as being of superior construction, there was still a reasonable expectation that the local authority master key would permit entry. Alternative means of forcing entry, that is battering rams, were nonetheless taken along and quickly employed when it was discovered that the door could not be unlocked.

The repeated efforts of D.S. Prudom and P.C. Irons to strike and break the frame of the door were unsuccessful and were said to contrast markedly with the action subsequently taken by the Police Support Unit officer, P.C. Evans, who was able quickly to overcome the door's security by striking the lower panel. There was thereby created restricted access with the officers having to crawl through the hole in single file. It was accepted that entry might have been more expeditiously effected if more specially trained Method of Entry officers had been deployed. Two Police Support Unit officers were delegated to deal with Mr. Sandeman's dog if required. There was no evidence of the consideration or availability of other specialist Method of Entry officers and therefore no satisfactory evidence of any better and more expeditious means of entry.

Retired Police Sergeant Danny Smith was also critical of the number of police officers involved in the operation, arguing that a greater number may have been able more quickly to establish control of the occupants of the flat and in particular of Mr. Sandeman. However the evidence led was said to demonstrate clearly that the practical obstacles, that is of restricted access and the narrow confines of the flat, would have prevented effective deployment of greater numbers. Mr. Sandeman was forewarned of police arrival, most likely by Barry McQuaid, and had therefore time to seek to destroy evidence by swallowing a significant quantity of cocaine which inevitably proved fatal. Consequently it had not been established, in the Crown submission, on the evidence that any delay in entry by the police contributed to Mr. Sandeman's death.

The Crown submission then addressed the criticism of delayed medical assistance. Such criticism fell to be understood in the context of the relevant guidance to police officers. I was

referred to Crown production number 9 which is a Tayside Police document entitled 'Policy and Guidance: Drugs'. Paragraph 1.44 provides:

"SUSPECT SEEN TO SWALLOW CONTROLLED DRUGS IN ORDER TO AVOID DETECTION- the following control measures are required when dealing with a suspect who has swallowed controlled drugs to avoid detection:

- Verbally encourage the suspect to give up the package/controlled drug. Prevent the suspect from placing any further articles into his/her mouth;
- Do not grip the suspect by the neck or throat, or place anything in suspect's mouth or place suspect of (*sic*) the floor face up;
- If the suspect is choking, render assistance. Check if a suitably qualified first aid person is available;
- In the event of the suspect swallowing the package:
 - If possible, identify the controlled drug;
 - Seek immediate medical assistance.
- The suspect should be arrested and cautioned and charged with the offence of obstruction under the Misuse of Drugs Act 1971. They should thereafter be kept on constant observations whilst in custody in the event that the item is produced...."

The guidance was submitted to be of limited value as it failed to demarcate the three distinct stages of swallowing, namely placing the object in the mouth, masticating and swallowing. The guidance on verbal encouragement to give up the drug could only be apposite to the first two stages. Once an object had been swallowed, verbal encouragement was no longer appropriate and other action including medical assistance was required.

The evidence led was said to establish that the police officers concentrated their efforts for some time on verbal encouragement by shouting at Mr. Sandeman to spit out the object in his mouth. That continued even after the integrity of the package had been overcome and its contents leaked. Although the lead role of encouraging Mr. Sandeman was taken by P.C. Irons, to reduce the degree of confusion, control of the operation remained with D.S. Prudom. D.S. Prudom conceded in cross examination that at that stage his primary concern was the destruction of evidence; the safety of Mr. Sandeman as the suspect was then a secondary consideration although priority shifted as the situation developed. His position was that he instructed D.C. Johnstone to summon emergency medical assistance as soon as he thought appropriate. From the evidence of the other police officers the need for emergency medical assistance was realised when Mr. Sandeman's demeanour changed. Mr.

Sandeman ceased violent resistance, became passive and appeared to be coughing and choking. Further the officers' evidence was that although they realised that controlled drugs had probably been swallowed, by that stage their primary concern was that Mr. Sandeman's airway had become obstructed.

D.S. Prudom's evidence was that so long as the packaging and the majority of its contents were obviously still in Mr. Sandeman's mouth, he believed it appropriate to continue to direct their efforts at persuading Mr. Sandeman to "give up" the controlled drug because they had not yet reached a stage where, according to their guidance and training, the controlled drug had been swallowed and immediate medical assistance should be sought. D.S. Prudom conceded in cross examination that he knew little of the medical effects of cocaine and had not been trained on the effects. None of the police officers had been alerted to the dangers of the exposure of the mouth and gums to cocaine, to its easy absorption through mucous membranes and rapid entry thereafter into the bloodstream.

The Crown submitted that with the benefit of informed hindsight it is now known that medical assistance should have been summoned as soon as it was realised that Mr. Sandeman had successfully breached the package. Therefore, on a counsel of perfection, medical assistance was, to a degree, delayed. However, such approach was said to be hypercritical and must be viewed in conjunction with two practical considerations.

The first was that emergency medical assistance could not have been administered and would not have been attempted whilst Mr. Sandeman was still engaged in a violent struggle with the restraining officers. Paramedics could only attend after Mr. Sandeman was subdued and controlled.

The second was submitted to be the futility of medical assistance in the particular circumstances. Professor Eddleston's evidence was that that a paramedic could do little outwith a hospital setting to treat severe cardiotoxicity. Professor Busuttil's Commentary at paragraph 10 was that:

"Even had a medical team, i.e. an ambulance with paramedics, been on standby while this drugs' operation was in progress, little could have been done to prevent

the death of this man as there is no specific antidote to the effects of cocaine and all that would have been done was to sedate him (with benzodiazepines) and support his breathing. Even if this episode had taken place in a hospital environment, his death would also have been inevitable."

Consequently it was submitted that there was no basis on the evidence to hold established that the death of Mr. Sandeman was in any real sense contributed to by any delays attributable to the actions or omissions of the officers involved. There was no material on which to determine a recommendation under section 6(1)(d).

In conclusion, I should confine my Determination to formal findings under section 6(1)(a) and (b). No further findings would be appropriate.

Submission on behalf of Mr. Sandeman's Family

Section 6(1)(c): Reasonable Precautions

On behalf of the family it was submitted that in terms of section 6(1)(c) of the 1976 Act that the reasonable precautions which might have avoided Mr. Sandeman's death related to the briefing and planning of the operation. There were failures to identify important information and this may have affected the ability to deal effectively with events which followed. The information fell into two categories, which in turn impacted on each other. The first related to identifying the personal characteristics of Mr. Sandeman and the second to the detailed examination of the property and subsequent consideration of how entry would be effected.

Failures in the briefing and planning were identified as follows.

Databases

D.S. Prudom's evidence was that he only checked the Scottish Intelligence Database (hereinafter referred to as "SID"), despite the fact that there were other databases available. It would have been appropriate and better practice to have checked all available databases. Had this been done, there may have been provided information on Mr. Sandeman's size and his propensity to swallow drugs when apprehended by the police.

Local knowledge

There was no systematic gathering of local knowledge by those planning the operation. A number of witnesses spoke to the benefits of such a practice and, it was submitted, all who spoke to this agreed it ought to have been done. Some witnesses assumed it had been done, such was the obvious nature of such a step in planning the operation. The only attempt at gathering local knowledge was to include a local officer on the raid team. This officer had no knowledge of Mr. Sandeman personally. Even basic and cursory local enquiries would have revealed officers with personal knowledge of Mr. Sandeman, as he had clearly been the subject of local police interest for many years. As such, there was a failure in the planning of any operation of this sort.

Had local checks been undertaken, the size of Mr. Sandeman would have become known to the raid team and it could then have planned the operation with that information in mind. No planning for Mr. Sandeman's size was undertaken.

Similarly, Mr. Sandeman's propensity to swallow drugs would have been revealed.

Failure to assign roles

The failure to assign roles to individual officers in the planning of the operation was a failure in an operation of its size and type. Reliance was placed on the evidence of retired P.S. Danny Smith. It was acknowledged that there was conflicting evidence on this point. Some witnesses believed it was not strictly necessary. The evidence of those witnesses who opined that it was necessary for good practice should be preferred.

In particular, the evidence was commended to the Inquiry that it would be standard and good practice to ensure that there were officers at all the potential exits to the property from the start of the raid, in this case the back of the property. The effect of this failure was that it was left to chance that one officer would decide to go round the back of the property. That did in fact occur and the observations of that officer, P.C. Donnelly, were crucial. It was a failure to leave such a critical role, and one that in fact mattered in this case, to chance.

Personal characteristics of Stuart Sandeman

It was submitted that better and appropriate research in the planning of the operation would have revealed critically important information about the personal characteristics of Mr. Sandeman that would have assisted the execution of the raid.

He was a man of extraordinary size. This was spoken to in the evidence of a number of officers. It was submitted that his extraordinary size would have been known to local officers. They were entering intelligence onto the databases regularly about him. They had been monitoring his activities for some years. They could have provided such critical information if asked. Retired P.S. Roy Kemp was an example of a local officer who knew of Mr. Sandeman's size.

The failure to check other databases was also a failure in this respect. Personal characteristics would not have been entered onto the only system checked, namely SID. Thus, limiting the research to that database inevitably excluded information discovery. It cannot be known if there were such warning markers for Mr. Sandeman as no-one checked these systems.

However, it was submitted that it could be said to be a failure in the proper planning not to have checked these systems. The systems exist for precisely the purpose of allowing officers to discover as much helpful information about a suspect as possible and that any failure to check these systems can only be regarded as a failure in planning. In the present case, it may have revealed helpful information about Mr. Sandeman's size. It was submitted that in a future operation it may reveal critical information helpful to the planning of an operation.

Further, the same criticism could be made of the failure of officers to discover that Mr. Sandeman had a propensity to swallow drugs when apprehended by the police. This information was known to local officers. Retired P.S. Roy Kemp gave this information in evidence.

Esto these submissions were not accepted and I found that it was reasonable to check only the SID database, then it would be appropriate to make a recommendation that information of the type described as warning markers should be included in the SID database.

Examination of the door to the property

It was submitted to be clear from the evidence that officers carrying out the reconnaissance did not notice that the door was not a local authority issue door but rather was a reinforced door installed by Mr. Sandeman. It was submitted that they ought to have been alert to such feature but failed to note it.

The evidence of several officers was that the faster the entry the better. Accordingly, a more thorough examination of the door would have revealed that it was of superior quality. Standing the intelligence that drugs were being dealt from property, a reasonable implication would have been that the door might have been reinforced.

Had this been appreciated, better planning could have followed. Officers would not have wasted time trying to use a local authority key. Officers would have expected it to be difficult to strike the door in and could have been better prepared, with more officers on hand. Had the door been more effectively demolished, officers would have been able to enter more swiftly, in greater numbers and in a shorter time. That would have allowed more officers to be in the hallway when Mr. Sandeman made his way to the living room. In consequence, officers would have been likely to be able to control Mr. Sandeman in a more calm and effective way. The situation which developed, resulting in Mr. Sandeman being on the floor in a prone position, could have been avoided.

Cumulative effect of the deficiencies in the planning and briefing of the operation

D.S. Prudom gave evidence that knowing Mr. Sandeman's size would have been helpful. He also gave evidence that to have known of Mr. Sandeman's propensity to swallow drugs would have been helpful. The manner of preparation did not allow either piece of information to be made available.

In conclusion, it was submitted that officers would have been better able to control Mr. Sandeman had any or all of the following taken place:

- i. officers had conducted a more thorough examination of the door,
- ii. officers had effected quicker entry to the property as a result,
- iii. officers had known of Mr. Sandeman's size,
- iv. officers had known of Mr. Sandeman's propensity to swallow drugs when apprehended and
- v. D.S. Prudom had assigned roles.

In consequence, the police officers could have entered quickly and assigned an adequate number of officers to concern themselves with controlling Mr. Sandeman. They could have removed the drugs from his mouth whilst he was on his feet. I should be satisfied that the evidence of the officers established that they were not able, with the available officers, to control Mr. Sandeman as he moved from the kitchen to the living room.

Section 6(1)(d): Defects in System of Working

In terms of section 6(1)(d) of the 1976 Act, it was submitted that each of the preceding criticisms under section 6(1)(c) could be made as an assessment of the system of working on the part of the police. As such I would be entitled to make findings in respect of each of those matters in terms of section 6(1)(d).

Section 6(1)(e): Any other facts relevant to the circumstances of death

Similarly, each of the foregoing criticisms could be made as an assessment of the overall circumstances of Mr. Sandeman's death and I would be entitled to make the following findings in terms of section 6(1)(e).

General context

It was accepted that the amount of drugs ingested was fatal and nothing could be done from the point of ingestion. However, it was submitted that some aspects of the handling of the dynamic situation around the attempted detention demonstrated failures that, whilst they made little difference to the present outcome, could make a difference in other cases. There

are lessons to be learned in those respects. As such, it would be helpful and appropriate for findings to be made.

