SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT ABERDEEN

[2026] FAI 51

ABE-B662-25

DETERMINATION

BY

SHERIFF PRINCIPAL ANDREW MILLER

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

into the death of

JAMES ALEXANDER ROBERT FORBES

ABERDEEN, 18 September 2026

For the Crown: Mr G Burton, Procurator Fiscal Depute
For Lyndsay Anne Forbes: Mr A Wickham, Advocate
For the Scottish Police Federation, PC Valentine and PC Bayliss: Professor P Watson, Solicitor Advocate
For PS Arton: Mr R Vaughan, Solicitor Advocate
For the Chief Constable: Ms G Haggerty, Solicitor
For Calum Scott: Mr A Rodgers, Solicitor

DETERMINATION

The sheriff, having resumed consideration of the evidence and information presented at the Fatal Accident Inquiry into the death of James Alexander Robert Forbes, Determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths Etc (Scotland) Act 2016 ("the 2016 Act") that:

1. James Alexander Robert Forbes was born on 19 November 1986 and was aged 37 at the time of his death.

2. In terms of section 26(2)(a) of the 2016 Act, Mr Forbes was pronounced dead at approximately 1545 hours on 15 January 2024 at Elphinstone Court, Aberdeen.

3. In terms of section 26(2)(b) of the 2016 Act, the fall resulting in the death of Mr Forbes occurred at approximately 1525 hours on 15 January 2024 at Elphinstone Court, Aberdeen.

4. In terms of section 26(2)(c) of the 2016 Act, the cause of Mr Forbes's death was:

1(a) Multiple blunt force injuries
1(b) Fall from height

5. In terms of section 26(2)(d) of the 2016 Act, the fall resulting in the death of Mr Forbes was caused when Mr Forbes, having been detained within flat 47 on the 12th floor of Elphinstone Court, Aberdeen against his will and subjected to repeated acts of violence there by Lee Charles Smith on 14 and 15 January 2024, jumped from the bedroom window of the flat in order to escape, whereby he sustained fatal injuries on impact with the ground.

6. In terms of section 26(2)(e) of the 2016 Act, the following precautions could reasonably have been taken and, had they been taken, might realistically have resulted in the death of Mr Forbes being avoided:

i. Police Scotland service advisor Calum Scott could have accurately noted the information provided by witness Gail Thomson during a 999 call made by her at 1013 hours on 15 January 2024 with regard to the location, relative to the tower block to which she referred, of the man whose shouting she described during the call.

ii. An attempt could have been made by a member of Police Scotland personnel to contact Gail Thomson in order to confirm the information she had provided during her 999 call, prior to PCs William Bayliss and Maree Valentine, who were carrying out enquiries arising from Gail Thomson's call, being instructed to stand down at about 1100 hours on 15 January 2024.

iii. Sergeant Richard Arton, when he asked PCs Bayliss and Valentine prior to instructing them to stand down whether they had spoken to "the witnesses," could have identified the witnesses to whom he was referring.

iv. PCs Bayliss and Valentine could have acted upon the information which they received from their interaction with a group of workmen including witness James Mutch shortly before 1100 hours on 15 January 2024, to the effect that shouting which a member or members of the group had heard earlier that morning had come from the upper floors, high in Elphinstone Court.

7. In terms of section 26(2)(f) of the 2016 Act, no defects in any system of working contributed to the death of Mr Forbes or to the circumstances which resulted in his death.

8. In terms of section 26(2)(g) of the 2016 Act, the following other facts are relevant to the circumstances of Mr Forbes's death:

i. Lee Charles Smith was convicted of the culpable homicide of James Forbes.

ii. A number of members of the public who heard James Forbes shouting for help on the morning of 15 January 2024 and who had the opportunity to call the police to report what they had heard and, in the case of some of those

individuals, to direct the police to the flat from which the shouting had come, did not do so.

iii. During a 999 call made by witness Lindsay Barrett at 1016 hours on 15 January 2024, Police Scotland service advisor Dawn Fair incorrectly recorded a reference by Ms Barrett to 34-48 Gordon's Mills Crescent, Aberdeen as a reference to numbers 34-38.

Recommendations

9. In terms of section 26(1)(b) of the 2016 Act and having regard to the matters set out in section 26(4) of the Act, the following recommendations might realistically prevent other deaths in similar circumstances:

i. The Chief Constable should develop and introduce guidance for Police Scotland service advisors with the objective of minimising the scope for the misrecording of information reported by telephone by members of the public, for example by requiring service advisors, where the nature and circumstances of the call allow, to repeat potentially important information such as the location of an incident to the caller, so that the caller has an opportunity to correct any misunderstanding or misrecording of that information.

ii. The Chief Constable should develop and introduce guidance to clarify: (a) the circumstances in which an attempt should be made to contact a person who has called the police to report a concern for person issue, in order to check and

confirm the information which the caller reported, before bringing enquiries arising from the call to an end; and (b) who should be responsible for attempting to make such contact.

NOTE

James Alexander Robert Forbes

[1] James Forbes was born on 19 November 1986 and was aged 37 at the time of his death. He was the oldest of three siblings. He is survived by his younger sister and brother and by his father, his mother having died in 2020. He did not have any children. At the time of his death, he was unemployed. It is understood that he had longstanding substance misuse issues.

The legal framework

[2] The legal principles and procedures which apply to Fatal Accident Inquiries are set out in the 2016 Act and in the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 ("the 2017 rules").

[3] Sections 1, 2 and 4 of the 2016 Act are in the following terms:

> **1 Inquiries under this Act**
> (1) Where an inquiry is to be held into the death of a person in accordance with sections 2 to 7, the procurator fiscal must—
> (a) investigate the circumstances of the death, and
> (b) arrange for the inquiry to be held.
> (2) An inquiry is to be conducted by a sheriff.
> (3) The purpose of an inquiry is to—
> (a) establish the circumstances of the death, and

(b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances.

(4) But it is not the purpose of an inquiry to establish civil or criminal liability.

…….

2 Mandatory inquiries

(1) An inquiry is to be held into the death of a person which—
  (a) occurred in Scotland, and
  (b) is within subsection (3) or (4).

(2) Subsection (1) is subject to section 3.

(3) The death of a person is within this subsection if the death was the result of an accident which occurred—
  (a) in Scotland, and
  (b) while the person was acting in the course of the person's employment or occupation.

(4) The death of a person is within this subsection if, at the time of death, the person was—
  (a) in legal custody, or
  (b) a child required to be kept or detained in secure accommodation.

…….

4 Discretionary inquiries

(1) An inquiry is to be held into the death of a person which occurred in Scotland if the Lord Advocate—
  (a) considers that the death—
    (i) was sudden, suspicious or unexplained, or
    (ii) occurred in circumstances giving rise to serious public concern, and
  (b) decides that it is in the public interest for an inquiry to be held into the circumstances of the death.

[4] The inquiry in relation to the death of Mr Forbes was a discretionary inquiry in terms of section 4 of the Act. Whether an inquiry is mandatory or discretionary, the specific matters to be determined by the court are set out in section 26 of the 2016 Act, which is in the following terms:

26 The sheriff's determination

(1) As soon as possible after the conclusion of the evidence and submissions in an inquiry, the sheriff must make a determination setting out—
  (a) in relation to the death to which the inquiry relates, the sheriff's

findings as to the circumstances mentioned in subsection (2), and

(b) such recommendations (if any) as to any of the matters mentioned in subsection (4) as the sheriff considers appropriate.

(2) The circumstances referred to in subsection (1)(a) are—

(a) when and where the death occurred,

(b) when and where any accident resulting in the death occurred,

(c) the cause or causes of the death,

(d) the cause or causes of any accident resulting in the death,

(e) any precautions which—

(i) could reasonably have been taken, and

(ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided,

(f) any defects in any system of working which contributed to the death or any accident resulting in the death,

(g) any other facts which are relevant to the circumstances of the death.

(3) For the purposes of subsection (2)(e) and (f), it does not matter whether it was foreseeable before the death or accident that the death or accident might occur—

(a) if the precautions were not taken, or

(b) as the case may be, as a result of the defects.

(4) The matters referred to in subsection (1)(b) are—

(a) the taking of reasonable precautions,

(b) the making of improvements to any system of working,

(c) the introduction of a system of working,

(d) the taking of any other steps,

which might realistically prevent other deaths in similar circumstances.

(5) A recommendation under subsection (1)(b) may (but need not) be addressed to—

(a) a participant in the inquiry,

(b) a body or office-holder appearing to the sheriff to have an interest in the prevention of deaths in similar circumstances.

(6) A determination is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature.

[5] Thus, in terms of section 1(3) and (4) of the 2016 Act, the purpose of a Fatal Accident Inquiry is to establish the circumstances of the death and to consider what steps (if any) might be taken to prevent other deaths in similar circumstance, but not to establish civil or criminal liability or blame. It is an inquisitorial, as opposed to an adversarial, process, in which the Procurator Fiscal represents the public interest.

[6] The word "accident" appears at several points in the operative provisions of section 26 of the 2016 Act. However, "accident" is not defined anywhere in the 2016 Act or the 2017 rules.[1] This sometimes raises an issue as to whether the event or circumstances which resulted in a person's death can properly be described as an accident, with implications for some of the issues to be addressed in terms of section 26. It is clear however that the 2016 Act uses the word "accident" in a very wide sense, to encompass any event or occurrence which causes or results in a person's death in circumstances which fall within the scope of section 2 or section 4 of the Act, whether the event or occurrence in question happened or arose deliberately, accidentally or in any other way. In the context of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ('the 1976 Act'), which was the legislation which regulated Fatal Accident Inquiries until the enactment of the 2016 Act, one commentator noted that "…[T]he term 'accident' is capable of a very wide interpretation; almost any untoward occurrence can be described as an accident."[2] It appears to me that the same wide interpretation should apply in the context of the 2016 Act.

[7] In relation to any disputed factual matters which require to be determined in the course of an inquiry, the sheriff considers the available evidence and any agreed facts and decides whether, on balance of probabilities, the relevant facts have been proved. In the course if this determination, where I state that I am satisfied of any particular fact, I mean that I am satisfied on balance of probabilities.

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[1] Mawdsley, *Sudden Deaths and Fatal Accident Inquiries in Scotland*, paragraph 4.31 et seq
[2] Macphail, *Sheriff Court Practice*, 3rd Edition, paragraph 28.15

[8] Particular issues arise with regard to the identification of precautions in terms of section 26(2)(e) of the Act. If the evidence satisfies the sheriff that any precaution could reasonably have been taken and that, had it been taken, it might realistically have resulted in the death or any accident resulting in the death being avoided, the sheriff must identify that precaution in the determination. In this context, a precaution is "a measure, action or step taken beforehand against a possible danger, risk or inconvenience."[3] The sheriff need not be satisfied that the precaution should have been or ought to have been taken. It is sufficient that the precaution could reasonably have been taken.[4] The precaution must arise from and be supported by the evidence led at the inquiry, or any reasonable inferences drawn from the evidence, and must be a precaution which could reasonably have been taken. In other words, it must have been available, suitable and practicable, whether or not it was required by any formal guidance or recognised practice which applied to the kind of situation which is under consideration. The sheriff does not need to be satisfied that the precaution would, or would probably, have resulted in the death, or any accident resulting in the death, being avoided; merely that the precaution might realistically have had that result. In other words, the sheriff must be satisfied that, had the precaution been taken, there is a realistic or actual possibility, rather than a fanciful possibility, a real rather than a remote chance, of the death or accident being avoided.[5]

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[3] Duncan v Lord Advocate [2025] CSIH 27, paragraph [52]
[4] Duncan v Lord Advocate, paragraphs [51] and [57]
[5] Determination into the deaths of Katie Allan and William Brown [2025] FAI 6, paragraph [28]

[9] Consistent with the terms of section 26(3) of the 2016 Act, it does not matter whether it was foreseeable in advance that the death or accident which resulted in the death might happen if the precaution was not taken. Thus, the sheriff is entitled to use hindsight in identifying precautions for the purposes of section 26(2)(e) of the Act, in order to contribute to the aim of preventing other deaths in similar circumstances in the future.[6]

[10] In the context of section 26(2)(f) of the Act, the question of whether "any defects in any system of working… contributed to the death…" is a question of fact for the sheriff to decide on balance of probabilities. There must be a causal relationship between any identified defect in a system of working and the death, but a defect may contribute to a death without being the only or even the main cause of it. All that is required is that the defect was at least a significant or material cause of the death, whether alone or in combination with other factors; it must not be so remote from the death as to have played no real part in it.[7]