Mr. Sandeman's family accepts that he was a drug dealer, dealing from his home. There was no challenge to any of the evidence led in that respect.

Inappropriate restraint techniques:

Jaw grab

There was clear evidence from P.C. Irons and P.C. Donnelly that P.C. Irons grabbed and held the jaw and/or chin area of Mr. Sandeman in an attempt to remove the package from his mouth. This was spoken to as a natural human reaction. The evidence was to the effect that this was neither a taught nor appropriate restraint technique. Such an inappropriate method of restraint ought not to have been used whether or not a natural human response. Officers in their training should be taught to resist natural urges that result in inappropriate methods of restraint. There was evidence from which it could be inferred that this technique resulted in neck compression and the bruising to the neck identified in the *post mortem* report.

Tripping up of Stuart Sandeman

There was evidence tending to suggest that Mr. Sandeman was deliberately tripped up on his way into the sitting room as a way of controlling him when officers were not otherwise able to control him. Such evidence of the civilian witnesses ought to be preferred to the evidence from officers that Mr. Sandeman fell. The situation was out of control. To trip Mr. Sandeman up was not an appropriate restraint technique.

Pulling head back

P.C. Irons gave evidence that when Mr. Sandeman was on the ground, he pulled his head back and opened his jaw in an attempt to get him to open his mouth. It was submitted this was not an appropriate technique to deal with a person who had swallowed something.

Blows administered

There was evidence that a significant number of blows were administered to the leg and torso areas of Mr. Sandeman. The discrepancy between the accounts of the officers about how many blows were administered indicated that the officers were either unreliable or incredible. Rather the evidence given by the civilian witnesses was reliable and credible. The evidence suggested that more blows were administered than was necessary or appropriate for restraint. The evidence of bruising on the back, shoulder blades and legs at *post mortem* examination supported this conclusion.

Prone position

The evidence from the civilian witnesses was that Mr. Sandeman was maintained in a prone position for an inappropriate time. The evidence of carpet burns on his face from the *post mortem* report supported such a conclusion.

Head lock

The evidence of horizontal bruising extending across the neck from the *post mortem* report supported the conclusion that Mr. Sandeman had been inappropriately held in a head lock.

Positional Asphyxia

It was submitted that there was an incomplete understanding of the risks of positional asphyxia on the part of most of the officers giving evidence. Officers were aware of the risks posed to breathing on the part of the person being restrained but were not sufficiently aware of the risks posed by putting pressure on the heart. D.C. Charnley was the only officer who was aware of the health risks to the heart.

Training on the effects of cocaine

The collective evidence of the officers made it clear that they all had an inadequate understanding of the effects of the ingestion of cocaine on an individual's health. The officers' knowledge of the effects of cocaine was almost exclusively related to the effect on the behaviour of an individual but not the health ramifications. Only P.S. Maclure had a reasonable knowledge of the health effects of cocaine ingestion. Evidence of the skilled

witnesses highlighted, it was submitted, the significant factors about which the officers had an inadequate knowledge, namely:

- i. how cocaine can be ingested
- ii. particularly, how it is ingested when it is put in a person's mouth
- iii. that it is absorbed rapidly in the mouth
- iv. that it is absorbed easily in the mouth
- v. the health risks of ingesting a large amount at once
- vi. that there is no antidote
- vii. that it is appropriate to seek emergency medical assistance the moment cocaine is ingested in a large quantity
- viii. that it is not appropriate to wait for visible signs of a person's health deteriorating before summoning medical assistance after a large amount of cocaine has been ingested.

It was submitted that the evidence of the officers revealed that they were well aware of the risk of choking on the part of a suspect swallowing drugs but had an inadequate training and knowledge of the risks of ingesting drugs.

Further, the officers relied upon a highly technical definition of "swallow" in their evidence in order to persuade the Inquiry that the response time for calling medical assistance fell within their taught guidelines. The guidelines made it clear that the moment drugs were swallowed by a suspect, immediate medical assistance should be called. The submission was made under reference to Crown production number 9 at paragraph 1.44, as set out above. Officers gave evidence that whilst the package could still be seen in Mr. Sandeman's mouth, they did not regard the package to have been swallowed and did not feel that they were within the ambit of the recommendation to call immediate medical assistance.

It was submitted that the officers operated on a working assumption that the package contained controlled drugs and almost certainly cocaine. The officers' briefing had indicated cocaine was being dealt from Mr. Sandeman's address.

It was clear to a number of officers that from the point when Mr. Sandeman was on the floor in the sitting room that the package had burst within his mouth. The officers' evidence was of their impression that Mr. Sandeman was trying to eat and swallow the package and the drugs.

In this context, it was submitted the distinction between the package being in Mr. Sandeman's mouth, and in fact being swallowed, is false and unhelpful. Such reliance on a very precise definition of swallowing led officers to fail to summon medical help when they ought to have. The evidence of the skilled witnesses made it plain that from the moment the package was burst, cocaine was being ingested in the mouth. They made it plain that from that point, the situation was a medical emergency and immediate medical assistance should have been sought.

In contrast, all officers but one made it plain that the point at which they felt it was appropriate to summon medical assistance, and when it was in fact summoned, was when they could see a visible deterioration in Mr. Sandeman.

It was submitted that any system is wrong whereby officers observing a suspect ingest cocaine wait until visible signs of ill health can be observed before medical assistance is sought. Rather medical assistance should be summoned immediately on observing drugs in the mouth as the negative effects of the drug on the suspect's health begin then.

It was observed that D.S. Prudom took the step of calling for back up before he called for an ambulance. He did not take the opportunity to call for an ambulance despite being in contact with the control room. It was submitted that D.S. Prudom's actions gave the appearance of an officer more concerned with gaining control of the suspect than considering the dangers to the suspect's health.

In any event, it was submitted that the evidence revealed that P.C. Donnelly shouted that Mr. Sandeman had swallowed drugs when she observed him from the back window.

Immediate medical assistance ought to have been summoned upon hearing P.C. Donnelly's words if the officers were following the guidelines to the letter as claimed.

Were I to find that the officers' reliance upon a precise definition of swallowing was appropriate and that according to their guidelines they called for help at the appropriate time, a recommendation should be made to amend the guidelines to include reference to the situation where drugs are within a suspect's mouth and being ingested, albeit not yet swallowed.

From the moment the package burst in Mr. Sandeman's mouth his status changed to a person in need of immediate emergency medical help. The officers ought to have appreciated the change in status and treated Mr. Sandeman as a person needing immediate emergency medical help. They ought immediately to have called an ambulance.

It was acknowledged that summoning medical assistance earlier would not have made any difference in the present case. Nonetheless it would be appropriate for a recommendation to be made for better training and procedures within the police lest in a future case the time taken to summon medical assistance would make a difference to a suspect's survival. The submission drew support from the evidence of Professor Eddleston in respect of the appropriate medical intervention albeit there is no antidote.

Submission on behalf of the Chief Constable

General

Having regard to any finding under section 6(1)(b) of the 1976 Act, Mr. Reid on behalf of the Chief Constable noted and agreed with the Crown submission to the effect that in considering the phrase "adverse effects of physical restraint" the word "adverse" describes "effects" and is not a reference to "physical restraint".

He submitted that were no reasonable precautions which could have been taken whereby Mr. Sandeman's death might have been avoided. There was no defect in the system of

working which contributed to his death. There was no defect in the system of working in any event.

Mindful of the potential overlap between the section 6 sub-sections (c), (d) and (e), Mr. Reid addressed certain of the issues raised in the Statement of Issues submitted on behalf of Mr. Sandeman's family.

Briefing and Planning

From the evidence it was clear that for most, if not all, of the police officers enforcement of the search warrant at Mr. Sandeman's home was a regular and routine occurrence. Advance reconnaissance was carried out and there was a briefing on the day in advance of the operation. D.S. Prudom, who was in charge of the operation, was entitled to rely on his team's experience. This was demonstrated by the actions of P.C. Donnelly who knew to go to the rear of the property when entry was delayed.

As a result of the advance reconnaissance, officers had obtained a master key from the local authority which they took in addition to two pieces of enforcement equipment, namely battering rams to break down the door. In the event, the key did not open the door and the rams were used.

In terms of the second Joint Minute of Agreement at paragraph 1 it was agreed that the door to Mr. Sandeman's property had been replaced by him prior to 6 May 2011 with a PVC door of superior quality to the standard local authority door and Mr. Sandeman had had in turn this new door reinforced. Officers were faced with a situation where a drug dealer had replaced the door and then reinforced it. It was therefore unsurprising that officers were unable to gain immediate access. In addition to which there was evidence suggesting that the initially open door had been closed and locked on police arrival.

Separately, in response to the submission that officers should have had more information on Mr. Sandeman's personal characteristics, Mr. Reid submitted that there was no evidence that officers should have been aware that he was 33 stones or similar weight. In any event, even

if they had been aware of his weight and size, there was no evidence that the officers would or should have acted differently. There was no evidence that any database held any information on Mr. Sandeman's personal characteristics which would have made any difference to the approach to the operation.

Similarly, officers would be aware generally in enforcement of any drugs search warrant that disposal of the drugs by any method might be attempted. That would include swallowing the drugs.

Despite criticism from retired P.S. Smith in relation to the number of officers, it was clear from the evidence that the size of the property would not have allowed for the deployment of a greater number of officers. This point was reinforced by the evidence to the effect that the three civilians present had to be removed from the sitting room to the bedroom and furniture had to be up-ended to give sufficient space.

Medical Assistance

It was submitted that the tone of the operation was set by the initial actings of Mr. Sandeman. The door to the property was locked on the approach of police officers. Mr. Sandeman attempted to conceal and/or dispose of cocaine within his home, putting a package into his mouth. Officers gained access and it was necessary to bring Mr. Sandeman under control. He resisted officers and given his size and weight, the officers found it difficult to obtain control. Despite repeated calls to Mr. Sandeman to "spit it out", he refused to spit the package out of his mouth.

It was submitted to be essential for the safety of both Mr. Sandeman and the officers that Mr. Sandeman be brought under control. An ambulance was called as soon as Mr. Sandeman's behaviour moved from resisting to becoming passive and it became apparent that there might be a problem with his health.

Cross-examination of the officers on behalf of the family was submitted to attempt to introduce an artificial definition of "swallow". The putting of the package into his mouth

was not Mr. Sandeman “swallowing” the package or the substance contained within it. The officers had to bring Mr. Sandeman under control and requested an ambulance at the appropriate time.

In any event the evidence was clear, that in the particular circumstances medical assistance would not have made any difference. A two man ambulance team would not have been able to remove Mr. Sandeman; a further team would have been required with specialist lifting equipment.

Further, Professor Eddleston’s evidence was that there is little that a paramedic can do outwith a hospital setting to treat severe cardiotoxicity. Reliance was placed on Professor Busuttill’s Commentary at paragraph 10 as referred to above in the Crown submission.

As such, there was submitted to be no delay in officers summoning an ambulance and even if there were considered to be a delay, any such delay made no difference at all.

Physical Restraint

Despite the criticisms directed at the methods used by officers, the medical evidence did not support any allegation that Mr. Sandeman had been kicked or punched or assaulted in any other way. Such allegations were inconsistent with the medical evidence as spoken to by Drs. Sadler and Grieve in support of the *post mortem* report.

Faced with Mr. Sandeman’s resistance the action taken by the officers was proportionate and reasonable. Holding the jaw or chin may not have been a taught restraint technique but, in the circumstance that Mr. Sandeman had a package of drugs in his mouth, was an understandable and reasonable response. Swallowing the cocaine would have put Mr. Sandeman at severe risk.

In response to the submission on behalf of the family of Mr. Sandeman being tripped up, which relied upon acceptance of the evidence of Steven Welsh, I should reject Mr. Welsh’s evidence as incredible and unreliable.

Similarly, there was no basis to support the submission that officers were “out of control of the situation”. The officers were faced with a situation where they had to gain control which was what they sought to do. Any blows administered by the officers were appropriate, necessary and part of the restraint process. It was re-emphasised that there was no evidence to support the contention that Mr. Sandeman was assaulted in any way.

In relation to positional asphyxia, it was submitted that there was no evidence to suggest positional asphyxia and it was irrelevant to the circumstances of this death.

Training

It was submitted that all of the officers had undergone the level of training appropriate at the relevant time. They acted in accordance with their training in a dynamic and unfolding situation in which Mr. Sandeman, having put a package of cocaine in his mouth, was firstly at risk of blocking his airway, secondly at risk of ingesting cocaine and thirdly seeking to dispose of evidence.

In response to the family’s submission that police officers should receive training on the effects of the ingestion of cocaine, it was submitted that police officers are neither medically qualified nor are they paramedics. The evidence established that they receive first-aid training. It would be unreasonable and impracticable to train officers on the effects of cocaine on the basis that officers are faced with situations where individuals may have consumed a range of toxic substances. To train officers on the effects of toxic substances would go beyond the responsibilities and capabilities of a police officer.

Thus, it was submitted emphatically that police officers cannot and should not be required to take decisions or administer treatment which would not only be outwith their area of expertise but would fall within the areas of expertise of other professionals.

In conclusion, it was submitted on behalf of the Chief Constable that Mr. Sandeman was a drug dealer and a drug user. He put a package containing cocaine into his mouth in an

attempt to conceal it. He was the author of his own misfortune. My Determination should be restricted to formal findings under section 6(1)(a) and (b).

Submission on behalf of the Eight Named Police Officers

General

On behalf of the eight named police officers, Mr. Watson submitted that there were no reasonable precautions which could have been taken whereby the death might have been avoided. Mr. Sandeman was warned about ingesting the drugs he placed in his mouth and he was repeatedly told to spit them out. He actively resisted police officers who were in the lawful execution of their duties, acting in the public interest. Mr. Sandeman placed himself in a stressful situation when he was already in precarious health.

Further, there was no defect in the system of working which contributed to the death and no defect in the system of working generally. Mr. Sandeman was a drug dealer and a drug user. He adopted a course of action, attempting to resist the lawful acting of police officers in executing a warrant. He adopted a course of action which placed his life at risk. He and no one else was responsible for the circumstances giving rise to his death.

The Police officers, it was submitted, acted at all times in good faith; they acted reasonably and in accordance with good practice and the training they had received.

In respect of the issues raised on behalf of the family, Mr. Watson responded as follows, adopting the same headings.

Briefing and Planning

The briefing and planning were appropriate and in line with the police officers' experience. It was a regular and routine operation. All of the police officers were experienced in such work and as such there was no failure to prepare and plan in their operation.

Databases

It was submitted that researching databases other than SID would not have changed

matters. SID has no fields in which to record health issues and officers have not been given guidance to encourage them to submit medical assessments of subjects. Had officers checked other available databases in respect of Mr. Sandeman's size and medical condition, it was unlikely that they would have done anything differently.

Local Knowledge

Any systematic gathering of local knowledge by officers planning the operation would not have been appropriate. It is not routine practice to consult local officers prior to enforcing a search warrant given the need to restrict the circle of knowledge of those involved and avoid any risk of compromise. Moreover, a police officer's knowledge of an individual, his history and size, would be based on contact with him. Given that Mr. Sandeman had had limited contact with Tayside police officers for some years, it would not have been appropriate to consult local officers.

Failure to Assign Roles

There was a need for a degree of flexibility in any operation. Accordingly, it was not necessary to assign roles. While the key roles of method of entry and control of the deceased's dog were assigned, the roles of covering the front and rear of the property were irrelevant. P.C. Donnelly went to the rear of the premises as an experienced member of the team, rather than by chance. It would not have made any difference if there had been any further planning.

Personal Characteristics of Stuart Sandeman

Even if better, and appropriate, research in the planning of the operation had revealed information about the personal characteristics of Mr. Sandeman, it was unlikely that officers would have acted any differently. Therefore, such information would not have assisted the execution of the raid. It would not have been practical to prepare for Mr. Sandeman's size given space restraints within his flat.

With regard to Mr. Sandeman's propensity to swallow drugs, it was not necessary for the police to have checked this on available databases. All targets in drug searches, believed to

be in possession of or dealing in drugs, are liable to dispose of the evidence, possibly by swallowing. Thus, it falls within the common knowledge of police officers.

Examination of the Door to the Property

The door had been a specially reinforced door, installed by Mr Sandeman. Appropriate reconnaissance was carried to gain advance information of potential issues and in particular the nature of the door fitted. Alternative means of forcing entry were carried out when it was immediately discovered that the door could not be unlocked. Had more police officers been deployed, it would have increased the risk of compromise on approach. Routinely a team of six to eight was sufficient to gain control and entry.

Tripping Up of Stuart Sandeman

It was submitted that Mr. Sandeman was not tripped up, rather he fell forward in an attempt to prevent control by the officers behind and on his side. The evidence of the three civilians in the sitting room regarding blows and trips was contradictory and unreliable. Contrarily, the police account was credible.

Calling for Medical Assistance

There was no delay in the police officers calling an ambulance and what took place was understandable given the circumstances of the situation. At the time the priority was to gain control of Mr. Sandeman, given his behaviour. An ambulance was called when the police officers thought appropriate to do so. Nevertheless, it was submitted that neither immediate emergency help nor the calling of an ambulance at any particular time would have made any difference.

Injuries

The findings of the *post mortem* examination and the medical evidence supported the conclusion that the force used by the officers in dealing with Mr. Sandeman was proportionate and reasonable. Evidence from the civilians present that Mr. Sandeman was either kicked or punched or otherwise assaulted was unreliable, untruthful and inconsistent with the medical evidence.

Submission on behalf of P.C. Gillian Donnelly

In the course of execution of a search warrant, Mr. Sandeman put a package into his mouth. Police officers continuously instructed him to spit out the package which was expected, and ultimately found, to contain cocaine. He refused to spit it out and continued to chew on it in an attempt to swallow it, thus concealing evidence. Such act of obstruction was an offence under section 23, Misuse of Drugs Act 1971. The officers were attempting to prevent the offence. Furthermore, the act of attempting to swallow cocaine constituted a serious danger to Mr Sandeman's health which the officers also wished to prevent. Mr. Sandeman made it clear that he did not wish to co-operate and he continued to obstruct and resist.

The officers experienced difficulty in controlling Mr. Sandeman whose weight was in excess of 33 stones and who was morbidly obese. Further, Mr. Sandeman had a grossly enlarged heart. Toxicological evidence confirmed that he had consumed a large amount of cocaine earlier that day. Accordingly, the combination of his poor state of health and ingestion of cocaine was such that he took seriously unwell whilst on the floor. Notwithstanding the actions of the officers present together with the subsequent assistance of paramedics, there was nothing which could be done to prevent Mr. Sandeman's death.

Medical evidence confirmed that the death of Mr. Sandeman could have occurred at any time with even minimal stress. Police officers acted properly in the execution of the warrant. They used reasonable force in attempting the apprehension of Mr. Sandeman. At no stage did Mr. Sandeman co-operate with them. When the officers noted the deterioration in Mr. Sandeman's health they took appropriate steps to assist him and to attempt to resuscitate him. They called for an ambulance. His death could not be prevented.

Accordingly, it was submitted that there were no reasonable precautions which could have been taken whereby the death of Mr. Sandeman might have been avoided and there was no defect in the system of working which contributed to his death.

Determination

In terms of section 1(1)(a)(ii), Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, the present inquiry is mandatory as Mr. Sandeman was in legal custody at the time of his death. Mr. Sandeman died at his home address during the execution of a search warrant by officers of Tayside Police and had been detained by the officers under the powers conferred by section 23, Misuse of Drugs Act 1971.

As a mandatory Inquiry no particular objectives were specified in the Application although Statements of Issues were subsequently lodged on behalf of the family and thereafter by the Crown, on the family's motion.

The evidence led established the following facts, which gave rise to limited dispute and cross-examination.

Information had been received by Tayside Police that Mr. Sandeman was concerned in the supply of cocaine from his home address. Detective Constable Scott obtained a warrant to search Mr. Sandeman's home address and a related property. Preparatory to executing the warrant, P.C. Irons and D.C. Johnstone were instructed to attend and carry out reconnaissance of the locus.

On the afternoon of 6 May 2011 Tayside Police sought to execute the warrant. This was preceded by a briefing using available intelligence resources from the Scottish Intelligence Database and information gathered from the reconnaissance visit. Tayside Police Drugs Branch officers travelled from the briefing in Dundee and met with D.C. Johnstone, who was a local officer, at Broxden roundabout in Perth. Two Police Support Unit officers had been delegated to deal with Mr. Sandeman's dog if required; otherwise specific roles had not been assigned to the remaining police officers.

It was not disputed that Mr. Sandeman was a drug dealer, dealing from his home. His schedule of previous convictions was agreed in terms of the first Joint Minute of Agreement at paragraph 7. He was convicted of being concerned in the supply of drugs on 20 August

2001 at Perth Sheriff Court. He was sentenced to a period of imprisonment of 27 months. He had also been subject to a recovery process under proceeds of crime legislation.

It appeared that the occupants of Mr. Sandeman's flat became aware of the imminent police raid as the flat door was closed and locked. Police had obtained a local authority master key for the property which did not unlock the door. As a consequence officers used an enforcer, specifically a battering ram, to gain entry.

It became a matter of agreement in the course of the Inquiry that Mr. Sandeman had replaced the door to his local authority tenancy with a PVC door of superior quality and had had that new door reinforced, in terms of paragraph 1 of the second Joint Minute of Agreement. D.S. Prudom and P.C. Irons initially attempted to force entry through the door by use of the battering ram. They were unsuccessful. Police Support Unit officer, P.C. Evans quickly overcame the door's security by striking the lower panel. There was thereby created restricted access with the officers having to crawl through the hole in single file.

While attempts were made to force entry, P.C. Gillian Donnelly went through the common close to the rear of the premises. Through the kitchen window, she observed Mr. Sandeman put a package into his mouth. The package resembled a golf ball in size. P.C. Donnelly climbed through the kitchen window to gain access, shouting to alert other officers to what she had seen.

Police officers, who had gained access through the broken panel in the front door, saw Mr. Sandeman emerge from the kitchen into the hallway. They attempted to restrain him. Mr. Sandeman resisted the officers verbally and physically.

Mr. Sandeman weighed in excess of 33 stones (219 kg) and was 6 feet 2 inches (188 cm) tall.

In the course of attempts to restrain Mr. Sandeman, he ultimately was positioned on the living room floor, face down in the prone position. Police officers applied handcuffs to

secure Mr. Sandeman's wrists to the rear; they required to use three sets of handcuffs given his bulk.

Throughout the time that officers were engaged with Mr. Sandeman he was repeatedly told to spit out what was in his mouth. This was suspected to be drugs. Officers were concerned that Mr. Sandeman was attempting to dispose of evidence which was a crime and that the package posed a danger to Mr Sandeman. Mr. Sandeman continued to chew on the package. He told police officers to "fuck off" and claimed to be eating a bacon roll.

In the course of police officers' attempts to restrain Mr. Sandeman, his condition deteriorated. He stopped resisting the officers both verbally and physically.

D.S Prudom instructed that an ambulance was called. Police officers attempted to clear Mr. Sandeman's airway and undertook cardiopulmonary resuscitation (CPR). Paramedics attended at the locus within a brief period, the precise time of which was not established. Mr. Sandeman died at the locus. He was pronounced dead at 1600 hours on the same day.

When police officers entered Mr. Sandeman's property, three civilians were present, namely Mario Foy, Steven Welsh and Roderick Moncrieff. In terms of paragraph 7 of the Joint Minute of Agreement, their previous convictions were agreed. All three had convictions under the Misuse of Drugs Act 1971, which were historic in the case of Steven Welsh. One, Mario Foy, had £1715 in cash with him.

A contrary position about the conduct of Mr. Sandeman and of the police officers was spoken to by the three civilian witnesses, Roderick Moncrieff, Mario Foy and Steven Welsh. I address their evidence and other disputed evidence below.

Firstly, I consider the largely undisputed medical evidence and evidence of the police officers who provided statement of opinion in respect of items recovered from Mr. Sandeman's home and comment on the execution of the search warrant and on officer safety training. Detailed consideration of that evidence reveals considerable coincidence of

testimony albeit that I was invited to place different reliance upon it by the family on the one hand and the Crown and other interested parties on the other.

Section 6(1)(b): Cause of Death

Post mortem examination was carried out on 11 May 2011 by Drs. David Sadler, James Grieve and Helen Brownlow. The *post mortem* report dated 22 June 2011 is Crown production number 22. The medical cause of death was recorded as I (a) adverse effects of cocaine and physical restraint and II obesity.

Dr. James Grieve and Dr. David Sadler are forensic pathologists. Dr. Grieve, now retired, was based at the date of Mr. Sandeman's death at the University of Aberdeen. Dr. Sadler remains based at the University of Dundee.

The information available to the pathologists is noted in the report as follows:

"This 37 year old man was a known drug abuser and was also thought to deal in drugs.

He was known to suffer from poor circulation and on the day of his death had been seen by his own general practitioner for weight problems, sleep apnoea and skin ulceration on his legs due to poor circulation.