[11] Section 26(2)(g) of the Act requires the sheriff to record "any other facts which are relevant to the circumstances of the death." This allows the sheriff to formally identify any facts which have been shown to be relevant to the circumstances of the death, including reasonable precautions or defective systems of work, but where the necessary causal connection which is required before the sheriff can make a finding under section 26(2)(e) or (f) is missing. Section 26(2)(g) therefore allows the sheriff to

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[6] Duncan v Lord Advocate, paragraph [60]

[7] Determination into the deaths of Katie Allan and William Brown, paragraph [31]

identify a precaution which it would have been reasonable to take, where the sheriff is not satisfied that, had the precaution been taken, there is a realistic possibility that the death might have been avoided. Likewise, the sheriff may identify a defect in a system of work which is relevant to the circumstances of the death, even if the sheriff is not satisfied that the defect actually contributed to the death. The overall effect of section 26(2)(g) is to widen the scope for lessons to be learned from the circumstances of the death with which the inquiry is concerned, in the hope of preventing other deaths in similar circumstances in the future.[8]

[12] Sections 26(1)(b) and 26(4) of the 2016 Act allow the sheriff to make such recommendations as the sheriff considers appropriate concerning the taking of reasonable precautions, the making of improvements to any system of working, the introduction of a system of working or the taking of any other steps, which might realistically prevent other deaths in similar circumstances. This envisages the making of forward-facing recommendations arising from the exercise of the sheriff's judgment and discretion, even if no findings have been made under section 26(2)(e) or (f). However, any recommendations made under sections 26(1)(b) and (4) must be reasonable and based on the evidence. The sheriff must also be satisfied that the recommendations might realistically prevent other deaths occurring in the future in similar circumstances to the death with which the inquiry is concerned.[9]

[13] In terms of rule 4.1 of the 2017 rules, information may be presented at a Fatal

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[8] Determination into the deaths of Katie Allan and William Brown, paragraph [32]
[9] Determination into the deaths of Katie Allan and William Brown, paragraph [32]

Accident Inquiry in any manner, including in the form of witness statements and other documents, and the sheriff may reach conclusions based on the information presented, irrespective of the manner in which it is presented.

Background circumstances and scope of the inquiry

[14] The participants helpfully agreed a substantial number of undisputed facts by joint minute, which shortened the inquiry hearing and allowed it to focus on the critical issues which were disputed. The agreed matters included those set out in the following paragraphs in this section of the determination.

[15] At approximately 1525 hours on 15 January 2024, a member of the public saw James Forbes fall from the open window of flat 47 on the 12th floor of Elphinstone Court, a high rise block of flats in Aberdeen. Mr Forbes died at the scene from impact injuries. Emergency services were called and attended, but Scottish Ambulance Service staff found that Mr Forbes was dead. He was formally pronounced dead at 1545 hours.

[16] Elphinstone Court comprised 18 floors and a basement level space. It was not disputed that the resident of flat 47 at the time of these events was a man named Lee Charles Smith.

[17] On 30 October 2024, Lee Charles Smith pled guilty at the High Court of Justiciary in Edinburgh to the culpable homicide of James Forbes. The charge to which Lee Charles Smith pled guilty was in these terms:

> "on 14 January 2024 and 15 January 2024 at 47 Elphinstone Court, Aberdeen you LEE CHARLES SMITH did abduct James Forbes, in that you did lock him within the property there and detain him against his will, and you did assault him in

> that you did utter threats to kill him, brandish a knife at him, strike him on the body with a hammer, repeatedly strike him on the body with a knife or similar instrument, carry him into a bathroom and put him into a bath, repeatedly punch him on the head and body, and in order to escape said James Forbes did jump from a window at height and did strike the ground, whereby he was so severely injured that he died there and you did kill him."

[18] When Lee Charles Smith pled guilty to this charge, the Crown (the prosecution) provided the court with an agreed written narrative of the facts and circumstances relevant to the criminal charge. That narrative formed part of the evidence which was available to the Fatal Accident Inquiry. The narrative is a lengthy document, which focuses on matters relevant to the criminal investigation into the actions of Lee Charles Smith, many of which are outwith the scope of this inquiry. No purpose would be served by reproducing its contents in full. I will however refer to some features of the narrative which are relevant to this inquiry.

[19] According to the narrative, James Forbes was seen alive and well on 14 January 2024, when he was captured on CCTV entering the lift on the ground floor of Elphinstone Court in the company of Lee Charles Smith at 1853 hours. They appear to have travelled to Smith's flat, flat 47 on the 12th floor of the block. James Forbes remained within that flat until he jumped from the window at 1525 hours on 15 January. In the intervening period, Smith was captured by CCTV coming and going from the block over the course of the evening of 14 January and the morning of 15 January. Of particular relevance, Smith left the flat sometime after 1000 hours on 15 January and met two associates. When all three returned to the flat at 1216 hours, the associates noticed that the handle of the front door of the flat did not look right. I understand this to be a

reference to the "thumb lock" fitted to the door. The lock looked as if it had been reversed, so that the handle was on the outside and the lock was on the inside, meaning that a key would have been required to exit the flat, rather than to enter it. When all three entered the flat, Smith's associates saw that James Forbes was within. Smith said he had reversed the lock on the front door to keep him there, that Mr Forbes had stolen £40 from him and that he intended to keep him there for three days so that he could "atone" for what he had done. He also said he had "battered" Mr Forbes because of the stolen money. The associates saw Mr Forbes within the flat, in an injured and distressed condition. They later described Smith's aggressive behaviour towards Mr Forbes whilst they were there. Mr Forbes told them that Smith had hit him with a hammer. The acts of violence perpetrated by Smith against Mr Forbes are described in the charge to which Smith pled guilty. When Smith's associates left the flat, it appears that James Forbes was within the bedroom.

[20] Smith's two associates were captured on CCTV exiting the lift on the ground floor of the block at 1513 hours. James Forbes jumped from the bedroom window of Smith's flat 12 minutes later, at 1525 hours. When police officers attended at flat 47 a short time later, they found Smith within. They also noted that the thumb lock of the front door had been reversed in the manner already described.

[21] Smith was ordered to serve an extended sentence of 12 years, comprising an immediate period of eight years in custody, followed by a four year extension period to be served in the community. A convicted person who is subject to an extension period of this kind is subject to conditions. His compliance with those conditions is supervised,

and he may be returned to prison for a further period if he fails to comply with the conditions of his release or if he commits a further offence during the extension period.[10]

[22] The circumstances summarised in the preceding paragraphs were not disputed by any of the participants in the inquiry proceedings and were not explored in evidence at the inquiry hearing. The inquiry focused on the police response to two 999 calls from members of the public, made at 1013 and 1016 hours respectively on 15 January 2024, during which the callers (witnesses Gail Thomson and Lindsay Barrett) reported that they had heard a male shouting for help from, or from the vicinity of, Elphinstone Court. I am satisfied that the person these witnesses had heard shouting was James Forbes. Two police officers, PC William Bayliss and PC Maree Valentine, attended at about 1022 hours in response to these calls. The shouting had stopped by that time and no further shouting was heard by those officers, or reported to the police. PCs Bayliss and Valentine spoke with a number of members of the public in the vicinity and made enquiries on the 5th, 6th, 7th and 8th floors of Elphinstone Court. They did not attend flat 47, which was on the 12th floor, and they did not locate James Forbes. The officers left to attend to other duties at 1101 hours. No further police officers attended Elphinstone Court in relation to the reported shouting prior to the death of James Forbes that afternoon.

[10] Criminal Procedure (Scotland) Act 1995, section 210A; Prisoners and Criminal Proceedings (Scotland) Act 1993, sections 16, 17 and 26A

[23] The focus of the inquiry was consistent with the terms of the "first notice" lodged with the court by the Procurator Fiscal in order to initiate the inquiry proceedings,[11] which anticipated that the inquiry would:

> "…consider and examine the police decision making and actions in relation to the initial emergency calls placed by the members of the public, as well as the police action upon attendance at the locus prior to the death of James Forbes."

In other words, whether the police could or should have taken further steps which might have enabled them to locate James Forbes before he fell to his death.

Participants and procedural history

[24] The participants in the inquiry proceedings were: the Procurator Fiscal, represented by Mr Burton; James Forbes's sister Lyndsay Anne Forbes, represented by Mr Wickham; the Scottish Police Federation, PC William Bayliss and PC Maree Valentine, all represented by Professor Watson; sergeant Richard Arton, who was the supervisor of PCs Bayliss and Valentine on 15 January 2024, represented by Mr Vaughan; Calum Scott, the police service advisor who took one of the 999 calls that morning, represented by Mr Rodger; and the Chief Constable of the Police Service of Scotland, represented by Ms Haggerty.

[25] At a continued preliminary hearing on 5 May 2026, I refused an application by Professor Watson, the effect of which would have been to widen the scope of the inquiry to include the issue of whether the window from which James Forbes fell complied with

[11] Act of Sederunt (Fatal Accident Inquiry Rules) 2017, rule 3.1

applicable health and safety and building regulations, with particular reference to the fact that the window was capable of being opened wide enough to permit Mr Forbes to pass through the opening. I explained my reasons for refusing that application in a separate note of reasons which was issued to participants on 5 May 2026 and which is published along with this determination.

[26] Evidence was led on 26, 27 and 28 May 2026. I then heard submissions on behalf of the participants on 7 August.

Agreed facts

[27] In addition to the facts summarised above with regard to the criminal proceedings against Lee Charles Smith, a large number of other matters were helpfully agreed by joint minute, including the origins and accuracy of various documents, audio and video recordings, photographs and medical matters.

[28] Mr Forbes was found to have sustained multiple, non-survivable injuries consistent with a fall from height. It was agreed that the post mortem examination confirmed that Mr Forbes was also found to have "...several sharp force injuries (incisions) of the palmar surfaces of both hands," which "... had features consistent with classic defensive-type injuries," and that the cause of death was certified as:
"1(a) Multiple blunt force injuries; 1(b) Fall from height."

[29] It was also agreed by joint minute that toxicological analysis of biological samples taken from Mr Forbes revealed the presence of a number of substances including controlled drugs and/or their metabolites (breakdown products). The

intoxicating effect, if any, of those substances on Mr Forbes was not explored in evidence or during submissions during the inquiry.

Summary of evidence presented

Map

[30] In the course of their evidence, a number of witnesses referred to a map which showed the locations of Elphinstone Court and the adjacent tower blocks including King's Court relative to a number of surrounding streets and other landmarks which featured in the evidence. That map is attached to this determination. In relation to the orientation of the map, the River Don is generally to the north.

Statements of witnesses who heard James Forbes shouting, but who did not give evidence

[31] It was a matter of agreement by joint minute that statements noted either by police officers or by staff members of the Police Independent Review Commissioner (PIRC) on various dates between 15 January 2024 and 30 April 2024 from a number of named witnesses should be admitted into evidence. Some of those statements were referred to in evidence. Others were referred to during the submissions hearing. No purpose would be served by identifying these witnesses. The following information is taken from their statements.

[32] Two people were within separate rooms (one in the bedroom and one in the living room) of a flat on the 10th floor of Elphinstone Court at about 1000 hours on

15 January 2024 when they each heard a male voice repeatedly shout "help me" and "please help me". One of the witnesses also heard the voice say something like "flat 47" and heard the voice, which seemed to be coming from outside, speak to someone who also seemed to be outside, about getting the police. One of the witnesses described the voice as sounding weak and quiet but not urgent or scared. The other formed the impression that the person was "genuinely looking for help". The shouting lasted for five or ten minutes and then stopped. The witness who was in the bedroom did not call the police as a lot of incidents happened around the block involving people shouting. This witness thought that the other witness who was within the flat would call the police if necessary. The witness who was in the living room went out onto the balcony of the flat but could not see the source of the shouting. This witness formed the impression that the voice had come from somewhere above him. This witness saw some people on the ground looking up at the block. They were on their phones and the witness thought that they would call the police, so the witness did not do so.

[33] Two people were within a flat on the 13th floor of Elphinstone Court between 1000 and 1100 hours on 15 January 2024 when they heard a male voice shouting for help from a flat on the floor below them. They realised that the shouting was coming from the flat occupied by "Lee", whom they knew as the resident of that flat but whom they avoided because of trouble he had caused in the past. The shouting lasted for around ten minutes. The witnesses assumed that the person who was shouting was Lee. They had heard him shouting in his flat, and playing loud music, on previous occasions. One of the witnesses looked out of the flat towards Lee's flat and saw a male who looked

similar to Lee and who the witness thought might have been Lee, "hanging out the window" repeatedly shouting for help. This male also shouted that he was at "a number" of Elphinstone Court, but the witness could not make out the number which was shouted. The male sounded scared. Neither of these witnesses called the police, because this was not the first time they had heard shouting and screaming coming from Lee's flat and because of aggressive behaviour they had experienced from Lee in the past.