The following information summarises what is currently known from police and civilian witness statements and police sudden death report. On the late afternoon of Friday 6th May his home was raided by Tayside Police drug squad officers. On entering his premises the deceased was thought to have hurriedly consumed an object thought to be a plastic-wrapped drug package. During the course of the raid he was said to have been briefly placed in a head lock by means of an arm placed around his neck. He was then said to have been restrained face down on the floor with pressure applied to his arms (behind his back) and legs. His wrists were then placed behind his back and secured by means of three linked pairs of rigid handcuffs. Civilian witnesses reported that he sustained three or four knee blows and knee pressure to the lower back whilst being restrained face down on the floor. Knee pressure was also applied to the backs of both thighs. Police officers were said to have been repeatedly encouraging the deceased to spit out a suspected drug package from his mouth. He was then moved to an upright position. He was then seen to start choking and was said to spit out fragments of plastic cling film. His condition deteriorated with sudden loss of consciousness and a small amount of blood-stained vomit emerged from the mouth. Resuscitation was attempted without success. Paramedics were called and took over attempts at cardio-pulmonary resuscitation, again without success."

Examination of the body revealed the following together with the noted comments:

1. Very marked obesity, the body weighing 219 kilogrammes with a body mass index of 62.
2. There were minor scattered abrasions to the right side of the nose, cheek and eyebrow which were likely to be carpet burns sustained in a facedown position against the floor or from impact against a similar surface.
3. There were bruises around both wrists and forearms in keeping with restraint and the application of rigid police handcuffs.
4. There were no features of asphyxia such as petechial haemorrhages, congestion or cyanosis.
5. There was minor bruising beneath the skin within the muscles just below the left clavicle.
6. There was minor horizontal bruising extending beneath the skin across the front of the neck which was the likely result of application of a head lock.
7. Reflection of the skin of the back revealed minor bruising within the fat and muscle beneath the skin on both sides of the lower back. That may be the result of knee blows or kneeling pressure which were reported to have occurred during restraint.
8. There was further minor bruising within the muscle attachments to both shoulder blades. That may be the result of knee pressure or forcible elevation of the wrists up behind the back resulting in over-stretching of the scapular muscles.
9. There was bruising beneath the skin on the back of both thighs which would be in keeping with the application of knee pressure.
10. There were no further internal injuries which could have contributed to death. In particular, there were no deeper neck injuries and no evident head injury.
11. The heart was enlarged, thought likely to be due mostly to the effects of chronic obesity. Cardiac enlargement in the present case may also be a consequence of chronic cocaine or other drug use. Such cardiac enlargement may in itself result in, or predispose to, sudden death at any time. Death from cardiac arrhythmia is particularly likely during exercise, exertion or any other physiological stress such as would occur during physical restraint or following the use of stimulant drugs.

12. The lungs were flooded with fluid, a common but non-specific finding in many drug related deaths and also a common consequence of terminal heart failure.

Toxicological analyses revealed, as agreed in the Joint Minute paragraph 2:

- i. 1.3 mg of cocaine per litre of preserved femoral blood.
- ii. 102 mg of cocaine per litre of stomach contents.
- iii. eta-Hydroxybutyrate (BHB) was below 50 mg/L of femoral blood and
- iv. Caffeine and metabolites, Cotinine, Levamisole, Lignocaine, Cocaine, Benzoyllecgonine and Benzocaine were detected in cardiac blood.

The report noted that the level of cocaine normally detected in cocaine fatalities is from 0.9-21 mg per litre of blood (average 5.3mg/l). Levamisole and Benzocaine are common contaminants of cocaine. Benzoyllecgonine is a metabolite of cocaine. All three were revealed as present by toxicological analysis. The high level of cocaine detected in the stomach contents was said to add support to the suggestion that the drug package had been swallowed.

The effects following oral administration of cocaine were noted as follows:

“Following oral administration, cocaine begins to have an effect within a few minutes, peaking after about an hour and the effects last about another hour. Adverse toxic effects including disturbances in the electrical rhythm of the heart associated with rapid heart rate (tachyarrhythmias), heart attack (myocardial infarction) due to blood vessel spasm, increased body temperature (hyperthermia) and stroke. The latter (*sic*) may be due to haemorrhage into the substance of the brain (intracerebral haemorrhage) or onto the surface of the brain (subarachnoid haemorrhage). Cocaine use is also associated with a state of intense physiological and psychological over-stimulation called excited or agitated delirium. The latter often leads to the need for physical restraint in custody settings and many deaths have been reported due to ‘restraint asphyxia in acute excited delirium’. This case has many of the features and factors which are typically described in such deaths.”

The report concluded:

“Factors contributing to death include the adverse effects of cocaine, various factors associated with physical restraint and also obesity. Physical restraint in a face down position would have a significant adverse effect on breathing efficiency, given the degree of abdominal obesity. Such a position would cause displacement of

abdominal organs and would impair the normal downward movement of the diaphragm during inspiration. In addition, handcuffing the wrists behind the back would impair the movement of the shoulder girdle muscle groups which act as accessory muscles of respiration and which contribute to assist breathing movements at times of high oxygen demand such as would occur during a struggle against physical restraint.

In summary, death is attributed to the combined adverse effects of cocaine AND adverse physiological consequences of physical restraint. The face down position and handcuffing of the hands behind the back represent factors which would impair respiratory function at a time of increased oxygen demand during the struggle against restraint. It is likely that the final mechanism of death was a cardiac arrhythmia causing cardiac arrest. Obesity is viewed as a significant contributory factor contributing to impaired respiratory and cardiac function."

In his evidence, Dr. Grieve set the use of "obesity" into context. The term "obese" is a clinical term. Mr. Sandeman's Body Mass Index (BMI) was calculated at 62. A healthy BMI lies somewhere between 20 and 25, overweight 25 to 30, above which the term obese is applied. Obese BMI is associated with significant health hazard and is targeted in terms of public health policy before it becomes a potentially major clinical problem, associated with chronic disease and considerable life shortening.

In respect of the finding on external examination of minor horizontal bruising extending beneath the skin across the front of the neck, Dr. Grieve thought that being briefly placed in a head lock by means of an arm placed around his neck explained the bruises in the subcutaneous tissue. He expanded that Mr. Sandeman survived any such application to the neck and that no features of asphyxia were found.

Similarly, Dr. Grieve considered that the minor bruising within the muscle attachments to both shoulder blades could arise from the simple application of the handcuffs, given Mr. Sandeman's body size and lack of body tone, as opposed to greater use of force in pulling up his arms. Such bruising was consistent with both the minimum force and greater force.

The Crown then sought to explore the medical causes of death. These were recorded as the adverse effects of cocaine and physical restraint with the contributory cause of obesity. Dr. Grieve spoke to the cause of death being multi-factorial. But for the circumstances of the

police raid, he saw two immediate possibilities for a sudden, unexpected death as firstly heart enlargement and secondly cocaine. A third possibility was the combination of those two factors. Had Mr. Sandeman died in his sleep consideration would also have to be given to sleep apnoea and to the cardio-respiratory effects of obesity.

However in the context of physical restraint, Dr. Grieve explained that physical restraint challenges oxygen intake, particularly in the obese. A police raid would increase the oxygen demand of the body, there would be over-excitement, the possibility of physical activity and an outpouring of adrenalin in the body, all of which would become problems. In the present case, there was the additional factor of cocaine which as a stimulant would cause the heart rate and blood pressure to increase and affect the release of adrenalin. Once face down, Dr. Grieve described Mr. Sandeman as in a compromised position, requiring more oxygen but unable to get more oxygen and that in a man with a significant heart problem and having taken cocaine. As such, Dr. Grieve concluded that there was a significant combination of potential pathologies, intoxication and circumstances which could each have made a greater or lesser contribution to Mr. Sandeman's death.

During Mr. Watson's cross-examination on behalf of the eight named police officers, Dr. Grieve agreed with Mr. Watson that the reference to physical restraint under causes of death reflected that Mr. Sandeman was, because of the police raid that day, caught up in a challenging event, more so given his complex and difficult medical condition and that it did not reflect a specific criticism of how a handcuff was placed on or what steps were taken in the restraint. Finally he agreed that the challenging circumstances would be exacerbated if there were violent resistance to arrest.

During his evidence, Dr. Sadler gave the opinion that had Mr. Sandeman died under natural circumstances, without any stimulus from drugs, exercise or other precipitating factor, the cause of death would be most likely recorded as cardiomegaly, that is cardiac enlargement, as a consequence of obesity. In the particular circumstances of the police raid, the physiological stress of the detention and the restraint could have caused his death. Dr. Sadler expanded that restraint can have an adverse effect on anybody whether applied well

or badly. However, given Mr. Sandeman's obesity, his cardio-vascular and respiratory reserves would be very small and not permissive of restraint however well applied. As such reference to the adverse physiological consequences of physical restraint reflects not on the way that the restraint was conducted but on the particular physiological effect which it had on Mr. Sandeman.

Specifically addressing Mr. Sandeman's restraint in the prone position while being handcuffed, Dr. Sadler said that if a fit man of a similar height had been similarly restrained he would continue to function without too much difficulty.

There was then explored the role of excited delirium. While Dr. Sadler noted the features of excited state from drug ingestion and restraint, he readily differentiated the present case on the basis of police officers' account that Mr. Sandeman became unco-operative immediately on police entry as opposed to a response to the toxicity of the drug.

Dr. Sadler confirmed his agreement with Professor Eddleston that the final mechanism of death was a cardiac arrhythmia or dysrhythmia, causing cardiac arrest. He did not agree with Professor Eddleston that the quantity of cocaine ingested by Mr. Sandeman would be the most likely explanation for the dysrhythmia. While he accepted that it was a very good explanation, he considered that there were other good explanations which could not be ignored namely, the physiological effects of restraint, the cardiac enlargement and the obesity. Thus, while the quantity of cocaine ingested could have been fatal, Dr. Sadler held firmly that these other factors ought not to be ignored.

In cross-examination, Miss. Smith on behalf of the family put sections of Professor Busuttil's report to Dr. Sadler for his comment. Professor Busuttil's report was instructed on behalf of the family. It is dated 17 February 2015 and is Family production number 1. Specifically, there was put the following section of Professor Busuttil's report at pages 12 and 13:

"Patients with cocaine toxicity may be combative, aggressive and disoriented and have delusions of persecution or hallucination. Caution is appropriate because the patient may attempt to harm care providers. Physical restraint should be avoided.....When required, physical restraint should be used only with caution and adequate personnel....

Any further strains and stresses that would have been operative on the heart and circulation of this man after he had become exposed to excessive physical (or emotional) activity would have had very serious effects on him. Such activity could have tipped unfavourably the balance of his precarious heart condition and pushed him into acute heart failure with acute pulmonary oedema developing. This could have been fatal within a short period....

He was restrained with some level of physical force and this would have further increased the acute demands on his heart and circulation.”

Dr. Sadler was content to agree with the opinion as expressed by Professor Busuttil.

As noted above, Professor Michael Eddleston is Professor of Clinical Toxicology at the University of Edinburgh, consultant clinical toxicologist and pharmacologist with NHS Lothian and Director of the National Poisons Information Service, Edinburgh. He produced a report dated 9 November 2014 which is Crown production number 24. He was instructed by the Crown to provide a report on the following question:

“Given the level of cocaine which was in the stomach as a consequence of the quantity of cocaine which the deceased voluntarily ingested but was as yet unabsorbed at the time of his death- was his death in any event inevitable?

In other words, if the deceased had not been apprehended and restrained by the police would the quantity of cocaine, in his particular circumstances, inevitably proved (*sic*) fatal or might there have been any reasonable precaution eg immediate medical intervention etc which might have prevented his death?”

Professor Eddleston was provided with various documents but for the purpose of his report focussed upon the *post-mortem report*, Crown production number 22, the toxicology reports respectively from the Centre for Forensic and Legal Medicine, Dundee, Crown production number 25, and from Roar Forensics Ltd, Crown production number 26, and a letter from Dr. Sadler dated 29 August 2011 addressed to the Procurator Fiscal commenting on the Roar Forensics Ltd report, Crown Production number 27.

Professor Eddleston spoke in evidence to his report. He proceeded on the basis of the samples and analysis reported in the *post mortem* report and the two toxicology reports. He observed Dr. Sadler’s comment in the letter which is Crown production number 27 on the variation in the analysis by Roar Forensics Ltd to the effect that any variation was to be expected between laboratories and did not affect the earlier interpretation or cause of death.

In respect of the level of benzoylecgonine, Dr. Sadler had commented that the level may indicate metabolism of the drug taken immediately prior to death or in the previous hours or days.

In terms of the Joint Minute of Agreement, it was agreed at paragraph 2 that on the date of *post-mortem* examination, that is 11 May 2011, that Mr. Sandeman's body contained drugs in the following concentrations:

- i. Approximately 1.3 mg of cocaine per litre of preserved femoral blood.
- ii. 102 mg of cocaine per litre of stomach contents.
- iii. Beta-Hydroxybutyrate (BHB) was below 50 mg/L of femoral blood and
- iv. Caffeine and metabolites, Cotinine, Levamisole, Lignocaine, Cocaine, Benzoylecgonine and Benzocaine were detected in cardiac blood.

Professor Eddleston noted that at *post-mortem* examination Mr. Sandeman was age 37 years, weighing 219 kilogrammes and 1.88 metres in height. His heart was described on examination as diffusely enlarged and globular in shape without apparent left or right ventricular hypertrophy. He further noted the conclusion of the pathologists that the heart enlargement was most likely due to the effects of chronic obesity, might also be a consequence of chronic cocaine and other drug use and might result in or predispose to sudden death at any time, particularly during exercise, exertion or any other physiological stress such as restraint.

Professor Eddleston understood the relevant time frame to be that Mr. Sandeman was noted to be in evident distress within approximately 15 minutes of police arrival and paramedic assistance was summoned. However, Mr. Sandeman died within 45 minutes of police arrival.

The final information on which Professor Eddleston proceeded was provided by the Crown in terms of its instruction. That was to the effect that the drug package in Mr. Sandeman's

mouth was “from its described size, estimated by experienced drug squad officers to be a 1 ounce (28.3g) packet of cocaine”. Subsequent analysis showed it to be cocaine of 1% purity by weight.

Professor Eddleston’s analysis of dose and body burden led him to state that the high blood benzoylecgonine concentration suggested that some of the cocaine might have been ingested in the hours before Mr. Sandeman’s arrest and was not the result of the ingestion observed by the police.

Separately, Professor Eddleston spoke to there being no specific antidote for cocaine overdose, rather that care is symptomatic and supportive with preservation of the airway and ventilation, control of hypothermia and reversal of hypoglycaemia. Patients surviving to hospital admission would receive intensive treatment and interventions. Prior to hospital admission, such treatments are not available and Professor Eddleston expressed the opinion that there would be little that a paramedic could do to treat severe cardiotoxicity. He doubted that even if he had arrived at the same time as the paramedic, he would have been able to make a significant difference as he believed that Mr. Sandeman was already in cardiac arrest and dysrhythmia.

In his evidence he agreed that the absence of any sign of ischaemia would suggest that the enlargement of Mr. Sandeman’s heart was primarily due to obesity rather than any influence of chronic cocaine use. Further he agreed that a consequence of heart enlargement is the predisposition to dysrhythmia as a consequence of any stress, exertion or excitement. He expanded that cocaine is a sodium channel blocker and also a potassium channel blocker which makes dysrhythmias much more likely. So, the fact that there was cocaine in the blood indicates that there was a mechanism for dysrhythmia to occur in a heart which was already prone to dysrhythmia.

In response to the question posed by the Crown, Professor Eddleston concluded in his report:

“Mr. Sandeman had ingested a dose of cocaine (283mg) that is in the reported lethal range. His previous use of cocaine, and perhaps sensitisation to its effects, together

with the cardiac pathology noted at *post-mortem* would have increased his risk of severe cardiotoxicity and dysrhythmias, in particular during physiological stress.

His blood cocaine and benzoylecgonine concentrations are associated in the literature with lethal poisoning and suggest that he had already absorbed at least 100mg of cocaine. The further absorption of the cocaine found in his stomach at death (maximum of 40mg, more likely 12 to 20mg due to bioavailability) is unlikely to have significantly affected the outcome.

From the evidence presented, it is most likely that Mr. Sandeman died from a cardiac dysrhythmia that occurred within 20 minutes of ingestion. He was at very high risk of death from the cocaine he had ingested. It is uncertain whether he would have died anyway if he had not been restrained by the police- physiological stress would have resulted from the raid itself.

Swallowing the cocaine resulted in a chain of events which were likely to result in death. Even prompt and rapid administration of full medical care would have been unlikely to save him."

In examination in chief, Professor Eddleston reviewed the levels of cocaine and benzoylecgonine and absorption levels. He did so under reference to Crown production number 29, a paper entitled 'Pharmacokinetics of Cocaine' by Reese T. Jones which was lodged in the course of his evidence. He maintained that the fact that the benzoylecgonine was so high and that the death occurred very rapidly after the oral ingestion indicated that it was very likely that Mr. Sandeman had a large amount of cocaine in his body before the oral ingestion. His opinion was that Mr. Sandeman had at least 100 milligrams of cocaine in his body, the majority of which came from previous use, exacerbated by the acute exposure, probably initially nasally with some orally.

Professor Eddleston confirmed his view that Mr. Sandeman died from a cardiac dysrhythmia that occurred within 20 minutes of the oral ingestion. The cardiac dysrhythmia was most likely caused by the cocaine toxicity in combination with the stress. Professor Eddleston explained that in the context of a raid on his home, Mr. Sandeman would have been tachycardic, that is he would have been stressed. He was already under the influence of cocaine to some degree and the additional cocaine would cause the dysrhythmia. Professor Eddleston thought it possible he would have died without the restraint because of the cocaine being absorbed and his stress. He did not know the precise role of the police restraint.

The procurator fiscal depute then sought to explore the cause of death certified in the *post mortem* report, Crown production number 22. The pathologists had attributed death to “the combined adverse effects of cocaine and adverse physiological consequences of physical restraint”. Professor Eddleston agreed that need not necessarily be the case. He summarised the situation as one in which Mr. Sandeman had a lethal dose of cocaine in his body. He was in a stressful situation during the raid, even without restraint, and had poor cardiovascular health. In such a situation, he was likely to have had a fatal event just from those factors. He could not say more than likely albeit that might be more than 80 *per cent*.

Under cross-examination by Mr. Watson on behalf of the eight named police officers, Professor Eddleston agreed that the level of cocaine which Mr. Sandeman would appear to have consumed, prior to the ingestion from the golf ball size package, in itself created a major question mark over his survivability on the date of his death. He clarified that while the amount taken was unknown, the blood concentration indicated a lethal amount.

Under cross-examination by Miss. Smith on behalf of the family, Professor Eddleston confirmed that a patient arriving in hospital, with a lesser dose of cocaine than Mr. Sandeman, even in a dysrhythmia, may receive some benefit from treatment and so someone suspected of taking cocaine should be treated as a medical emergency and taken to hospital as a matter of urgency.

I turn now to the Crown’s invitation to determine the cause of death under section 6(1)(b) of the 1976 Act to be I a) cardiac dysrhythmia; b) cocaine intoxication and cardiac enlargement; II obesity. Given the coincidence of opinion of Drs. Grieve and Sadler and Professor Eddleston that the final mechanism of Mr. Sandeman’s death was cardiac dysrhythmia, I have no difficulty in determining that as a cause of death. However, my view of the evidence does not permit me to exclude reference to the adverse effect of physical restraint. To do so would be to ignore the careful evidence of both Drs. Grieve and Sadler as to the combination of potential pathologies, intoxication and circumstances which could each have made a greater or lesser contribution to Mr. Sandeman's death.

Dr. Sadler was unable to agree with Professor Eddleston that the quantity of cocaine ingested by Mr. Sandeman would be the most likely explanation for the dysrhythmia. While he accepted that it was a very good explanation, he considered that there were other good explanations which could not be ignored namely, the physiological effects of restraint, the cardiac enlargement and the obesity. These other factors ought not to be ignored.

Dr. Sadler, as recorded above, set the contribution of physical restraint into context. Restraint can have an adverse effect on any person whether applied well or badly. However, given Mr. Sandeman's obesity, his cardio-vascular and respiratory reserves would be very small and not permissive of restraint however well applied. As such reference to the adverse physiological consequences of physical restraint reflected not on the way that the restraint was conducted but on the particular physiological effect which it had on Mr. Sandeman. The consequences would be exacerbated if there were violent resistance to arrest.

Professor Eddleston's position was that he did not know the precise role of the police restraint in circumstances in which Mr. Sandeman had a lethal dose of cocaine in his body. Mr. Sandeman was in a stressful situation during the police raid, even without restraint, and had poor cardiovascular health. In such a situation, Professor Eddleston was of the opinion that Mr. Sandeman was likely to have had a fatal event just from those factors.

I do not consider that there is significant dispute between the medical witnesses but rather a question of emphasis. Drs. Grieve and Sadler see the cause of death as multi-factorial and seek to represent that in their conclusion. They have declared themselves unable to prioritise the various factors at play or to exclude any one factor. Professor Eddleston while content to acknowledge the potential role of police restraint, is equally content to prioritise the other factors which he considers dominant.

It seems to me that in circumstances where the cause of death was multi-factorial and where physical restraint was one such factor, that factor should be represented. This Determination has otherwise fully explored the lawful nature of the physical restraint and its justified use.

As such, I am content to make a finding under section 6(1)(b) of the 1976 Act that the cause of death was I a) cardiac dysrhythmia; b) cardiac enlargement and adverse effects of cocaine and physical restraint and II obesity.

Section 6(1)(c), (d) and (e): Reasonable Precautions, Defects in Systems and any other relevant facts

Police Sergeant Mark Maclure, when a Detective Constable in Central Scotland Police's Drugs and Organised Crime Unit based at police headquarters in Stirling, prepared with two colleagues a Joint Report- Statement of Opinion which is Crown production number 14. P.S. Maclure had completed 18 years police service and had been a member of Central Scotland Police's Drugs and Organised Crime Unit for 11 years. In the latter role he had been involved in a variety of drugs related enquiries ranging from drugs deaths to street level dealing and to investigation into organised crime groups responsible for importing controlled drugs into the United Kingdom and their subsequent distribution. He is also qualified to undertake level 1 surveillance duties. He described himself as conversant in the manner in which drugs are sold and abused.

P.S. Maclure is the co-author of the Scottish Police College Initial Training Course notes on drugs enforcement. He is a member of the United Kingdom wide Drugs Expert Witness and Valuation Group. He attends and contributes to the bi-annual Scottish Statement of Opinion Seminars. He regularly prepares Statements of Opinion and has given evidence on those in court proceedings from 2003.

On 16 August 2011, P.S. Maclure was briefed in relation to the investigation surrounding the death of Mr. Sandeman and instructed to prepare a statement of opinion. The Joint Report- Statement of Opinion was produced by P.S. Maclure together with Detective Constable David Dunne and Detective Sergeant Paul Rollo, both of whom were officers with Central Scotland Police's Drugs and Organised Crime Unit.

In terms of the first Joint Minute of Agreement, it was agreed in paragraph 3 that the following Crown labels were found within Mr. Sandeman's home after his death:

Label number 3 - PLASTIC BAG CONTAINING UNKNOWN SUBSTANCE was found on a unit in front of the TV within the living room at 73b Struan Road, Perth. This item was examined and found to consist of plastic and a quantity of granular material which was identified as cocaine with a weight for weight purity of 1%. All components were contaminated with blood. In addition the plastic appeared to be the remains of a knotted plastic bag.

Label number 1 - UNKNOWN SUBSTANCE was found on the floor within the living room adjacent to the settee at 73b Struan Road, Perth. This item was examined and found to consist of plastic and a quantity of granular material which was identified as cocaine with a weight for weight purity of 1%. All components were contaminated with blood.

Label number 2 - UNKNOWN SUBSTANCE was found on the floor underneath the living room window at 73b Struan Road, Perth. This item was examined and found to consist of plastic and a quantity of granular material which was identified as cocaine. All components were contaminated with blood.

The plastic in all three label productions detailed above was examined and all had the appearance of being masticated and as such no common origin could be established between the pieces of plastic nor could the original number of packages be determined.

The above detailed Labels were examined at the laboratory of SPSA Forensic Services (Glasgow) on 24 May 2011 and the blood staining on each was found to carry the DNA profile of the said Stuart Robert Sandeman.

Label number 4 - DIGITAL SCALES 1 was found within the second from bottom drawer of the TV unit in bedroom numbered as number 1 at 73b Struan Road Perth during a search there on 7 May 2011. When examined a small amount of white material was noted adhering to the weighing surface and the battery compartment. A portion of the material was analysed and found to contain cocaine.

Label number 15 - PLASTIC TUBE WITH POWDER THEREON was found within the kitchen cupboard above the dishwasher in the kitchen of 73b Struan Road, Perth during a search there on 8 June 2011. On examination this was found to be a plastic box which was found to contain a length of plastic tube. The tube was examined

and a small amount of white material was noted inside the tube. The material was analysed and found to contain cocaine. The ends of the plastic tube carried DNA profiles matching those of the said Stuart Robert Sandeman and the Crown witness Roderick McKenzie Moncrieff.

Label number 11 - QUANTITY OF TISSUE (BLOODSTAINED) was found within a bin in the kitchen at 73b Struan Road, Perth on 3 June 2011. On examination this was found to consist of 5 pieces of bloodstained white paper tissue. White powdery material was observed adhering to the tissue paper. A portion of the blood staining was analysed and found to carry the DNA profile of the said Stuart Robert Sandeman. Material on that tissue was also found to contain unquantifiable amounts of cocaine and Benzoylecgonine.