[34] Finally, a postal worker was on duty in the general vicinity of Elphinstone Court on the morning of 15 January 2024 when, at about 1030 hours, he heard a single shout for help. He did not see who had shouted and he could not make out where the shout had come from, although he thought it may have come from one of the high-rise blocks in the vicinity, of which Elphinstone Court was one. The witness concluded that the source of the shout was "kids messing about", and thought no more of it until a short time later, when two police officers (PCs Bayliss and Valentine) stopped and asked whether he had heard anyone shouting for help. The witness told them what he had heard and that he thought the voice had come from the direction of the high-rise blocks.

[35] It is clear from these statements that the timings given by these witnesses should be treated as estimates. Where they conflict with timings which are referred to below, which are taken from reliable sources such as CCTV images and official police records, I prefer and accept the accuracy of the latter timings.

Gail Thomson

[36] Gail Thomson, aged 27, gave evidence that she was walking her children to school along Gordon's Mills Crescent, within sight of Elphinstone Court and the similar tower blocks on either side of it, shortly before 1015 hours on 15 January 2024 when she heard a male voice repeatedly shouting words similar to "help, help, somebody help me". The male who was shouting was at a square window in Elphinstone Court. She could also see another male wearing an orange top standing on a balcony near to the window (I am satisfied that this male was on the balcony of a different flat).
Ms Thomson called 999 at 1013 hours and reported the matter. Under reference to a transcript of that call, she accepted that she had told the service advisor who answered the call (who transpired to have been the witness Calum Scott) that:

> "… [it] looks like there is somebody in one, two, three, four, five, six, six floors down hanging over the balcony screaming like I said that's possibly him screaming for help,"

[37] Ms Thomson commented slightly later in the call that she did not know if this person was the source of the screaming. At a later stage again, in reference to the person who was screaming, she was heard to say that "the guy was standing like the fifth or sixth floor down from the top", in the middle of three high-rise blocks. Elphinstone Court is indeed flanked by two similar high-rise blocks. In evidence Ms Thomson was adamant that, notwithstanding her references in evidence and during the 999 call to a male on or "hanging over" a balcony, it was the male she had seen in the window who was shouting.

[38] For reasons which became obvious during the subsequent evidence of the service advisor Calum Scott, it is noteworthy that, at an early stage of this call, he repeated back to Ms Thomson his understanding of her own location, which he had wrongly noted as Gordon's Mills Terrace, rather than Crescent. This enabled Ms Thomson to correct that error. However, he did not repeat or confirm her references to the screaming male being "…six floors down…" or "…like the fifth or sixth floor down from the top…" of the block.

[39] Towards the end of the call, the service advisor indicated that the police might call Ms Thomson back. However, the police did not call her back and she did not receive any further contact from the police until officers came to note a statement from her that evening. Had the police called her back during the day, she would have been able to confirm that the shouting she had heard had come from a male who was five or six floors from the top of Elphinstone Court.

Lindsay Barrett

[40] Lindsay Barrett, aged 47, was waiting for a taxi outside the entrance to the block of flats where she lived on Gordon's Mills Crescent, Aberdeen shortly before 1015 hours on 15 January 2024. The entrance was at the side of the block which faced away from Elphinstone Court and the tower blocks either side of it. Although her block had only four floors, her position as she waited outside, close to her block, meant that she could not see the tower blocks. During a period of between five and ten minutes as she waited for the taxi, she could hear the sound of a male voice, which sounded desperate and

distressed, shouting for help. She could not see where the voice was coming from. She shouted, "where are you" and thought that the male replied, but she could not understand what he said.

[41] She walked south along Gordon's Mills Crescent looking for any open windows in the row of low-rise blocks which ran along the Crescent, but she could not find the source of the shouting. She spoke to an unidentified man at the junction of Gordon's Mills Crescent and Wavell Crescent and asked whether he could see where the shouting was coming from. He pointed in the general direction of Elphinstone Court, but Ms Barrett was unsure whether he was pointing at Elphinstone Court or at one of the low-rise blocks on Gordon's Mills Crescent, which were in the same general direction as Elphinstone Court but much closer to the man.

[42] Ms Barrett dialled 999 to report what she had heard. It was a matter of agreement that her call was answered at 1016 hours that day by service advisor Dawn Fair. Under reference to a transcript of the call, Ms Barrett confirmed that she said that:

> "someone is screaming help from one of the buildings on the street and I can't figure out who … it's a male. Sounds like it's coming from building 9 – 23 but when I said what building, and my hearing isn't great, it sounds like he's saying 26. And I saw someone else, and I said can you hear that? And he pointed at a building two up from me. It's all quiet now but it was going on for a while".

[43] Later in the transcript Ms Barrett confirmed that "it sounds like it's coming from across from me which is building 9 – 23 Gordon's Mills Crescent", but that a man she had spoken to in the street "was pointing at 34 – 48, but there's no windows open in that block …" It seemed clear that the street numbers given by Ms Barrett during the call

related to the low-rise blocks along Gordon's Mills Crescent, rather than to Elphinstone Court. At no point did Ms Barrett see the person who was shouting.

[44] Very quickly after this call had ended, Ms Barrett flagged down a police car on Gordon's Mills Crescent. The occupants were a male and a female police officer (PCs Bayliss and Valentine). They asked her whether she had called the police. She confirmed that she had and told the officers that she had heard someone shouting for help but that she did not know where the shouting was coming from. The officers said that they would drive around and have a look. They then drove off towards a car park at the junction of Gordon's Mills Crescent and Montgomery Road. They did not note her details. She did not hear from the police again until police officers came to her home that night and noted a statement.

Victoria Esan

[45] Victoria Esan, aged 40, lived in a flat on the second floor of a low-rise block on Gordon's Mills Crescent, Aberdeen in January 2024. She gave her evidence in English, with a very strong foreign accent. On the morning of 15 January, she walked her child to school, which started at 10am that day because of the snowy weather. At the school she met her friend, witness Shola Belo, and the two women walked back home together. Their route took them along Montgomery Crescent, close to Elphinstone Court and the tower blocks on either side of it. As they chatted, they paused next to a children's playpark adjacent to Elphinstone Court. Ms Esan heard a man shouting, "help, can you call the police, somebody help". He shouted phrases similar to this a couple of times.

He sounded really stressed, as if he was in danger. Ms Esan realised that the man was shouting from a window high above her in Elphinstone Court. Ms Esan and/or Ms Belo shouted to the man asking which flat he was in, to which he responded "47". The man was only at the window for a short period, after which he retreated from the window, which was slammed shut. During this period an unidentified woman walked past. She said that she was on the phone to the police about the man who was shouting. Ms Esan and Ms Belo told her that the man had said he was in flat 47. Because they understood that the woman would pass that information to the police, neither Ms Esan nor Ms Belo called the police.

[46] Ms Esan went home to her flat in Gordon's Mills Crescent, the rear of which looked on to the high-rise blocks including Elphinstone Court. A short time later she saw a male and a female police officer (PCs Bayliss and Valentine) whom she assumed were looking for the man who had been shouting. Ms Esan shouted to the officers from her kitchen window "it's flat 47". As she was shouting this information to the officers, she was aware of a male voice (witness Steven Dark) which was also shouting to the officers, from a location which she could not identify. The male voice appeared to be giving the officers information about a floor number, as opposed to a flat number. The officers went away but came to the door of her flat, inside her building, around 10 or 15 minutes later. She told them again that she had heard the male say that he was in flat 47. She then went with them to a window on the communal staircase inside her building, which looked towards Elphinstone Court. The officers asked her whether she

could point out the particular window where she had seen the man. She told them that she wasn't sure which window it was, but that it was on a floor high up in the building.

[47] In cross-examination, Mr Wickham asked Ms Esan to comment on the anticipated evidence of the two police officers that she had told them that the male had shouted from the 7th floor of Elphinstone Court, and that she had not mentioned flat 47 to them. She insisted that she had never told the officers which floor the man was on because she did not know the floor. When she spoke to the officers from her kitchen window, she had said the man had said he was in flat 47. When the same officers came to her flat a short time later, they told her that they had been to a particular floor within Elphinstone Court. She told them she didn't know which floor the man had been on, but that he had said he was in flat 47. When she had gone to the window of the stairwell within her block with the officers, she had tried counting up from the bottom of Elphinstone Court, but she simply did not know which floor the man had been on.

[48] When cross-examined by Professor Watson, Ms Esan added that the male she had seen at the window calling for help was a young man, that she could see something on his face or head which could have been blood and that, when she went to the window of her stairwell with the police officers, she had told them that she couldn't point out the flat or the floor where she had seen the male but that it was "high at the top" of the block and that the male had said he was in flat 47.

Shola Belo

[49] Shola Belo, aged 31, also lived in a flat in Gordon's Mills Crescent, Aberdeen in January 2024. She was with Victoria Esan next to the children's playpark adjacent to Elphinstone Court and its neighbouring blocks on the morning of 15 January shortly after 10am when they heard a man's voice shouting "help, help". Ms Belo looked up and saw that the man was shouting from the window of one of the high-rise blocks, although in her evidence Ms Belo was not able to identify which block. She could see the man's head protruding over the window ledge. Neither she nor Ms Esan called the police because, at that point, an unidentified woman walked past and said that she was calling the police. The woman asked Ms Esan and Ms Belo if they knew which flat the man was in. Ms Belo shouted to the man and asked him, and he replied, "flat 47". Ms Belo told that to the woman who was on the phone, so that she could tell the police. When Ms Belo looked up towards the flat again, the man was no longer visible. She then went home to get ready for work. During examination-in-chief, Ms Belo adopted a passage from a witness statement given by her on 27 March 2024, during which she had said that the man who was shouting was "… about twelve floors up, really high in my opinion …".

Steven Dark

[50] Steven Dark, aged 47, lived in a flat on the 10th floor of King's Court, Aberdeen, a high-rise block adjacent to Elphinstone Court, in January 2024. His kitchen window was on the south elevation of King's Court. He was within his flat at around 10am on

15 January 2024 when he heard a male voice screaming for help. The voice sounded serious and had "desperate urgency". Apart from repeatedly calling for help, the voice appeared to be giving a location, which sounded like "7" or "11". Mr Dark could not hear the location clearly and he could not see the person who was calling for help. However, from his knowledge of the area he had formed the view that the shouting was coming from the south elevation of Elphinstone Court, ie the opposite side of Elphinstone Court from the side which faced King's Court. That impression was reinforced by the fact that he could see some people on the ground who appeared to be looking or pointing up towards the south elevation of Elphinstone Court. Mr Dark estimated the distance between the south elevation of King's Court and the south elevation of Elphinstone Court as approximately 150 metres.

[51] Mr Dark telephoned the police to report what he had heard. On doing so, he was told that the police had already received a report about the matter. A short time later he was looking out of his window when he saw a male and female police officer, who appeared to be speaking to the occupant of a nearby flat in a different block (witness Victoria Esan) via a window. Mr Dark shouted to the officers from the window of his flat and told them they were looking in the wrong place and that the shouting had come from Elphinstone Court. The officers were between 80 and 120 metres from Mr Dark and at ground level when he shouted this information to them from his 10th floor window. Mr Dark was "pretty sure" that he told the officers at that point that he had heard the voice shout "7, 11", in reference to a location, but he could not be certain that he had told the officers that at that stage. The same two police officers came

to his flat around 10 or 15 minutes later. They told him that they had been to Elphinstone Court and had knocked on some doors there, but that they "couldn't find anything". When Mr Dark gave evidence about the police officers coming to his flat, he was not asked, and did not say, that he had told them at that point that he had heard the voice shouting anything to indicate a location, whether "7", "11" or otherwise.

[52] No witness statement was put to Mr Dark, but on reviewing a statement he gave to the police officers at around midday on 17 January 2024 I noted that, although its terms are generally consistent with the evidence he gave to the inquiry, it does not suggest that, when the officers came to his flat, he said anything to them about the voice having indicated a location.