Label number 12 - QUANTITY OF PIECES OF PLASTIC BAGS was found within the kitchen bin within 73b Struan Road, Perth during a search there on 3 June 2011. This was found on examination to contain 11 pieces of plastic and nine open plastic bags each of which contained an amount of white material. From 4 of the plastic bags selected at random a sample of white material was analysed and each was found to contain cocaine.

Label number 6 - WRAP was found in the rear garden of 73b Struan Road Perth on 12 May 2011. On examination this was found to consist of a press seal plastic bag which was found to have a small amount of white staining on the inside of the bag. The staining was analysed and found to contain cocaine.

Label number 17 - TUB OF CREATINE 1 was found in the lower cupboard to the left of the dishwasher at 73b Struan Road, Perth during a search there on 8 June 2011. This article was found to consist of a plastic container which was found to contain a quantity of white powder weighing 94.06 g.

Label number 18-TUB OF CREATINE 2 was found in the lower cupboard to the left of the dishwasher at 73b Struan Road, Perth during a search there on 8 June 2011. This article was found to consist of a plastic container which was found to contain an intimate mixture of white powder and an off-white compressed powder. These powders were subsequently separated. The white powder weighed 76.47 g. The

compressed off white powder weighed 1.450 g and on analysis was found to contain amphetamine.

Label number 14 - PACK OF SANDWICH BAGS was found in the upper cupboard to the right of the cooker in the kitchen at 73b Struan Road Perth on 8 June 2011 and Label number 12 – QUANTITY OF PIECES OF PLASTIC BAGS were found within said pack.

Label number 16 - CONTAINER WITH TWO PLASTIC TUBES was found in cupboard above the dishwasher in the kitchen at 73b Struan Road Perth during a search thereon 8 June 2011.

P.S. Maclure spoke to the Joint Report and concluded that the circumstances of the case indicated the involvement of Mr. Sandeman in the sale or supply of the class A controlled drug cocaine and the class B controlled drug amphetamine. There was evidence found within the kitchen bin which indicated not only the creation of street level gram deals but also of ounce deals of a powdered drug. The drug activity was recent. Scales and an adulterant were also found.

In respect of the bloodstained tissue with traces of cocaine and benzoylecgonine, Crown label number 11, his evidence was that this tissue, found within the kitchen bin, indicated previous cocaine abuse by Mr. Sandeman. In his experience, prolonged abuse of cocaine by snorting leads to the breakdown of vessels in the nasal passages and can result in nosebleeds whenever the drug is snorted.

Crown label number 15 was plastic tubes. P.S. Maclure spoke to such items as ideal for snorting cocaine.

P.S. Maclure expressed the opinion that a person preparing ounce deals of a powdered drug is involved in supplying the drug at a significant level. He referred to an ounce as a dealer quantity. Those buying ounce deals of cocaine would be involved in the sale or supply of the drugs, adulterating and sub-dividing the drug into smaller street deals for onward sale. He illustrated the rationale for such a practice by reference to the value of drug quantities: an

ounce of cocaine has a value of £900 to £1000 but has a maximum street value of £1120 to £1400 if sub-divided into 28 individual gram deals sold for £40 to £50 each.

Creatine was found within the kitchen, Crown label numbers 17 and 18. It could be used to adulterate powdered drugs such as cocaine and amphetamine. If used for that purpose, it assumes the same value as the drug itself and so increases the dealer's profits.

P.S. Maclure explained the use made of standard plastic food bags. To prevent powdered drugs adhering to the bag and being partially lost, drug dealers place the desired amount of powder into the corner of the bag which they then tightly knot, cutting the bag as close to the knot as possible. Such a method aids the package being concealed internally. Eleven such pieces of bag were recovered which are Crown label number 12.

Analysis of mobile telephones recovered at Mr. Sandeman's home disclosed various incoming messages about money or a debt to be repaid to Mr. Sandeman.

In cross-examination on behalf of the family, Miss. Smith sought to explore absorption of cocaine in the mouth. P.S. Maclure described absorption in the mouth as rapid and very dangerous if an ounce package of cocaine were placed in the mouth. If the bag were to burst in the mouth, P.S. Maclure agreed that such a situation would constitute a medical emergency. He considered that the priority would be to try to remove the bag from the mouth to prevent it being swallowed and further ingested. In the event of failing to remove the bag or of a deterioration in health, emergency medical help would be required.

P.C. John D'Ambrosio is a police officer with 26 years' service, completed with Strathclyde Police prior to unification into the single force of Police Scotland. At present he is based within the Officer and Training Safety Department for Police Scotland which role has continued from a similar role with Strathclyde Police. He has held the role since 2009.

P.C. D'Ambrosio's role entails variously ensuring that trainers are applying the techniques that Police Scotland have put in place and assisting with one day officer training re-

qualification. He is currently involved in a national review looking at officer safety training for Police Scotland.

Prior to unification of the various forces, police officers in Tayside Police undertook requalification every two years. Under Police Scotland, requalification is required annually.

Police officers are trained that any use of force has to be reasonable in the circumstances, justifiable and not to excess. Officers are shown a wide range of techniques, with emphasis on the individuality of the officer and the situation and the need for any officer to justify his or her actions. It is impossible to train for every scenario. Accordingly officers are given a programme and it is for them to determine what is best suited. Officers may employ techniques which are outwith the programme. In every situation the officer's actions must be justifiable, reasonable and proportionate.

The concepts of justification and preclusion are taught. Justification entails that any force employed, after a dynamic risk assessment, has to be reasonably proportionate to the perceived threat and necessary. Preclusion operates where a level of force has been attempted without success and a higher level of force is then employed. These concepts are underpinned by consideration of impact factors which will inform the amount of force.

P.C. D'Ambrosio gave evidence that in a scenario of active resistance that handcuffing to the rear ensures better control and safety. Similarly, officers are trained that putting someone in a prone position is far safer for the person if they are resisting and the safest and easiest way to apply handcuffs.

In respect of a scenario whereby drugs have been placed in the mouth, no techniques are taught for removal of the drugs. In respect of neck holds or seizing hold of the jaw, no techniques are taught. Officers are advised not to use neck holds given the potential to cause injury. P.C. D'Ambrosio acknowledged that it may be an instinctive reaction for an officer to grab a jaw to stop chewing or swallowing of a drugs package but in the absence of any

technique within the national programme, it would be for the officer to justify the reason for its use and to show that it was not excessive.

Examined on training about positional asphyxia, P.C. D'Ambrosio's evidence was that officers were given an awareness of positional asphyxia. In respect of ground pin techniques or putting someone in a prone position, trainers will remind officers of what is meant by positional asphyxia. The context is that while officers have to achieve their lawful objective, as soon as that has been achieved and it is safe, they should alleviate any risks by putting the person onto his side, or sit or stand him up. If any of the signs of positional asphyxia are present, the condition should be treated as a medical emergency.

In cross-examination Mr. Watson on behalf of the eight named officers sought to explore the scenario, as spoken to in evidence, of Mr. Sandeman placing into his mouth a golf ball shaped package, wrapped in plastic and containing about an ounce of cocaine in a cut format. P.C. D'Ambrosio agreed that the situation posed two risks to Mr. Sandeman namely blockage of the airways and, if the package were burst open by chewing, of the rapid ingestion of toxic drugs. Further he agreed that he would not be critical of an officer making verbal and other attempts to get the package out of Mr. Sandeman's mouth, having regard to his safety. That was set into the context of the officer's duty of care to his custody.

Mr. Watson then sought confirmation that the law entitles police officers to use reasonable force, that training is designed to illustrate what might be reasonable and that the programme is not prescriptive such that techniques outwith the programme are unlawful, provided that they can be justified. Further, P.C. D'Ambrosio agreed with Mr. Watson that officers cannot abandon their lawful duties simply because the situation offers certain risks. Rather, he agreed that risks require to be navigated as best they can to achieve the officer's lawful objective.

Cross-examined by Miss. Smith on behalf of the family on distraction strikes, P.C. D'Ambrosio described them as a technique to distract a subject, to allow the officers to achieve the next lawful object of, for example, securing handcuffs. As at 2011, the use of

these techniques was no longer part of training for new officers but there would be officers who had been taught distraction techniques. Further, although by 2011 there was a national programme, there were still legacy forces which may have taught such techniques. It was not until Police Scotland that all trainers were required to teach in a standardised way. Any officer using such a technique, would require to justify it and show it to be reasonably proportionate to the threat faced.

Retired Police Sergeant Danny Smith produced a report which is Family production number 3. He was instructed by Messrs. Culley McAlpine solicitors in February 2015 on behalf of the family to review material and to prepare a report relating to the sudden death of Mr. Sandeman. He was asked to state an opinion as to whether the force employed by police officers was reasonable, proportionate and in accordance with officer safety training, in all of the circumstances.

P.S. Smith retired from Strathclyde Police in 2010 having completed 30 years' service. He was then the Officer Safety and Use of Force and First Aid Co-ordinator for Strathclyde Police. He has instructed and designed training at a national level and was the lead instructor in the design and delivery of the first Scottish Officer Safety Training National Instructors course in 2010. The training presently delivered by Police Scotland was designed and implemented by the team in which he was lead instructor. Retired P.S. Smith regularly provides statements of opinion in relation to alleged improper use of force by police officers.

In preparing his report, P.S. Smith reviewed witness statements, photographs, 3D images and a DVD reconstruction of the scene, the *post mortem* report together with Tayside Police Drugs Operation Policy and Guidance on Drugs and Tayside Police Guidance on Use of Force.

Retired P.S. Smith spoke to his report. His evidence was that all police officers now go through the same training programme at the beginning of their service and are subject to a rigorous annual or bi-annual requalification in the use of force and first aid. The training and requalification must include awareness of excited delirium and positional asphyxia. Officers

are reminded of the use of force criteria and accountability when force is used. They are trained to recognise profiled offender behaviour, in reasonable officer response options and on impact factors which are other facts and circumstances which may have a bearing on the response option used. If the reasonable officer safety response option is a use of force, then it must satisfy the criteria that:

1. in order to be lawful, a police officer's use of force must be reasonable and
2. it must be justifiable and in proportion to the profiled offender behaviour.

Profiled offender behaviour ranges from compliance through passive resistance to serious active resistance. Reasonable officer response options range from officer presence through control skills to defensive tactics and deadly force. Impact factors include drugs, alcohol, weapons and mental health amongst many others.

Retired P.S. Smith identified the key impact factors having a bearing on the enforcement of the drugs search warrant at Mr. Sandeman's home as Mr. Sandeman's size, his serious medical problems and lack of mobility, his use of drugs, the presence of a large dog and the suspicion that Mr. Sandeman was dealing in controlled drugs. Further, it was unknown how many other people would be present at the locus.

In reviewing the Policy and Guidance documents referred to above, retired P.S. Smith noted section 1.44 of the Drugs Guidance Policy which applied when a suspect had been seen to swallow controlled drugs to avoid detection. Paragraph 1.44 provides:

"SUSPECT SEEN TO SWALLOW CONTROLLED DRUGS IN ORDER TO AVOID DETECTION- the following control measures are required when dealing with a suspect who has swallowed controlled drugs to avoid detection:

- Verbally encourage the suspect to give up the package/controlled drug. Prevent the suspect from placing any further articles into his/her mouth;
- Do not grip the suspect by the neck or throat, or place anything in suspect's mouth or place suspect of (sic) the floor face up;

- If the suspect is choking, render assistance. Check if a suitably qualified first aid person is available;
- In the event of the suspect swallowing the package:
 - If possible, identify the controlled drug;
 - Seek immediate medical assistance.”

In his report, retired P.S. Smith concludes as follows:

“In my opinion it would appear that the officers involved in this operation have been poorly briefed and this has had an effect on the outcome.

The initial aim of the operation is to gain entry as quickly and safely as possible in order to gain control of all persons within the residence and to preserve any evidence within.

Had a proper briefing taken place then a quicker and more efficient forced entry could have been effected. Trained method of entry officers were on scene but not utilised.

Mr. Sandeman’s previous history goes unmentioned. As a result he is given more time to access his kitchen and is observed to place a bag in his mouth. From this point on he is a time bomb waiting to go off.

The medical reports clearly explain the potential risk he is at having begun to chew on the bag of cocaine. This, in turn, will have a devastating effect on his condition as he struggles and resists arrest.

It is clearly a highly charged and stressful event for all persons involved.

Whilst this impacts on his health, both physically and mentally, his physical size exacerbates the problems.

I struggle to comprehend why these officers kept Mr. Sandeman in a prone position for what appears a long time. Every officer is trained and aware of the dangers of positional asphyxia and excited delirium.