James Mutch

[53] James Mutch, aged 56, is a site supervisor for a company which repairs concrete and stonework on the exterior walls of high-rise blocks. In January 2024 he was in charge of a group of technicians engaged in repairing the exterior walls of Elphinstone Court and four nearby high-rise blocks. The work required technicians to travel up and down the exterior walls of the blocks on metal cradles attached to electrically powered cables. This was a long-term project, during which Mr Mutch's base was a portacabin within the car park of Elphinstone Court.

[54] Mr Mutch arrived at work at about 0720 hours on 15 January 2024. The morning was cold and snowing. Between about 0720 and 0730, he heard someone repeatedly shouting "police" or "please help". The shouting lasted until approximately 0800 hours,

when it stopped. Mr Mutch could not see who was shouting. However, because it was common for his colleagues to shout to each other between the ground and cradles at different heights on the sides of the blocks, he was able to form the view that the shouting was coming from between the 10th and 16th floors of Elphinstone Court. Shortly after 0800 hours, Mr Mutch and a colleague walked around their site to carry out a routine check that no one had tampered with their equipment overnight. Whilst doing that, a male and female police officer spoke to them in the car park of Elphinstone Court. The officers asked whether Mr Mutch or his colleague had heard anything. Mr Mutch told the officers that he had heard someone shouting "police" or "please help" and that he estimated that the shouting had come from between the 10th and 16th floors of Elphinstone Court. The officers said that they were going back to their office to contact "control" to try and find out where the calls to the police about shouting had come from, because they had not been able to find the source of the shouting. Mr Mutch was not contacted by the police again until after 1500 hours that day, when officers came back to the site to note the details of Mr Mutch and his colleagues.

[55] No witness statement was put to Mr Mutch, but when it was suggested to him by Mr Burton that in fact it may have been later in the morning that he had spoken to the police officers, he agreed that that could be correct and that his recollection of the precise time he spoke to the officers could have been affected by the passage of time. However, whatever time he had spoken to the officers, he had told them that he believed that the shouting had come from between the 10th and 16th floors of Elphinstone Court.

Calum Scott

[56] Calum Scott, aged 28, is a service adviser employed by the Police Service of Scotland at their control room in Bilston Glen, near Edinburgh, a role he has held for around four and a half years. He receives 101 and 999 calls from members of the public, records the information provided by callers on to the police STORM (System for Tasking and Operational Resource Management) system and transfers that information electronically to the appropriate local police control room for action. In the course of a shift, Mr Scott deals with an average of between 40 and 50 calls of varying degrees of urgency.

[57] Mr Scott worked a day shift on 15 January 2024, commencing at either 0700 or 0830 and ending at 1600. Under reference to an audio recording and transcript, he confirmed that he took the 999 call from witness Gail Thomson at 1013 that morning, the contents of which have been summarised at paragraphs [36] to [39] above. Mr Scott was not familiar with Aberdeen. He confirmed that, in one of the final entries in the transcript, he told Ms Thomson that "we" i.e. the police, might call her back. However, he had not been asked to call Ms Thomson back at any point after this call ended. It would be unusual for that to happen. He would normally only call a caller back if he realised that he had omitted to check or confirm a potentially important piece of information. The number from which a caller calls 101 or 999 is automatically recorded on the police STORM system and can easily be retrieved from the system if required.

[58] Mr Scott was referred to the typewritten STORM incident record created by him during Gail Thomson's call. The early entries in the document, until the point at which

he transferred the electronic record to the local police control room, were made by him. In due course the court heard evidence that entries subsequent to that point in time were made by police officers who were involved in one way or another in responding to the incident reported by Gail Thomson.

[59] The STORM record gives the date and time of the call from Gail Thomson and her name. It categorises the nature of the incident reported by her as "PW-72, CONCERN FOR PERSON," a category selected by Mr Scott from a drop-down menu during the call. The priority of the call is given as "(7) IMMDTE," meaning "immediate," the highest level of priority. The general nature of the incident reported by Gail Thomson is given as "SOMEONE SCREAMING FOR HELP." Mr Scott transmitted the details noted by him to the local area control room via the police STORM system during Gail Thomson's call. This can be seen from the fact that the STORM record includes a number of brief entries from the local area control room and, as it transpired, from sergeant Arton, who was then on duty in the Tillydrone area of Aberdeen, where Gordon's Mills Crescent and Elphinstone Court are located, interspersed with entries created by Mr Scott. Where the urgency of the situation requires it, the STORM system allows a service advisor to transmit the live STORM incident record to the local area control room during the call, so that entries can be accessed, and updates added, in real time in the relevant local police division prior to the completion of the call.

[60] The entries created by Mr Scott between 1013 and 1018 hours instruct police to attend at Gordon's Mills Crescent, Aberdeen and state:

> "caller can hear a person screaming for help. Possibly coming from the high-rise flats as someone is hanging over the edge … caller is at the car park. Screaming heard from the flats direction … caller has not seen anyone"

[61] In response to an entry typed into the STORM record at that point by a member of the local control room staff in Aberdeen asking Mr Scott to check with the caller "if someone has been seen hanging over the edge as first stated", Mr Scott typed the following entry:

> "… caller said there was but unknown if it was them looking for help or just looking out … caller can not hear anything now. Unknown where it has came from. Caller said there is three high rises, and caller thinks it was the middle one around 6-8 flats up (emphasis added). The person is now not there. Caller has no further details."

[62] The entries created by Mr Scott concluded at 10:18:13 hours. They are generally consistent with the information provided by Ms Thomson during her call, with the notable exception of the text in paragraph [61] above which I have underlined; instead of noting, as Ms Thomson had stated, that the male referred to by her was "six floors down" or on "the fifth or sixth floor down from the top" of the block, the corresponding entry created by Mr Scott in the STORM incident record stated that the person "6 – 8 flats up."

[63] The significance of this is that it was a matter of agreement (joint minute, paragraph 46) that Elphinstone Court has 18 floors and that flat 47, from which James Forbes fell, is on the 12th floor, six floors from the top. As already noted, at an early stage of this call, Mr Scott repeated his understanding of Ms Thomson's location, which he had incorrectly noted as Gordon's Mills Terrace. That allowed Ms Thomson to immediately correct him by repeating that she was in Gordon's Mills Crescent. However,

at no point during the call did Mr Scott repeat to or clarify with Ms Thomson her description of the location, relative to the tower block, of the male she had described, namely that he was "six floors down" or that he was at "the fifth or sixth floor down from the top". Accordingly, Ms Thomson did not have the opportunity to correct Mr Scott's misunderstanding of this significant information. During examination-in-chief, Mr Scott could not explain why he had recorded this information in the STORM record as "6 – 8 flats up". He had been paying attention to Ms Thomson during the call.

[64] I asked Mr Scott why, apart from recording that Ms Thomson had indicated a location by reference to the base, rather than the top, of a block, he had made any reference to floor 8, when Ms Thomson had not referred to floor 8 at any stage during the call. Mr Scott stated that he believed that he had taken some handwritten notes during the call which made some reference to "floors 6 – 8". However, he was not sure about that. Any handwritten notes made by him during the call would have been made in a single notebook, and Mr Scott confirmed that Crown production 14, agreed by joint minute to be handwritten notes made by him on 15 January 2024, contained, on a single page, brief notes relating to this call and a number of other calls received prior to and subsequently to Ms Thomson's call that day. The only note which relates to this call is his handwritten but mistaken reference to Gordon's Mills Terrace as Ms Thomson's location. There is no reference to the figures 6 or 8 and no other handwritten notes made by Mr Scott were produced in evidence. It appeared therefore that he had not made any handwritten notes during Ms Thomson's call which made any reference to floors 6 – 8, whether counting from the bottom or from the top of the block in question.

[65] During cross-examination by Mr Wickham, Mr Scott confirmed that, in his experience, divisional police officers responding to an incident recorded on the STORM system do not ask service advisors to contact the original caller to check or clarify information. Police officers are able to make direct contact with callers using the information, including the caller's telephone number, which is recorded on the STORM incident record, which they are able to access on their handheld electronic devices.

[66] During cross-examination by Mr Rodgers, Mr Scott confirmed that he had classified the priority of the incident as immediate because of Gail Thomson's description of a person shouting for help. He had selected that level of priority at a very early stage of the call and then transferred the information he had noted to the local area control room for the location Ms Thomson had given. He agreed with Mr Rodgers that the entry in the STORM record which indicated that the male was "6 – 8 flats up" was a recording error by him due to a miscommunication between him and Ms Thomson.

Dawn Fair

[67] Dawn Fair, another service adviser at the Police Scotland service centre at Bilston Glen, Edinburgh, did not give evidence at the inquiry hearing, but it was a matter of agreement that she took the 999 call from Lindsay Barrett at approximately 1016 hours on 15 January 2024 and that she created a STORM incident record from that call. That STORM incident record was not referred to during the inquiry hearing. It is brief and generally consistent with the information provided by Lindsay Barrett during her call, except for one brief entry in reference to the possible source of the shouting, timed at

10:16:50 hours, in the following terms: "…her neighbour thought it could building 34 – 38". In fact, what Ms Barrett told Dawn Fair at that point in her call was that another person in the street had pointed at flats 34 – 48 in Gordon's Mills Crescent. The transcript of this call reveals that Ms Fair repeated the incorrectly noted reference to "34 - 38" during the call, in response to which Ms Barrett replied "48 yes". Despite this clarification by Ms Barrett, the resulting entry made in the STORM incident record for this call still contained the incorrectly noted reference to "building 34-38", as the potential source of the shouting. It was agreed that, when interviewed in relation to this matter on 22 May 2025, Dawn Fair had described this misrecording as "simply a case of an error on my part".

[68] It is clear that Lindsay Barrett's general position during her 999 call was that she did not know where the shouting had come from. She did not suggest that it had come from the nearby tower blocks, of which Elphinstone Court (which Ms Barrett did not refer to during the call) was one. It was agreed that Dawn Fair linked the STORM incident record created by her to another incident created by another service adviser, which appeared to relate to the same matter. It appears therefore that this is how Calum Scott became aware, during the call he took from Gail Thomson, of the fact that another call had been received during which reference had been made to a building in Gordon's Mills Crescent.

Andrew Durham

[69] Andrew Durham, aged 37, is the service centre operations manager of the Police Scotland service centre based at Bilston Glen near Edinburgh. He has been responsible for the overall running of the service centre since his appointment to his post in April 2025. Prior to that he was a service adviser for a number of years. Mr Durham had produced a booklet comprising a number of annotated screenshots which illustrated the "journey of a call", from the receipt of the call by a service adviser to the creation of a STORM incident record, the allocation of the appropriate priority and the transfer of the incident to the appropriate local area control room. This passage of evidence was lengthy and detailed, but not controversial.

[70] More pertinently, Mr Durham was asked in examination-in-chief whether he considered it to be best practice for a service adviser to confirm apparently important details with a caller, such as Gail Thomson's reference to a male being located "six floors down" or on the "fifth or sixth floor down from the top" of a tower block. Mr Durham replied that the two most important pieces of information which were required from a caller were, what is happening and where it is happening. The STORM system does not allow an incident to be electronically transferred to an area control room without a location for the incident being identified. There is no procedural requirement for a service adviser to confirm a piece of information provided by a caller if the adviser is confident that they have correctly understood it. However, if a caller reports that an incident has occurred at, or that an individual is at, a particular location, Mr Durham would expect the adviser to confirm that information with the caller by means of a

response such as "… so you're saying it's happening at [location]…," in order to check that the adviser had correctly understood the location provided by the caller and to give the caller the opportunity to correct any misunderstanding.

[71] Mr Durham confirmed that a STORM incident record allocated to front-line officers is visible to the officers who attend the incident via their hand-held devices. The STORM record provides the officers with the telephone number from which the original call had been received. The officers are therefore able to use that number to attempt to make direct contact with the original caller, if necessary. Service advisors would not be expected to call 999 callers back with further enquiries. Unless the call has "immediate" priority, in which case the STORM record is transferred to the area control room as a live document prior to the end of the call, the service adviser's involvement ends as soon as the STORM record is electronically transferred to the relevant area control room. In relation to "immediate" priority calls, the service adviser's involvement comes to an end at the end of the call.

[72] Mr Wickham asked Mr Durham during cross-examination how he would expect a service adviser to record the location of an incident reported by a caller if the caller could not provide an address. Mr Durham replied that he would expect the adviser to obtain a street name and then link any more detailed information which the caller could provide to that street name, for example "the middle block of flats" on a particular street. Where the caller was reporting an incident as having occurred within a tower block, Mr Durham would consider any indication of the floor where the incident was taking place to be important information. When cross-examined by Ms Haggerty,

Mr Durham confirmed that, had any caller made any reference to "flat 47", in reference to this incident, he would have expected that information to appear in the resulting STORM incident record.