Mr. Sandeman should have been brought to a seated position or placed onto his side as soon as it was safe to do so. This is taught and mentioned as a consideration at all O.S.T [Officer Safety Training] and SPELS [Scottish Police Emergency Life Support] seminars and training courses.

The officers made valiant efforts, along with the paramedics to save Mr. Sandeman. The medical findings show, as the chain of events took place, as soon as Mr.

Sandeman swallowed that amount of cocaine he was on limited time due to his medical conditions.

The officers concerned have to justify the course of action they took on the day. The same officers must be able to explain, in detail, the reasons for the use of force in relation to handcuffing and knee strikes, and why a person of Mr. Sandeman's stature was kept in a prone position for an extended period of time, contrary to training."

Retired P.S. Smith caveated his evidence by clarifying that he is not an expert on drug raids but had been involved in many planning briefings. He added that Tayside Police was an unknown unit to him and that Strathclyde Police tended to do things differently. To an extent, that evidence was qualified by an explanation that the training elements on restraints were historically almost identical from force to force. All officers were delivered a generic programme at the Scottish Police College on entering police service. On then entering an officer's parent force, there may have been subtle changes.

Specifically relating to the police officers undertaking the raid at Mr. Sandeman's home, retired P.S. Smith had seen the officers' training records and confirmed that almost all of them within the prior year to eighteen months had completed officer safety training and first aid training. That officer safety training within Tayside Police was said to be almost identical with training in the Strathclyde force. Any differences related to baton use.

Retired P.S. Smith's evidence on the various databases available for police officers to scrutinise in advance of any operation does not enable me to make clear findings on the databases available in 2011, their respective purposes and the type of information likely to be held on each. In fairness, he had some difficulty in recollecting the names of the various databases from the time of his retirement in 2010 and the names may have changed subsequently. However, despite careful examination by Miss. Smith apparently to establish that Mr. Sandeman's size and propensity to swallow drugs may have been warning markers on a specific database, it seems to me that such information was as likely to be on the Scottish Intelligence Database as on any other but was entirely dependent upon recent involvement with and observation of Mr. Sandeman. The other evidence heard at the Inquiry did not establish such involvement or that there was any intelligence about Mr.

Sandeman on other databases which was undiscovered. There was evidence that D.S. Prudom's briefing included reference to Mr. Sandeman's previous conviction from 2001, Mr. Sandeman's violent resistance and his attempt to swallow drugs on apprehension. Further, as was readily conceded by retired P.S. Smith in cross-examination, police officers will embark upon a drugs raid with the expectation that a suspect may attempt to conceal drugs by various means including by swallowing.

Accordingly, while police officers should approach any operation properly briefed, that briefing using all available intelligence, I am satisfied that there was no failure in relation to Mr. Sandeman in terms of D.S. Prudom's preparation and no evidence to establish that any available intelligence was missed.

Retired P.S. Smith held firmly to the view stated in his report that had a proper briefing taken place then a quicker and more efficient forced entry could have been effected. Given that two officers carried out a reconnaissance of the locus and note was taken of the door being of a quality superior to the standard local authority door, I am not certain what further steps retired P.S. Smith proposed should be undertaken. That is especially the case as the officers thought that Mr. Sandeman may have been alert to one officer's presence and followed him onto the street. However, P.S. Smith did concede that once the officers realised that the door was not being overcome quickly, they took steps to enter as quickly as possible and did their best at that point. He also fairly set the operation and any difficulties into context by contrasting police training as sterile while in reality operations are dynamic and do not always proceed to plan.

Standing the terms of paragraph 1 of the second Joint Minute that not only had Mr. Sandeman replaced the door to his property but had had it reinforced -the latter of which would not be visible on reconnaissance- I am uncertain what distinct steps could have been taken by officers to effect quicker entry. I accept that it is at least possible that immediate deployment of the method of entry officer may have resulted in speedier entry but he too would have had to overcome the reinforcement.

Retired P.S. Smith was closely examined and cross-examined on the actions of the police officers in the course of restraining Mr. Sandeman. I deal elsewhere with the evidence which I have accepted and rejected in this respect. Ultimately, P.S. Smith's evidence, in line with that of P.C. D'Ambrosio, echoed the terms of his report that if the reasonable officer safety response option is a use of force, then for that use of force to be lawful, it must be reasonable, justifiable and proportionate. Not all techniques are taught and if a particular technique is used which is not within the national programme, then it falls to be justified by the individual officer.

On the specific issue of a suspect placing drugs into the mouth, retired P.S. Smith spoke to the appropriate response being to talk to the suspect, constantly telling him to spit it out. He emphasised that the officers also require to prevent a suspect from concealing drugs and that by taking control, subduing the suspect, handcuffing him and putting him to the ground. Under cross-examination retired P.S. Smith accepted that there may be circumstances where a drugs package may be safely retrieved if it were protruding.

If the drugs were seen to be swallowed, then that should be treated as a medical emergency. Similarly if the package were seen to have burst, that should be treated as a medical emergency. Ultimately retired P.S. Smith's evidence was that as the circumstances unfolded in respect of Mr. Sandeman nothing could have been done. He maintained that the problem was the delay in entry. Once Mr. Sandeman was able to swallow the drugs, an increased number of police officers would not have made any difference. More officers may have facilitated a more rapid entry and easier containment of Mr. Sandeman.

It is appropriate now to consider the disputed evidence in respect of the conduct of the police officers in their execution of the search warrant and separately the conduct of Mr. Sandeman. I heard evidence principally from Detective Sergeant Robert Prudom, Police Constable Gareth Irons, Detective Constable Jamie Abel, Detective Constable Mark Charnley and Police Constable Gillian Donnelly. I also heard evidence from three civilian witnesses namely, Roderick Moncrieff, Mario Foy and Steven Welsh.

Each of the police officers spoke to what took place on entry into Mr. Sandeman's property from his or her individual vantage point in what was a dynamic and intense situation. I had no sense of evidence having been rehearsed or of any collusion. Rather each officer's account was vivid and conveyed the immediacy and urgency of what developed. The officers were not defensive and made appropriate concessions in cross-examination. I found the officers to be credible and reliable. In particular, I thought that D.S. Prudom and P.C. Irons remained reflective about the operation and whether it might have been conducted differently.

Notwithstanding criticism on behalf of Mr. Sandeman's family about the inadequacy of planning and of the briefing and about the failure to assign roles, I am satisfied that each of the officers deployed appropriately. As events developed, D.S. Prudom either properly instructed the available officers or they correctly assumed necessary roles. Retired P.S. Smith fairly acknowledged that the officers did their best, acting bravely by entering one at a time when the reinforced door presented difficulty and made valiant efforts to save Mr. Sandeman when his health deteriorated.

Retired P.S. Smith's conclusion was that it fell to the officers to justify the course of action which they took. They must be able to explain the reasons for the use of force in relation to handcuffing and knee strikes and why Mr. Sandeman, given his size, was kept in a prone position for what P.S. Smith described as an extended period of time. In respect of the last point, the officers' conduct was said to be contrary to their training. Mr. Sandeman should have been brought to a seated position or placed onto his side as soon as it was safe to do so. These conclusions underpinned the submissions made on behalf of Mr. Sandeman's family.

The Inquiry heard disputed evidence as to the conduct of the police officers in seeking to control Mr. Sandeman. The consistent evidence of the police officers was that Mr. Sandeman, having come out of the kitchen with a golf ball size package in his mouth, was determined to enter the living room and forcefully resisted the police officers, D.C. Abel and D.C. Charnley, attempting to restrain him on each side and P.C. Irons attempting to gain control from the front. P.C. Gillian Donnelly was behind Mr. Sandeman. All of the officers spoke to the inability to gain control of Mr. Sandeman and of him falling into the living

room as a combination of his determination to enter that room and the momentum from his resistance and his bulk.

P.C. Gillian Donnelly alone spoke to her recollection that Mr. Sandeman's shorts fell down in the struggle and contributed to him falling over. Her evidence illustrates the very distinct perspectives which each individual officer had in a restricted space. P.C. Donnelly's evidence is given credence from the photographic record of the locus showing a pair of men's shorts discarded in the hallway. None of the other police officers, engaged in attempts to control Mr. Sandeman, noted the shorts although by the time of his death in the living room, Mr. Sandeman was wearing undershorts and no shorts or trousers.

P.C. Irons' evidence was that he took hold of Mr. Sandeman's chin, around the jaw, and head in an attempt to control his head. He described the step as a natural reaction in an attempt to see what was in his mouth and to encourage him to spit it out.

Mr. Sandeman fell face down onto the floor of the living room. He continued to resist the officers both verbally and physically, by kicking out, struggling and seeking to lodge his right arm underneath the weight of his body. He sought to frustrate the officers' attempts to handcuff him to the rear and to position him on his side. He used the force of his weight against the officers. P.C. Irons suspected that Mr. Sandeman had further drugs in his clenched fist although that transpired to be incorrect.

D.S. Prudom was positioned towards Mr. Sandeman's head. P.C Irons and D.C. Abel were respectively at his shoulder and lower back, attempting to apply handcuffs, and D.C. Charnley lay across his legs in an attempt to stop Mr. Sandeman kicking out. D.C. Abel struck Mr. Sandeman on the rear of his left thigh with his right knee as his knee was the only part of his body which was not engaged in the struggle with Mr. Sandeman. D.C. Abel's objective was to stop Mr. Sandeman kicking out so that D.C. Charnley could safely gain control of Mr. Sandeman's legs. D.C. Abel kept his knee pressed there to reduce the range of movement of Mr. Sandeman's left leg in a pinning manoeuvre.

Mr. Sandeman persisted in chewing on the package within his mouth, variously telling officers to “fuck off”, claiming that he was eating a bacon roll, laughing and attempting to lick the carpet onto which powder from his mouth had fallen.

Mr. Sandeman was handcuffed to the rear by three linked sets of handcuffs. D.S. Prudom instructed that he was brought to a sitting position and Mr. Sandeman’s condition deteriorated rapidly. That deterioration was noted in Mr. Sandeman stopping communication with the officers, in him making choking noises, losing colour to his face, becoming unresponsive and losing consciousness.

D.S. Prudom had earlier contacted force control to arrange for additional assistance. On Mr. Sandeman’s condition changing, he instructed removal of the three civilian witnesses from the living room, for furniture to be up-ended to create more space and then for an ambulance to be called. P.C. Irons spoke to a number of officers calling for an ambulance to be summoned as soon as Mr. Sandeman’s health visibly deteriorated and an awareness that an ambulance was being summoned.

The handcuffs were removed. P.C. Dale Evans slapped Mr. Sandeman on the back in response to his apparent choking in an attempt to dislodge any obstruction. Mr. Sandeman was placed onto his back. His vital signs were checked. P.C. Irons tilted Mr. Sandeman’s head back, was able to open his mouth, to see an obstruction to his airway and to use his small finger to remove bloodied plastic. CPR was started. Paramedics arrived within a brief period (the precise period was not established but noted to be short as the ambulance was passing as the call was issued) and took over CPR. The police officers acted in accordance with their first aid training. As I understand it no criticism is made of the officers’ attempts to assist Mr. Sandeman once an ambulance had been called. Criticism is made of the point at which an ambulance was called.

The evidence allows me to be satisfied that police officers arrived at Mr. Sandeman’s property at 1515 hours. Additional manpower was requested via the force control room at 1521 when officers could be heard to be shouting at Mr. Sandeman to “spit it out”. An

ambulance was requested at 1534 hours. D.S. Prudom appeared to agree with Miss. Smith's suggestion in cross-examination that Mr. Sandeman was on the floor of the living room at 1521 hours but disputed that Mr. Sandeman had been on the floor for 15 minutes. His recollection was that the period was no more than five to ten minutes and that a longer period had transpired from forcing entry, through handcuffing the three civilians before contacting force control.

D.S. Prudom was carefully examined and cross-examined on the timing of the request for an ambulance and what informed that decision. In examination in chief, his evidence was that he realised that medical assistance was needed when he saw red powder coming out of Mr. Sandeman's mouth and in essence he realised that something was wrong. Under detailed cross-examination by Miss. Smith on behalf of the family, his evidence was that he summoned the ambulance when Mr. Sandeman's health deteriorated as he was being sat up and so at a later stage.

Further, Miss. Smith sought to explore whether the applicable guidance, namely a Tayside Police document entitled "Policy and Guidance: Drugs", which is Crown production number 9, dictated that medical assistance should be sought urgently on a suspected drugs package being swallowed. She referred to the terms of paragraph 1.44 which provides that in the event of a suspect swallowing the package, the drug should be identified if possible and immediate medical assistance sought.