Inspector Rhona Di Meola

[73] Inspector Rhona Di Meola, aged 40, is based in the Police Scotland Professional Standards Department in Aberdeen. In the course of her 16-year police career, she has served as a frontline police constable based in the Tillydrone area of Aberdeen (where Elphinstone Court is situated), as a sergeant supervising frontline police constables in Aberdeen and as a divisional inspector with operational responsibility for community policing and for overseeing the police response to critical incidents. With the benefit of her professional experience, inspector Di Meola was called by the Crown to give evidence about the actions which frontline police officers might reasonably be expected to take when responding to a concern for person report. It emerged that she had also been asked to review the witness statements and other evidence which had been gathered prior to the inquiry hearing.

[74] Inspector Di Meola confirmed that Police Scotland does not have a standard operating procedure for responding to concern for person reports. She agreed with a suggestion from Ms Haggerty that that may be because of the potential diversity of the circumstances which might result in such reports, which may range from a person failing to make contact with family to a report of a person walking on the motorway. Inspector Di Meola has personally undertaken enquiries in relation to many concern for

person reports, and has supervised other officers who have carried out such enquiries. The appropriate police response depends entirely on the circumstances. Officers who respond to a report rely partly on the information contained in the originating STORM record, but are also expected to use their initiative and common sense to carry out appropriate enquiries on the ground, such as by speaking to individuals in the area, conducting door-to-door enquiries and contacting anyone who might be able to provide further information which might shed light on the circumstances. The more sources of information the responding officers can gather, the better.

[75] Inspector Di Meola confirmed that, if the responding officers were advised in the STORM record that a caller had reported a person shouting for help who was 6 to 8 floors up in a high-rise block, she would expect the officers to conduct door-to-door enquiries on floors 6, 7 and 8. If the officers had been advised that the person had also shouted that he was within flat 47, she would expect the officers to attend at that flat. If the officers were advised by a member of the public at the scene that the shouting appeared to have come from somewhere between the 10th and 16th floors of the block, she would expect the officers to make enquiries on those floors. She would expect officers to follow up any information they received in the course of their inquiries which appeared to be relevant, even if it was different from, or inconsistent with, the contents of the originating STORM record.

[76] In this case, there was no procedural requirement for the officers to attempt to make direct contact with the callers identified in the STORM incident records. Although this would have been an option which was open to them, inspector Di Meola would not

have expected them to do this if they were satisfied with the information they had received from the STORM record and any other information they had gathered.

[77] Constables responding to a concern for person report require the authority of a sergeant to stand down at the conclusion of their enquiries. When deciding whether to authorise constables to stand down, the sergeant would take into account all of the available information regarding the incident and the enquiries carried out, including the contents of the STORM record and all of the updates provided by the constables from the scene with regard to the information they had received, the enquiries they had made and the outcome of those enquiries. Having assessed all of that information, the sergeant would authorise the constables to stand down if satisfied that all appropriate enquiries had been carried out.

[78] When responding constables have concluded their enquiries, they can update the STORM record to include any information they gathered, the enquiries they carried out and the results of those enquiries. Alternatively, their sergeant can update the STORM record on their behalf, based on verbal updates provided by the constables via the police airwave system.

[79] In response to cross-examination by Mr Wickham, inspector Di Meola expressed the opinion that, although there is no specific procedural requirement for constables responding to a concern for person report to advise their sergeant of information received by them at the scene which they did not believe to be accurate, she would expect such information, along with all other potentially significant information received by the constables in the course of their enquiries, to be included in the updates provided

to their sergeant, to ensure the integrity of the investigative process. Common sense was required. The experience of the constables and the dynamics of their professional relationship with their sergeant were also relevant. Different constables may provide, and different sergeants may require, more or less detail than others. Whatever the circumstances, a sergeant needs accurate and prompt information in order to decide whether it is appropriate to authorise constables to stand down. If, for example, PCs Bayliss and Valentine had told their sergeant that workmen had heard shouting coming from Elphinstone Court, but had failed to tell him that the workmen had said they thought the shouting was coming from between the 10th and 16th floors of the block, that would be an incomplete and inaccurate update.

[80] During Professor Watson's cross-examination, inspector Di Meola was asked, without objection, to express her opinion in relation to the reasonableness, proportionality and adequacy of the actions of PCs Bayliss and Valentine in this case. Based on the statements given by the constables, inspector Di Meola concluded that they had carried out a thorough and proportionate investigation. According to their statements, on the information available to them it would not have been proportionate for them to attend at the door of every flat on all 18 floors of Elphinstone Court, each of which contained four flats. Further, from inspector Di Meola's knowledge of the area, it was not uncommon for people to shout to each other from the high-rise blocks in that neighbourhood. There were no STORM records in relation to this matter containing any mention of "flat 47".

[81] When cross-examined by Mr Vaughan, inspector Di Meola agreed that one of the responsibilities of an operational sergeant is to deploy police resources in an appropriate manner. In this case, on the information available to her, she found no fault with the actions of sergeant Arton, who was the supervisor of PCs Bayliss and Valentine on the day.

[82] In response to cross-examination from Ms Haggerty, inspector Di Meola agreed that the information constables receive from members of the public at the scene of their enquiries might be more reliable than the information provided by the original call which generated the STORM record. She also stated that, if the constables had attended at flat 47 within Elphinstone Court in the course of their enquiries and received no response at the door, they would have had no authority to force entry unless they had further information to justify that course. The mere absence of a response would not, on its own, engage any requirement to investigate why there was no response.

[83] Mr Burton picked up this latter point in re-examination. Inspector Di Meola agreed that, if the officers had received no response at the door of flat 47 but had noticed that the "thumb lock" on the door had been reversed, so that the handle was on the outside and the keyhole was on the inside with the result that a key was required to open the door from the inside (as was the case – see paragraph [19] above), that might have been an unusual feature which she would have expected the officers to notice. It would also have been relevant information for them to communicate to their sergeant in an update, which might have given rise to further lines of enquiry.

Constable William Bayliss

[84] PC William Bayliss, aged 26, was a member of the community policing team based at Tillydrone Police Office in Aberdeen on 15 January 2024. At that time, he had a little over two years' service. His duties included responding to reports from members of the public and progressing ongoing enquiries. On 15 January he was on duty with PC Maree Valentine. Their shift started at 0700 hours and concluded at 1600 hours. The day was cold. It was snowing intermittently. At around 1015 hours they were sent to Gordon's Mills Crescent in Aberdeen, where it had been reported that a person was shouting for help. PC Bayliss drove there in a marked police vehicle. On arrival in Gordon's Mills Crescent he stopped the vehicle, switched the engine off, lowered the windows and listened for any shouting, but heard none. From their vehicle, the officers spoke with a woman who they later learned was Lindsay Barrett, although they did not note her details at the time. She confirmed that she had called the police because she had heard shouting. She could not provide much detail as to the content, but directed the officers to the general area of Mongomery Crescent/Montgomery Road.

[85] PC Bayliss drove to Montgomery Crescent and again stopped the vehicle, switched off the engine and listened, but heard no shouting. The officers spoke to a postman, who told them that he had been in the area for some time and that he had heard shouting earlier, which had not caused him any concern. He had not called the police. His details were not noted. He directed the officers to the nearby high-rise blocks, one of which was Elphinstone Court. PC Bayliss drove there and, as confirmed by CCTV images, stopped the police vehicle on Auchinleck Crescent at a point between

King's Court and Elphinstone Court at 1022 hours. Having once again taken a moment to listen for the sound of shouting, and having heard none, the officers got out of their vehicle and split up in order to walk around the tower blocks to look and listen for anyone shouting. PC Bayliss went towards King's Court and PC Valentine went towards St Machar Court (the blocks either side of Elphinstone Court).

[86] After a short time, PC Bayliss heard the witness Victoria Esan shouting to him from the window of a flat two or three floors above ground level, in a low-rise block bordering Montgomery Crescent. From the window of her flat, Ms Esan told him that she had heard someone shouting earlier, that she thought the shouting was from Elphinstone Court, that she believed that she had seen the person standing at the window of a flat with what could have been blood on his face and that she believed she had heard him shout "floor 7". At that point, PC Bayliss heard the witness Steven Dark shouting to him from the window of a flat around ten floors up in King's Court. PC Bayliss communicated with Mr Dark as best he could, given the distance between them and the prevailing weather. Mr Dark told him he had heard someone shouting earlier, that he thought the shouting was coming from Elphinstone Court, that he thought the voice had mentioned something about an ambulance and that he thought he had heard the voice say something about "floor 7". PC Valentine joined PC Bayliss at around this time and they made their way to Elphinstone Court to make enquiries there. PC Bayliss updated the area control room as they made their way there.

[87] Having arrived at Elphinstone Court, the officers took the lift to the 7th floor. They knew that the sound proofing in the tower blocks was not very effective and they

reasoned that, if someone had been shouting from a flat within the block, the sound would have travelled between floors. No shouting could be heard on the 7th floor. The officers knocked on the doors of all four flats on the landing, with the intention of asking whether any of the occupants had heard shouting. PC Bayliss could not remember whether any of the doors were answered. The officers then went up to the 8th floor. Again, they heard no shouting. They knocked on the doors of all four flats on the landing. At least one occupant answered, but did not provide any information which assisted them. They then took the stairs down to the 6th and then the 5th floor, repeating the same process on each. Again, they heard no shouting and did not receive any helpful responses from the occupants of any flats on either landing.

[88] The officers then decided to go and speak to Victoria Esan and Steven Dark to confirm what they had heard and to make sure they had not misunderstood anything they had been told by either witness. They went to Steven Dark's flat on the 10th floor of King's Court first. He reiterated that he had heard someone shouting in distress, apparently from Elphinstone Court. He could not be sure whether the person had referred to an ambulance. However, he did confirm that the voice had shouted something about "floor 7". He could not exclude the possibility that Mr Dark had referred to "floors 7 to 11"; however, he could only remember Mr Dark referring to floor 7. They then went to visit Victoria Esan. As with Mr Dark, on this occasion they entered Ms Esan's building. They spoke to her on the landing outside the door of her flat. She repeated that she had heard shouting from Elphinstone Court and said she had seen a figure at a window on the 7th floor, although she was not sure that that was the

correct floor. When asked about her earlier comments that the person may have had blood on their face, she said she was not sure whether what she saw was blood or red blotches. PC Bayliss asked Ms Esan to look at Elphinstone Court from the window of the internal stairwell of her block and point out the floor she was referring to by counting up from ground level. She counted up seven floors but then said she was not sure of the floor. She did not, at any point, tell the officers that the person had shouted anything about flat 47. Nor did she say that the person was "high up" in the block. The nearest she came to pinpointing the person's location was her reference to floor 7. PC Bayliss gave evidence that his belief was that PC Valentine updated their supervisor sergeant Arton via her mobile device as they left Victoria Esan's building.

[89] As the officers made their way to their police vehicle, they saw some workmen in the vicinity of Elphinstone Court and stopped to speak to them. They did not note any of their names. The workmen said they had heard shouting coming from Elphinstone Court earlier but they did not give any more precise location. PC Bayliss did not recall any of the workmen saying that he thought the shouting was coming from between the 10th and 16th floors of Elphinstone Court, or that he thought it was coming from high in the block. The workmen said that the shouting had lasted for some time and that they thought the person who was shouting was "under the influence". PC Bayliss was referred by Mr Burton to a statement noted from him by a member of staff from the Police Investigations and Review Commissioner (PIRC) on 23 April 2024. PC Bayliss accepted that he had told the investigator that:

> "When I was speaking to the group of workers they gave an indication that it [the shouting] was somewhere high in the block but could not be more specific than that."

[90] PC Bayliss's evidence was that he could neither remember being told that information by any of the workmen he spoke to, nor telling the PIRC investigator that he had been told that, but he ultimately accepted that, when providing this statement, he had told the PIRC investigator that the workmen had said this. He was adamant that he did not recall Victoria Esan making reference to flat 47, Steven Dark making reference to floors "7 to 11", or one of the workmen (James Mutch) making reference to shouting coming from between the 10th and 16th floors of Elphinstone Court.

[91] After speaking to the workmen, PC Bayliss and PC Valentine returned to their car and made their way to Tillydrone Police Office, having updated their sergeant and been instructed to stand down. According to the CCTV images, the officers arrived at Auchinleck Crescent, in the vicinity of Elphinstone Court, at 1022 hours and left at 1101 hours. Having returned to Tillydrone Police Office, PC Bayliss updated the STORM incident record at 1130 hours to reflect the enquiries he and PC Valentine had carried out. The update is generally consistent with PC Bayliss's account of the enquiries he and PC Valentine had carried out. Although it does not name any of the witnesses to whom the officers spoke, it makes reference to the officers having conducted house-to-house enquiries on multiple floors of Elphinstone Court and having spoken to several residents, none of whom had heard a disturbance. There is no reference to any flat numbers or floor numbers having been given to the officers by any member of the public.

[92] Towards the end of PC Bayliss's update, the following text appears:

> "A group of workers have been outside Elphinstone Court since approximately 0800 hours and state there is a male on the upper floors who has been variously yelling since then and that they believe him to be under the influence. They have not expressed any concern for him" (emphasis added).

The entry concludes with a statement that "We have spoken to [sergeant Arton, identified by his call sign] and suitable to be closed."

[93] PC Bayliss was then taken through a number of brief audio recordings of police airwave radio communications between himself and PC Valentine and others including sergeant Arton during their enquiries that morning. A transcript of the recordings was available. The transcript includes the initial verbal instruction from the area control room to PCs Bayliss and Valentine at 1015 hours directing them to attend an "immediate" concern for person call in Gordon's Mills Crescent, Aberdeen concerning a report of someone shouting for help, "possibly coming from the high-rise flats". A verbal update from the control room at 1017 hours was as follows: "Caller saying that there are three high rises and the caller thinks it was the middle one around six to eight flights up" (emphasis added). This information generally corresponds with the information incorrectly noted by call handler Calum Scott during the 999 call he received from the witness Gail Thomson. A further update a few seconds later advised the officers that the voice shouting for help may have been coming from the building on Gordon's Mills Crescent containing flat numbers 9 to 23 or alternatively from the building containing flat numbers 34 to 38, but that the shouting had stopped. This information, including the erroneous reference to "numbers 34 to 38", generally

corresponds with the information noted by the call handler Dawn Fair during the 999 call she received from the witness Lindsay Barrett. The officers updated the control room at 1021 hours, confirming that they were on Gordon's Mills Crescent, they had noted "nothing obvious" and that they had spoken to a postman who thought the shouting may have come from one of the high-rise blocks. Of some significance, at 1027, PC Bayliss could be heard advising the control room as follows:

> "Spoke to a couple of people in the area and they said 7th floor at Elphinstone Court, so we are goin' to head up there and see what we can find … There is mention from one, eh, person, possibly someone covered in blood, eh, but that's not been corroborated. Someone else has mentioned they think they were shouting for an ambulance."

[94] The potential significance of this real-time update, which appears to relate to a point in time after PC Bayliss had spoken with Victoria Esan and Steven Dark for the first time but before the officers had entered Elphinstone Court to carry out door to door enquiries, is that it indicates PC Bayliss's understanding that both of the people he had spoken to (i.e. witnesses Esan and Dark) had made reference to the 7th floor of Elphinstone Court in connection with the shouting they had heard, rather than to flat 47 or to the 11th floor. This update also appears to confirm the evidence of Victoria Esan and PC Bayliss that, during their first interaction, Ms Esan had made reference to possible visible bloodstaining on the man who was shouting.

[95] There then followed a brief exchange during which a member of staff in the control room checked with ambulance control and confirmed that no calls had been received requesting the attendance of an ambulance to the general vicinity of the reported shouting. At the end of that brief exchange (at 10:30:42), PC Bayliss

acknowledged the update and advised the control room that "we're just going to go door to door just now". This update appears to have been given by PC Bayliss as the officers made their way to the 7th floor of Elphinstone Court.

[96] At 1122, by which time the officers had left the vicinity of Elphinstone Court and returned to Tillydrone Police Office, the area control room asked PC Bayliss for an update. He replied: "I'm just typing an update just now". At 1131 he told the control room that he had completed the update in relation to this call. That was a reference to the lengthy typewritten update which he had by then added to the STORM incident record and which was timed at 1130.

[97] PC Bayliss was taken through a lengthy passage of CCTV clips showing the movements of himself and PC Valentine from their arrival in Auchinleck Crescent, in the vicinity of the tower blocks at 1022 hours until their departure at 1101 hours. The images were unremarkable and generally supported PC Bayliss's evidence with regard to the movements of the officers in and around Elphinstone Court and its surrounding area during that period. The images showed that it was snowing steadily that morning. The interactions between the officers and Victoria Esan and Steven Dark are not shown clearly because of the distance between the camera and the buildings where the witnesses lived. However, having spoken to those witnesses, the officers are seen to enter Elphinstone Court at 1028 hours, when they enter a lift on the ground floor. There were no CCTV images covering the landings of the individual floors visited by the officers, but they were shown descending the stairs and then leaving the building at 1037 hours. Again, there were no clear images of the officers returning to speak with

Steven Dark or Victoria Esan. The next clear images were at 1059 hours, when the officers approached and briefly interacted with the group of workmen at the base of Elphinstone Court. These images are also somewhat unclear because the camera was some distance away. The officers are then shown returning to their vehicle and leaving at 1101 hours, having spent approximately 39 minutes in the vicinity of Elphinstone Court.

[98] PC Bayliss confirmed that if he attended at a door in the course of responding to a concern for report and heard shouts for help coming from within the flat, he would attempt to communicate with someone within the flat in order to find out why they were distressed and what assistance they needed. Although police officers could force entry if they reasonably believed that there were sufficient grounds, that would be an unusual course, which PC Bayliss had never taken. Before forcing entry, he would communicate with the area control room in case they had relevant information regarding the vulnerability of the occupant, any prior incidents involving the flat or any particular risk factors which officers should be aware of.

[99] PC Bayliss could not remember whether he had checked his handheld device when he was in the vicinity of Elphinstone Court that day, or whether he had used it to read any STORM record relating to this call. Although he accepted that he had been advised via the police airwave system that (according to the STORM report) the shouting was coming from six to eight floors up in the block, he could not now remember hearing that. He had not thought to carry out enquiries on floor 9, because the information provided by Victoria Esan and Steven Dark pointed towards floor 7,

which was consistent with the indication given via airwave that the shouting was coming from six to eight floors up.

[100] Neither PC Bayliss nor PC Valentine had attempted to call either of the original 999 callers. PC Bayliss accepted that, with the benefit of hindsight, contacting the original 999 callers, or asking the control room to do that, was a line of inquiry which would have been open to them and which could have been helpful in order to clarify the information reported by the callers. However, they had not done that. In his mind, at the time there was no lack of clarity. The information passed to him and his colleague was that the shouting was coming from six to eight floors up. At the scene, two witnesses told them that it was coming from floor 7. The information was all consistent. There was nothing to clarify. When reminded by Mr Burton that he had accepted having told the PIRC investigator that the workers had said that the shouting was coming from high in the block, he reiterated that he could not now remember the workers saying that, or indeed providing any information that caused him to doubt the other, more specific information he had been given by Victoria Esan and Steven Dark.

[101] In cross-examination by Mr Wickham, PC Bayliss confirmed that Victoria Esan did not mention flat 47 to him that day. She had physically counted up seven floors from the ground, from the window of the common stairwell in her block. Although a description of Ms Esan counting up seven floors from the bottom of the block appeared in PC Bayliss's PIRC statement dated 23 April 2024, he accepted that no such description appeared in the initial self-prepared statement given by him on 15 January 2024. Steven Dark did not mention floor 11. None of the workmen made reference to shouting

having come from between the 10th and 16th floors. PC Bayliss could not explain why he had told the PIRC investigator when giving his statement that a workman had told him the shouting had come from "somewhere high in the block". His evidence to the inquiry was that he could not recall that being said. If witnesses had provided any of this information to him on the day, he would have been obliged to act upon it and investigate it. If he had carried out enquiries on the 11th floor of Elphinstone Court, that would have taken him close to the 12th floor, where flat 47 was. Floor 8, the highest floor searched by him and PC Valentine, was within the bottom half of the (18-storey) block, as opposed to being an upper floor, high in the block.

[102] PC Bayliss refuted Mr Wickham's suggestion that although it was possible that, when he initially spoke to Victoria Esan via the window of her flat, he had misheard her reference to "47" as "floor 7", when he visited her flat later she told him that she had heard the male referred to flat 47 but that he had simply not wanted to return to Elphinstone Court to make further enquiries, perhaps because of the inclement weather that morning.

[103] In response to cross-examination from Mr Rodgers, PC Bayliss confirmed that, had anyone mentioned flat 47 to him on the day, he would have gone there. He would have had no reason not to do that. Had he attended at flat 47 and heard any sounds of distress from within, he would have considered the option of forcing entry. If he had received no answer at the door and heard no sounds of distress, he would have made enquiries at the neighbouring flats.

[104] Under cross-examination from Professor Watson, PC Bayliss confirmed that his role was to carry out an effective search for the person reported as having been in distress. None of the information communicated to him by the area control room made any reference to flat 47. Had it done so, he would have gone there. He absorbed the information he received at the scene from the various individuals he spoke to. This allowed him to build a picture which identified the areas and enquiries which were appropriate, having regard to the information he had received. The enquiries he and PC Valentine had made that morning were reasonable and proportionate, having regard to the information available to them.

[105] In re-examination, Mr Burton returned to PC Bayliss's PIRC statement, given in April 2024. PC Bayliss confirmed that he must have told the PIRC investigator who noted his statement that the workmen had made reference to shouting having come from "somewhere high in the block". When asked why he did not make enquiries "high in the block", PC Bayliss then stated that he was not given that information by the workmen on the day. It was possible that he "misspoke" when he gave his PIRC statement. He was not given this information by any of the workers.

Constable Maree Valentine

[106] PC Maree Valentine, now aged 33 with nine years' police service, was on duty with PC Bayliss on 15 January 2024. Her evidence about the events of that day and the enquiries she and PC Bayliss undertook was generally consistent with the evidence given by PC Bayliss. No purpose would be served by summarising PC Valentine's

evidence about those matters in detail. She confirmed that, a short time after she and PC Bayliss had split up following their arrival in Auchinleck Crescent, she heard PC Bayliss shouting up to a man (Steven Dark), who was at the window of a flat in the King's Court tower block. Although she could not hear what was being said by either, she made her way towards PC Bayliss and he told her that the man had said he believed that he had heard shouting coming from the 7th floor of Elphinstone Court. As the officers made their way to Elphinstone Court to follow up that information, PC Bayliss told her that a woman (Victora Esan) had also told him that she believed that the shouting had come from the 7th floor of Elphinstone Court.

[107] On arrival at Elphinstone Court, a member of the public allowed the officers entry via the secure main door. The person said they had not heard any shouting. PC Valentine's evidence regarding the enquiries she and PC Bayliss made on the 5th, 6th, 7th and 8th floors was entirely consistent with PC Bayliss's evidence. She recalled that two residents answered their doors to the officers, one woman on the 8th floor, who said she had not heard anything but that if there was shouting in the building, she would normally hear it, and another woman on the 6th floor, who said she had not heard anything. The officers then made their way to Steven Dark's flat on the 10th floor of King's Court. He told them that he had heard shouting from his kitchen window and that, although he had not seen the person who was shouting, he believed it to be coming from the far side of Elphinstone Court, i.e. the side furthest away from Mr Dark's window. He believed that the person had referred to the 7th floor. He did not mention

the 11th floor. Had he done so, the officers would have gone back to Elphinstone Court and made enquiries on the 11th floor.

[108] The officers then went to Victoria Esan's flat in a low-rise block on Gordon's Mills Crescent. They spoke to Ms Esan at the door of her flat, within her building. She told them that she believed that the shouting she had heard had come from the 7th floor of Elphinstone Court. One of the officers asked her whether she would be able to point out which floor she was referring to. She said that she would try and, via a window within her block, she pointed towards Elphinstone Court and counted up seven floors from the ground. She did not, at any stage, make reference to flat 47. If Victoria Esan had made any reference to flat 47 of Elphinstone Court, the officers would have gone there to make enquiries. PC Bayliss had told PC Valentine that Victoria Esan said that the man who was shouting appeared to have blood on his face. PC Valentine asked Ms Esan about this. Ms Esan said that the man had redness on his face but that she could not be sure that it was blood. At around that time PC Valentine updated her supervisor sergeant Arton via her radio. She told him about the enquiries she and PC Bayliss had made and that they had been unable to trace the person who had been shouting.