D.S. Prudom clarified his understanding of the guidance and agreed with Mr. MacDonald, the procurator fiscal depute, in re-examination that there were distinct stages to what might broadly be termed "swallowed". He understood that "swallowed" necessitating medical assistance did not come into play if the package remained within a suspect's mouth. Otherwise, the guidance that a suspect should be verbally encouraged to give up the package did not make sense. In Mr. Sandeman's case, it was D.S. Prudom's assessment that the package was still within Mr. Sandeman's mouth as he was chewing on it and so it was appropriate to continue efforts to have him spit the package out. He did not consider that Mr. Sandeman had swallowed the package.

On the question of timing, my overall impression of D.S. Prudom's evidence is that he experienced the progress of the raid as a continuum, during which matters were kept under continual review and during which his duty of care to Mr. Sandeman as well as to the officers under his command dictated that Mr. Sandeman was brought under control and encouraged to spit out whatever was in his mouth. Mr. Sandeman was encouraged to spit the package out not only to preserve evidence but for his own safety. The need for medical assistance arose for D.S. Prudom on the package not being spat out, on a powdered substance coming from Mr. Sandeman's mouth, on Mr. Sandeman stopping speaking to the officers and ultimately on Mr. Sandeman's health visibly deteriorating. It seems to me that D.S. Prudom was appropriately engaged in a dynamic assessment of the operation and that it is to an extent unfair and artificial to seek to identify an isolated point in that continuum at which an ambulance should have been summoned. I reject the submission on behalf of Mr. Sandeman's family that the Tayside Police "Policy and Guidance: Drugs" should be read as equating "swallowed" to having placed in the mouth. To do so would render meaningless the reference to encouraging the suspect to give up the package. I agree with the Crown that the guidance then in operation in Tayside Police could have been framed with greater clarity.

It is fairly conceded on behalf of Mr. Sandeman's family that the precise point at which an ambulance was summoned would not have affected Mr. Sandeman's survival.

On behalf of the Crown it was again fairly submitted that with the benefit of informed hindsight it was now known that medical assistance should have been summoned as soon as it was realised that Mr. Sandeman had successfully breached the package. On a counsel of perfection, medical assistance was, to a degree, delayed. However, such approach was said to be hypercritical and must be viewed in conjunction with the two following practical considerations:

1. emergency medical assistance could not have been administered and would not have been attempted whilst Mr. Sandeman was still engaged in a violent struggle with the

restraining officers. Paramedics could only attend after Mr. Sandeman was subdued and controlled and

2. the futility of medical assistance in the particular circumstances as a paramedic could do little outwith a hospital setting to treat severe cardiotoxicity.

Consequently it was submitted that there was no basis on the evidence to hold established that the death of Mr. Sandeman was in any real sense contributed to by any delays attributable to the actions or omissions of the officers involved. There was no material on which to determine a recommendation under section 6(1)(d).

I understand the force of the Crown submission in respect of section 6(1)(d) of the 1976 Act. However, section 6(1)(e) permits comment upon and, where appropriate, recommendations in relation to any matter which has been legitimately examined in the course of the Inquiry as to a circumstance surrounding the death if it appears to be in the public interest to make such comment or recommendation. I rely upon the observations of Sheriff Kearney in his Determination in James McAlpine, referred to above:

“Finally, the provisions of section 6(1)(e) are very widely stated and, in my view, entitle and indeed oblige the Court to comment upon and, where appropriate make recommendations in relation to, any matter which has been legitimately examined in the course of the inquiry as to a circumstance surrounding the death if it appears to be in the public interest to make such comment or recommendation.’

Further in his Determination in Thomas Strain (Kilmarnock, 28 September 2010) Sheriff Hammond observed:

‘Causation is relevant in determining what findings can be made under section 6(1)(c) or (d) but section 6(1)(e) permits consideration of any other facts which are relevant to the circumstances of the death, even though a causal link has not been established.’

In making a finding under section 6(1)(e), I fully acknowledge that D.S. Prudom was engaged in a dynamic assessment such that I consider that no criticism attaches to the steps taken by him and, further, no adverse consequence for Mr. Sandeman resulted from those steps. Nonetheless I consider that it is appropriate to find that other facts which are relevant to the circumstances of Mr. Sandeman’s death are that medical assistance should have been summoned as soon as it was realised that Mr. Sandeman had breached the package within

his mouth, the contents of that package being suspected to be cocaine. The medical evidence clearly establishes the immediate risk posed in the event of a cocaine package being breached and there being exposure within the mouth to the drug.

Miss. Smith's cross-examination on behalf of the family was also directed to the length of time that Mr. Sandeman was held face down, that is in the prone position on the living room floor. The questions were set in the context of positional asphyxia. I have addressed the timings above. D.S. Prudom and P.C. Irons showed an awareness throughout their evidence of the need to move Mr. Sandeman onto his side as soon as it was safe to do so, that is when he was handcuffed. D.S. Prudom spoke to the increased risks of positional asphyxia having regard to factors of weight, drug or alcohol use and potential medical problems. There were constant references in the officers' evidence in chief to trying to move Mr. Sandeman onto his side but to Mr. Sandeman resisting such attempts.

Dr. Sadler assisted the court in his evidence about the signs of excited delirium. D.S. Prudom's evidence was that Mr. Sandeman, while struggling with officers, was fully lucid and persistent in arguing that he was eating a bacon roll. He did not consider, and I am satisfied that there is no evidence to support, that Mr. Sandeman's behaviour was manic or purposeless, such that excited delirium is relevant.

Finally then in the chapter of the officers' conduct, I assess the contrasting evidence of the police officers and of the civilian witnesses as to the restraint techniques employed by the officers and whether the officers met with resistance from Mr. Sandeman. I have set out the police evidence above.

Roderick Moncrieff, Mario Foy and Steven Welsh spoke to a very different scenario unfolding. To varying degrees, they described intemperate and aggressive behaviour on the part of the officers towards Mr. Sandeman.

Mr. Moncrieff's evidence was that a police officer had an arm around Mr. Sandeman's neck, that officers forced Mr. Sandeman to the floor by pulling him down, that an officer sat on

Mr. Sandeman's legs and another kneed Mr. Sandeman on his kidneys, driving his knee in repeatedly after drawing his knee fully back. He also said that a distinct officer tried "to shove his fingers in [Mr. Sandeman's] throat". Mr. Moncrieff was adamant that he had not seen any powder coming out of Mr. Sandeman's mouth, had only seen a bacon roll in his mouth but that when Mr. Sandeman spoke there sounded to be nothing in his mouth.

Mr. Foy's evidence was that Mr. Sandeman was face down in the living room for the entire time and that he was struck three or four hard blows on the side above the hip. Mr. Foy rejected as lies any suggestion that the blows may have been to Mr. Sandeman's leg, consistent with bruising on the leg.

Mr. Welsh spoke to the most extreme violence on the part of police officers. He said that the officers were raging and had come through the door like a pack of wolves. They had shouted to get Mr. Sandeman down and had "decked him". The officers had punched and kicked Mr. Sandeman. An officer repeatedly kneed Mr. Sandeman in the ribs on his right side. Another sat on his legs despite Mr. Sandeman's screams of pain while yet another pulled the handcuffs up high behind Mr. Sandeman's back. Mr. Welsh then described two officers acting in tandem, one losing his temper, striking Mr. Sandeman and the other then following the lead of the first officer.

Mr. Welsh gave a vivid and detailed account of what would have been assaultive behaviour by police officers. In common with Mr. Moncrieff, he said that there was nothing in Mr. Sandeman's mouth, nothing which obstructed his speech. Mr. Welsh said that he had been a friend of Mr. Sandeman for 20 years but that on the date of Mr. Sandeman's death, he was present in his flat as he was decorating it. Specifically on that day, he was painting Mr. Sandeman's daughter's bedroom. He also gave an elaborate account of closing the front door to Mr. Sandeman's flat, immediately before police officers attempted entry, as he had been varnishing in the hall and wanted to keep out dust from the common close. In examination in chief, Mr. Welsh was shown a number of photographs of the bedroom, taken following Mr. Sandeman's death, which showed a fully furnished room, with wall shelves and various items hung on the walls. Notwithstanding the photographic evidence, Mr.

Welsh maintained that he was painting in that room at the time of the police raid although he modified his evidence to say that he had been touching up the finishes. Following upon Mr. Welsh's evidence a second Joint Minute was entered into and at paragraph 2 it was agreed that the photographs referred to above were taken between 6 and 11 May 2011 by scene of crime officers none of whom detected any indication of recent decorating activity in the property and in particular any smell of fresh paint or decorating equipment.

I note not only the inconsistencies between the civilian witnesses' evidence and that of the police officers but the inconsistencies in the evidence of the three. Mr. Welsh spoke to a very different event to Messrs. Foy and Moncrieff. I reject Mr. Welsh's evidence as incredible partly on the basis that he lacked credibility in his account of why he was in the flat and with ease fabricated a purpose which was contradicted by photographic evidence and the second Joint Minute. But further, Mr. Welsh's account of a sustained and violent assault found very little, if any, support in the *post mortem* examination. It was also unsupported in its intensity and range by the evidence of Messrs. Foy and Moncrieff.

As set out above, the evidence both of the police officers and of *post mortem* examination enables me to determine that at least one but possibly more knee blows were struck to the rear of Mr. Sandeman's leg. The pathologists spoke to the unreliability of bruising as an indicator of level of force. In assessing the credibility and reliability of the three civilian witnesses against that of the police officers, I prefer the evidence of the officers. I have grave concerns also about the credibility of Messrs. Foy and Moncrieff. Mr. Foy's evidence was contrived in his explanation for having in excess of £1700 in cash on him, namely that he had sold a car some weeks earlier, had kept the money in his kitchen cupboard and despite living in Pitlochry had taken the opportunity on that particular day to travel to Perth to deposit the money at a bank in Perth, after visiting Mr. Sandeman. Mr. Moncrieff's evidence that he had seen nothing in Mr. Sandeman's mouth other than a bacon roll was not credible and was inconsistent with the officers' and photographic evidence of the powder and plastic packaging which came from Mr. Sandeman's mouth. Similarly incredible was the claimed lack of knowledge that there were drugs within Mr. Sandeman's home, a fact which Mr. Sandeman's family was content to concede.

On balance I reject the evidence of the three civilian witnesses that the police officers acted as claimed. Accepting the officers' account, I then require to determine whether their use of force was a reasonable, justifiable and proportionate response, and so lawful, in the circumstances. I appreciate that the holding of Mr. Sandeman's jaw and head and the use of knee strikes are not taught within the national programme, and so fall to be justified by the individual officers. I have set out carefully above the profiled offender behaviour which the officers met on entering Mr. Sandeman's flat for the lawful execution of a search warrant, namely persistent verbal and physical aggression and resistance. Further Mr. Sandeman's physical size, potential drug consumption and apparent holding of a drugs package within his mouth presented as impact factors. Mr. Sandeman's behaviour coupled with these impact factors indicated that a reasonable officer response was the use of force. Given the scale and persistence of Mr. Sandeman's resistance and the risk which he posed to officers' safety and his own safety, I am satisfied that the officers' response was reasonable and proportionate. I am also satisfied that P.C. Irons and D.C. Abel justified respectively holding Mr. Sandeman's jaw and of applying force with the knee.

Lastly, I note the submission on behalf of Mr. Sandeman's family that police officers should receive training on the effects of the ingestion of cocaine. In response on behalf of the Chief Constable, it was submitted that police officers are neither medically qualified nor are they paramedics. The evidence established that they receive first-aid training and that the particular officers' training was current. It would be unreasonable and impracticable, it was further submitted, to train officers on the effects of cocaine on the basis that officers are faced with situations where individuals may have consumed a range of toxic substances. To train officers on the effects of toxic substances would go beyond the responsibilities and capabilities of a police officer. I am persuaded by the submission on behalf of the Chief Constable and see potential danger in police officers straying into the territory of medical assessment when not medically qualified. The requirement of them ought to be a clear understanding of when a medical emergency arises and help should be summoned.

Conclusion

I am satisfied that in terms of section 6(1)(a) of the 1976 Act that Mr. Sandeman was pronounced dead at 1600 hours on 6 May 2011 at 73b Struan Road, Perth.

In terms of section 6(1)(b) of the 1976 Act, I am satisfied that the cause of death was I a) cardiac dysrhythmia; b) cardiac enlargement and adverse effects of cocaine and physical restraint and II obesity.

On the basis of the foregoing analysis, I am content that there were no reasonable precautions whereby Mr. Sandeman's death might have been avoided nor any defect in any system of working which contributed to his death, as submitted on behalf of Mr. Sandeman's family. As such, I make no findings in terms of section 6(1)(c) or (d) of the 1976 Act.

I have found under section 6(1)(e) of the 1976 Act that other facts which are relevant to the circumstances of Mr. Sandeman's death are that medical assistance should have been summoned as soon as it was realised that Mr. Sandeman had breached the package within his mouth, the contents of that package being suspected to be cocaine.

Finally, I should like to extend my sympathy to Mr. Sandeman's family, a number of whom were present throughout the Inquiry.