[109] As the officers made their way from Victoria Esan's flat to their police vehicle, they saw a group of construction workers near to the base of Elphinstone Court and asked them whether they had heard any shouting. The workers said they had been there since 0800 that morning, that they had heard shouting earlier which they thought sounded like someone under the influence, that they couldn't be sure where the

shouting had come from but that it was possibly Elphinstone Court. None of the workers said anything about shouting coming from between the 10th and 16th floors of Elphinstone Court. Had they said that, the officers would have returned to Elphinstone Court and made further enquiries on those floors. The workers said that the shouting had been going on all morning but that they had no concerns about it. PC Valentine asked them what was shouted, but they were unable to be specific. She did not note the names of any of the workers because they had not provided any information which was evidentially significant. Because the workers had said they would be there all day, PC Valentine asked them to call the police if they heard any further shouting. After they left the workers, they were given permission by sergeant Arton to stand down from the call. PC Valentine could not recall if sergeant Arton had asked whether she or PC Bayliss had contacted the 999 callers before he told them to stand down. The control room assigned them to a different call, although it was possible that they had returned to their police office before attending to that call. Under reference to the passage from PC Bayliss's PIRC statement, PC Valentine said that she did not hear any of the construction workers say that the shouting was coming from "somewhere high in the block".

[110] PC Valentine did not read the STORM incident record via her handheld device whilst she was in the vicinity of Elphinstone Court. She did not attempt to contact any of the individuals who had made the original 999 calls. Lindsay Barrett, whom the officers spoke with briefly on their arrival in Gordon's Mills Crescent, had told them that she had called the police. However, PC Valentine did not know the identity of the

second caller whom the control room had referred to as she and PC Bayliss had made their way to Gordon's Mills Crescent that morning. Her belief by the time she left the scene that morning was that Steven Dark was the second caller.

[111] When cross-examined by Mr Wickham, PC Valentine repeated that Steven Dark had not made any reference to floor 11, only floor 7, and that Victoria Esan had not made any reference to flat 47. When asked whether Victoria Esan's reference to the male possibly having blood on his face had given her cause for concern, PC Valentine said that it had not because Ms Esan was not sure whether she had seen blood and, by the time she had spoken to Ms Esan, she and PC Bayliss had carried out enquiries on the 5th, 6th, 7th and 8th floors of Elphinstone Court and had seen no signs of blood at any of those locations.

[112] In response to cross-examination by Mr Vaughan, PC Valentine could not remember whether sergeant Arton had asked her, before authorising the officers to stand down, whether they had spoken to "the witnesses", or whether she had simply told sergeant Arton who they had spoken to.

Sergeant Richard Arton

[113] Sergeant Richard Arton, aged 46, has 18 years police service and was based at Tillydrone Police Office on 15 January 2024, supervising a team of front-line police constables including PCs Bayliss and Valentine. He confirmed that a concern for person report with an immediate priority grading would be regarded as a potentially serious matter in which he would have taken a direct supervisory role. Officers who respond to

such a call have a significant degree of autonomy, but they would be expected to provide him with updates regarding the progress of their enquiries.

[114] On the morning of 15 January 2024, sergeant Arton received updates from one or other of PC Bayliss and PC Valentine on a couple of occasions in relation to this call. He identified the various updates provided by the officers and his own acknowledgements on the STORM incident record arising from Gail Thomson's 999 call. At an early stage, shortly after their arrival at the scene, the officers provided an update that there was no one hanging out of a window or shouting for help. When one of the officers provided an update which referred to a description of a male potentially "covered in blood", sergeant Arton instructed that that be further investigated. He received a further update from one of the officers confirming that they had spoken to the witness, who was not sure whether they had seen blood. At some point sergeant Arton asked the officers to check which floor the person reported as shouting had been on. The response from one of the officers was that a witness had counted up to the 7th floor. That information appeared to be consistent with the information received from the call centre and noted on the STORM incident record, which had referred to a male shouting from between the 6th and 8th floors of a tower block. According to sergeant Arton's evidence, it was after this update that the officers informed him that they were making their way to Elphinstone Court to make enquiries there.

[115] The next update sergeant Arton could recall was that the officers had carried out enquiries on the 7th, 8th, 6th and 5th floors of Elphinstone Court, but that they had not been able to identify anyone who was in distress. A short time later, he heard a call from the

control room asking whether PCs Bayliss and Valentine were free to attend another call concerning a domestic incident. He heard PC Valentine reply that they would have to speak with sergeant Arton. The officers then provided him with a further update, indicating that they had spoken to some workmen who had heard shouting but had no concerns and who thought that the person shouting was drunk. The officers had asked the workmen to call the police if they heard any further shouting.

[116] Sergeant Arton then contacted one of the officers – he could not remember which – and asked whether they had spoken to "the two witnesses". When he asked this question, he was referring to the two people who had made the 999 calls to the police earlier that morning which had resulted in the two STORM incident records (Gail Thomson and Lindsay Barrett). However, he did not name those witnesses when he asked the question of the officer. He simply referred to "the two witnesses". The response from the officer to whom he spoke was "yes", and that they had also spoken to a postman who had been working in the area and who had not heard any shouting. Sergeant Arton then gave the officers permission to stand down. He did that because the officers had been at the scene for some time, they had not seen or heard anything to suggest that anyone was in distress and he believed that they had spoken to the witnesses who had made the 999 calls to the police and to workmen who had confirmed that they would call the police if they heard any further shouting. All of these factors gave sergeant Arton sufficient reassurance to stand the officers down, which he did at about 1100 hours.

[117] When asked by Mr Burton why he had wanted to know whether the officers had spoken to the two witnesses who had made the 999 calls, sergeant Arton replied that he knew that the police had only received two calls regarding this incident and he wanted to know whether the officers had spoken to those callers, in case they could add any further information or provide any further clarification of the circumstances. When one of the officers had replied in the affirmative, he assumed that the officer was confirming that they had spoken to Gail Thomson and Lindsay Barrett, although neither he nor the officer used either of those names. Sergeant Arton also took the affirmative response to mean that the officers had spoken to Gail Thomson and Lindsay Barrett at the scene, not that they had telephoned them. He would not have expected the officers to have telephoned the witnesses. If the officers had made it clear that they had not spoken to one or other of those witnesses at the scene, either sergeant Arton or a member of control room staff would have contacted that witness by phone, using the contact details from the STORM incident record. Alternatively, he would have asked the officers at the scene whether they were in a position to telephone the witness.

[118] At no point did either of the officers, in any update, tell him that any witness had referred to "flat 47" or to "floors 7 to 11" of Elphinstone Court in connection with any reported shouting, or that a workman had said that he thought the shouting was coming from between the 10th and 16th floors of Elphinstone Court. Had the officers received any of this information from members of the public, he would have expected them to tell him in an update, and to investigate it on their own initiative.

[119] When cross-examined by Mr Wickham with reference to PC Bayliss's lengthy update to the STORM incident record, sergeant Arton agreed that the update referred to the workers having said that a male "on the upper floors" had been shouting, and agreed that the 7th floor of Elphinstone Court would have been located in the lower half of the block. However, when cross-examined by Mr Vaughan, he suggested that he would still have regarded the 7th floor of Elphinstone Court as an "upper floor", because he had not been aware at the time of how many floors the block had. With reference to his request for confirmation that the officers had spoken to "the witnesses", sergeant Arton thought it would have been obvious to either of the officers that the witnesses he was referring to were the two witnesses who had made the 999 calls which had generated the two STORM records, even though he did not name the witnesses when he made this enquiry. By the time he told the officers to stand down, he considered that they had carried out a reasonable and proportionate investigation, based on the updates they had provided to him.

Submissions on the evidence

[120] Written submissions on behalf of all participants were lodged in advance of the submissions hearing on 7 August 2026. The written submissions were supplemented by further submissions presented during the hearing. No purpose would be served by summarising the submissions in any detail here. The submissions assisted me greatly in my task.

[121] One line of reasoning which was common to the submissions presented on behalf of all of the participants apart from the Crown and Lyndsay Anne Forbes related to the question of precautions in terms of section 26(2)(e) of the 2016 Act. This argument was to the effect that, within the scope of the evidence, the avoidance of Mr Forbes's death would have depended on PCs Bayliss and Valentine not only attending at the door of flat 47 on the 12th floor of Elphinstone Court prior to the fatal fall but also, by some means, discovering or bringing about the discovery of Mr Forbes's presence within the flat. However, it was clear from the unchallenged evidence that, although Mr Forbes had been heard shouting for help prior to the arrival of the officers in the vicinity of Elphinstone Court at about 1022 hours on 15 January 2024, no further shouting from him was reported by any witness after the officers arrived. Given that Mr Forbes remained alive until his fatal fall at about 1525 hours, it was a reasonable inference that he had stopped shouting for help during the intervening period because, for one reason or another, he was not able to do so. Therefore, even if the officers had attended at the door of flat 47 and made themselves known, to conclude that Mr Forbes would have been able to respond to their presence and make himself known to them, for example by shouting for help, would be an exercise in speculation.

[122] Thus, even if I concluded that there were precautions which could reasonably have been taken in terms of subsection (2)(e)(i) which might have resulted in PCs Bayliss and Valentine finding their way to the door of flat 47, no such precaution might realistically have resulted in the death of James Forbes being avoided, in terms of subsection (2)(e)(ii).

[123] The contrary analysis, proposed on behalf of the Crown and Ms Forbes, was that it was clear that the death of Mr Forbes might realistically have been avoided had the officers attended at the door of flat 47 during their enquiries in Elphinstone Court and that it was therefore open to me to identify precautions in terms of section 26(2)(e) of the Act. I return to this issue later.

Assessment of credibility and reliability

[124] When a court assesses the evidence of witnesses, two important aspects which must be considered are credibility and reliability. The evidence of a witness on any particular matter is regarded as credible when the court is satisfied that the witness is doing their best to tell the truth about it. However, even the most honest witness, doing their best to tell the truth about a particular matter, may be mistaken, with the result that their evidence may not be reliable. There may be various reasons for that, such as the confusing or upsetting nature of the incident the witness is describing, the passage of time or the surrounding circumstances at the time of the incident. It is very much a matter for the court to assess and decide whether and to what extent the evidence of each witness is credible and reliable. Only evidence which is accepted as both credible and reliable can form the basis for positive findings about the facts of the case.

[125] A related point is that it is always open to a court to accept the evidence of a witness in whole or in part; in other words, to accept parts of what a witness has said in evidence and to reject other parts of the evidence given by that same witness, either because it is not credible (truthful) or because it is not reliable (accurate). If part of the

evidence given by a witness is rejected, it does not logically follow either that the opposite of what the witness has said must be true, or that all of the witness's evidence must be rejected.

[126] There was no criticism of the credibility or reliability of the evidence of any of the witnesses who were heard during the inquiry hearing in relation to the generality of their evidence. That accords with my own general assessment of the credibility and reliability of the evidence which I heard. The only criticisms in relation to credibility and reliability focussed on a few particularly important interactions between PCs Bayliss and Valentine and the witnesses Victoria Esan, Steven Dark and James Mutch. In relation to these interactions, the evidence of Ms Esan, Mr Dark and Mr Mutch about the information they provided to the officers contradicted the evidence of the officers about what they were told by the witnesses. These are the points on which I will focus my assessment of credibility and reliability. I will indicate my conclusions at the appropriate points in the analysis of the evidence which follows.

Analysis of evidence

The circumstances which resulted in the death of James Forbes

[127] This inquiry focussed on the police response to reports from members of the public about a man shouting for help on the morning of 15 January 2024. I am satisfied on the evidence that that man was James Forbes and that he was within flat 47 on the 12th floor of Elphinstone Court when he was heard shouting. Mr Forbes died on the afternoon of 15 January 2024 when he jumped from the window of that flat and

sustained fatal injuries. However, no police officer or member of police staff caused the death of Mr Forbes. Likewise, no member of the public who heard James Forbes shout for help, but who did not call the police, caused his death. Responsibility for his death was established by the criminal proceedings against Lee Charles Smith. By his plea of guilty in the High Court of Justiciary to the culpable homicide of James Forbes, in the circumstances described in the indictment, Lee Charles Smith publicly accepted criminal responsibility for the death of Mr Forbes. There is no reason to imagine that James Forbes would have died on 15 January 2024 but for the criminal acts which Lee Charles Smith committed against him on 14 and 15 January.

Missed opportunities to call the police

[128] The Crown's position during these proceedings was that the only calls to the police on 15 January 2024 concerning a person, who I am satisfied was James Forbes, shouting for help in the vicinity of Elphinstone Court were the 999 calls made by the witnesses Gail Thomson and Lindsay Barrett. No records were produced of any other calls to the police. However, the evidence makes it clear that other people heard the same shouting and, for different reasons, did not call the police.

[129] As indicated at paragraphs [32] to [34] above, in the aftermath of James Forbes's death, police officers took statements from witnesses who were within flats in Elphinstone Court in close proximity to the 12th floor on the morning of 15 January 2024 and who heard, and in the case of one witness, saw James Forbes shouting out of the window of flat 47. For a variety of reasons, none of those people called the police. Had

any of them done so, they would have been able to provide the police with significant detail not only about the nature of the shouting but about where within the block the shouting was coming from, including, in the case of some of those people, identification of the flat from which the shouting came.

[130] I am satisfied that Victoria Esan and Shola Belo saw and heard James Forbes shouting for help from Elphinstone Court and that they heard him say that he was within flat 47. Their evidence to that effect is entirely consistent with other unchallenged evidence and agreed facts indicating that James Forbes was within flat 47 that morning. Ms Esan and Ms Belo could not have known that he was within flat 47 unless they had heard him say so. Despite forming the impression that the man they saw and heard was in genuine distress, neither called the police, because they believed that an unidentified woman who was near to them was on the phone to the police and that she would tell the police the flat number.

[131] James Mutch gave evidence that he and his colleagues heard shouts for help, which I am satisfied must have come from James Forbes, emanating from Elphinstone Court on the morning of 15 January prior to the attendance of the police officers. However, they did not call the police, apparently because they thought that the person who was shouting sounded intoxicated and the shouting did not give them any cause for concern.

[132] Thus, although the only calls to the police for which any records were produced were the 999 calls made by Gail Thomson and Lindsay Barrett, a number of other people who might have been in a position to call the police that morning, to report essentially

the same shouting which Ms Thomson and Ms Barrett reported, chose not to do so for one reason or another. This is worth noting not to cast any blame or responsibility towards any of those individuals, but because calls to the police from a larger number of members of the public may have increased the likelihood that information would have been provided and recorded which would have resulted in a clearer, more specific starting point for police enquiries. It may also have reduced the impact of a single human error by a busy police service advisor, Calum Scott, on the course of those enquiries.

The unidentified woman

[133] I accept that neither Victoria Esan nor Shola Belo called the police because they believed that a woman who was nearby was on the phone to the police about the shouting and that she would pass the flat number given by James Forbes to the police during her call. However, that woman was not identified in the evidence. Neither Gail Thomson nor Lindsay Barrett made reference to meeting or speaking with anyone answering the descriptions of Ms Esan and Ms Belo. None of the participants suggested to either Ms Thomson or Ms Barrett during their evidence that they were the woman referred to by Ms Esan and Ms Belo. Neither Ms Thomson nor Ms Barrett made reference during their 999 calls to flat 47. Furthermore, the Crown's position was that there was no record of a call to the police from the woman described by Ms Esan and Ms Belo. If that call connected, the evidence does not disclose any explanation for the absence of a record of it. One possibility emerged from Steven Dark's evidence that he

called the police to report the shouting he had heard, but that he was told that someone else had already called and reported the same shouting. There appears to have been no record of Steven Dark's call either.

[134] Although the evidence does not exclude the possibility that the unidentified woman described by Ms Esan and Ms Belo did call the police but received a similar response to Mr Dark, there was no evidence to support any findings about the identity of the woman, about whether any call to the police from her connected or, if it did, about any response she may have received.

The two 999 calls and the recording errors by the service advisers

[135] It is a matter of agreement that 999 calls were made on the morning of 15 January 2024 by the witnesses Gail Thomson (at 1013 hours) and Linday Barrett (at 1016 hours). I am satisfied that the shouting which they reported came from James Forbes. I am also satisfied that, unlike Lindsay Barrett, Gail Thomson actually saw James Forbes at the window of flat 47 on the 12th floor of Elphinstone Court. Ms Thomson provided potentially vital information during her call, namely that the person she was describing was "six floors down" and then that he was "…like the fifth or sixth floor down from the top" of the block to which she referred. Although Ms Thomson did not name Elphinstone Court during her call, I am satisfied that the information which she did provide would have allowed local officers to swiftly identify Elphinstone Court as the block to which her report referred. Elphinstone Court is an 18-storey block. Flat 47, where James Forbes was, is on the 12th floor. Had

Ms Thomson's description been accurately recorded in the resulting STORM record which was transmitted to the local police area control room, police enquiries would have been directed from the outset to the vicinity of the 12th. However, as a result of simple human error in the course of what was no doubt a typically busy shift, the STORM record created by Calum Scott, the service advisor who took the call, noted the location given by Ms Thomson as "around 6-8 flats up", which set the enquiries subsequently undertaken by PCs Bayliss and Valentine off on the wrong course from the outset.

[136] It is noteworthy that, during Gail Thomson's 999 call, Calum Scott initially misheard her location as Gordon's Mills Terrace, Aberdeen, rather than Gordon's Mills Crescent, but that when Mr Scott repeated his understanding of her location, Ms Thomson was able to correct his error. However, Mr Scott did not repeat his understanding of the equally vital information provided by Ms Thomson about the location of the person who was shouting. Had that been done, there is every reason to anticipate that Ms Thomson would also have been able to correct that error.

[137] As already noted, Andrew Durham, the operations manager of the Police Scotland service centre which received both calls, gave evidence that although there is no procedural requirement for a service adviser to confirm a piece of information provided by a caller if the adviser is confident that they have correctly understood it, he would expect the adviser to repeat the location of an incident provided by a caller, in order to check that the adviser had correctly understood the location and to give the caller the opportunity to correct any misunderstanding.

[138] It was clear from the evidence led at the inquiry hearing that none of the information which Lindsay Barrett provided to Dawn Fair, the service advisor who took her 999 call, would have identified Elphinstone Court as the focus for police enquiries. However, it is noteworthy that a recording error also occurred during this call. Ms Barrett's reference to numbers 34-48 Gordon's Mills Crescent was recorded by Dawn Fair as a reference to numbers 34-38. On this occasion, the transcript of the call reveals that Dawn Fair did repeat the incorrectly noted reference to "34-38," in response to which Ms Barrett replied, "48 yes". Despite this clarification by Ms Barrett, the resulting STORM incident record for this call still contained the incorrectly noted reference to "building 34-38," as the potential source of the shouting. In contrast to the misrecording of the information provided by Gail Thomson, the misrecording of this information from Lindsay Barrett did not exert any influence on the course of the subsequent police response.

The general enquiries carried out by PCs Bayliss and Valentine

[139] Leaving aside for the moment the disputed factual issues relating to the information which was, or was not, provided verbally to PCs Bayliss and Valentine by the witnesses Victoria Esan, Steven Dark and James Mutch, and the understanding which the officers gained from their interactions with those witnesses, I accept as credible and reliable the evidence of PCs Bayliss and Valentine with regard to their attendance in the vicinity of Elphinstone Court and the general nature of the enquiries which they carried out there. The unchallenged CCTV evidence confirmed that they

arrived in a marked police car at 1022 hours and that they left in their car at 1101 hours. There was no dispute that, during the intervening period, they made the enquiries which they described, including speaking to Victoria Esan, Steven Dark and a group of workmen including James Mutch. There was also no challenge to the evidence of the officers, which was supported to some extent by CCTV images from within Elphinstone Court, that after the first interactions between PC Bayliss, Victoria Esan and Steven Dark, the officers walked the short distance to Elphinstone Court, travelled in the lift to the 7th floor and attended at the doors of every flat situated on the 7th, 8th, 6th and 5th floors, in that order, and that their enquiries on those floors elicited no response which could have directed their attention to the 12th floor or to flat 47 situated there. There was no challenge to the evidence of the officers that they heard no shouts for help or sounds of distress whilst they were in the vicinity of Elphinstone Court. The only evidence of any shouting by James Forbes related to the period prior to the arrival of the officers at 1022.

[140] I am satisfied that, had the officers chosen to do so, it would have been no more difficult for them to have travelled in the lift to the 12th floor of Elphinstone Court and to have attempted to make enquiries at every flat situated there, including flat 47, as it was for them to attend and make enquiries on the 5th, 6th, 7th and 8th floors.

PC Bayliss's first interactions with Victoria Esan and Steven Dark

[141] Victoria Esan and Steven Dark each had two interactions with the officers. Firstly, both communicated with PC Bayliss via the windows of their flats at an early

stage, while the officers were separately attempting to establish where the reported shouting might have come from. Ms Esan spoke to PC Bayliss from the window of her second floor flat in a low-rise block on Gordon's Mills Crescent, a short distance from Elphinstone Court and its neighbouring tower blocks. Whilst PC Bayliss was speaking with Ms Esan, Mr Dark called to him from the window of his 10th floor flat in King's Court, adjacent to Elphinstone Court, at a distance of between 80 and 100 metres from the officer. Bearing in mind the evidence that it was snowing at the time, these conditions were clearly not ideal for the communication of potentially important information.

[142] Ms Esan gave evidence that what she had shouted from her window was "it's flat 47". However, as I have already noted, although Ms Esan gave her evidence in fluent English, she spoke with a very strong accent. It was clear from Mr Dark's evidence that he could not be sure that, in the course of the comments he shouted from his window, he made any mention of the figure "11", as opposed to "7", in reference to any location he may have heard being shouted earlier.

[143] I accept that, immediately after these interactions between PC Bayliss, Ms Esan and Mr Dark, PC Valentine joined PC Bayliss and that both officers walked the short distance to Elphinstone Court, where they took the lift straight to the 7th floor to begin their enquiries there. It is significant that, as they made their way to Elphinstone Court at that point in the sequence of events, PC Bayliss provided a verbal update to the control room, which included a comment that he had spoken to "…a couple of people in the area and they said seventh floor at Elphinstone Court, so we are going to head up

there and see what we can find." I am satisfied that the people to whom PC Bayliss referred in this update were Ms Esan and Mr Dark.

[144] No rational explanation emerged from the evidence for PC Bayliss's failure to refer in that update to either flat 47 or to the 11th floor, or indeed the failure of the officers to make enquiries at flat 47 and on the 11th floor of Elphinstone Court when they entered the block moments later, had either of these locations been communicated to PC Bayliss by Ms Esan or by Mr Dark.

[145] It is worth emphasising the obvious fact that, by this point in the sequence of events, James Forbes was still alive and the officers had no reason to anticipate the tragic events which would unfold that afternoon. There is no possibility that this update could have been fabricated later in an attempt to portray the actions of the officers in a positive light in the aftermath of the death of James Forbes. The court heard a recording of the update, which was given by PC Bayliss at 1027 hours that morning. The terms of the update are supportive of and consistent with the evidence of PC Bayliss that neither the 11th floor nor flat 47 were communicated to him by Mr Dark or Ms Esan during his first interactions with them. I accept PC Bayliss's evidence that, in the imperfect conditions which I have described, he heard both witnesses refer in some way to the number 7, in a context which conveyed to him that they were each referring to the 7th floor of Elphinstone Court in connection with the location of the shouting which he was investigating.

[146] Mr Dark was not sure that he had mentioned the number 11 during this first interaction with PC Bayliss. Whatever the precise words used by Ms Esan during her

interaction with PC Bayliss at this point, I am satisfied that PC Bayliss did not hear any reference to flat 47 but did hear a reference to the number seven, a possibility which was recognised in Mr Wickham's cross-examination of PC Bayliss. This analysis explains the terms of the update provided by PC Bayliss as he and PC Valentine made their way to Elphinstone Court and it explains why the officers focused their enquiries on the 7th floor and the floors immediately above and below it, when it would have been as easy for them to have gone to the 11th floor or to flat 47 on the 12th floor and to have made enquiries at those locations, had they been given any reason to do so.

The officers' next interactions with Victoria Esan and Steven Dark

[147] Their enquiries within Elphinstone Court having proved fruitless, I am satisfied that the officers attended at the flats of Steven Dark and Victoria Esan. The fact that the officers returned to speak to these witnesses at this stage is significant. I accept the evidence of the officers that their purpose in attending at the homes of these witnesses was to make a further attempt to establish and confirm any information they might be able to provide which could advance their enquiries. There was no other reason for the officers to visit these witnesses at that stage. The weather was inclement. CCTV images showed that snow was falling whilst the officers were at the scene that morning. If, as Mr Wickham may have implied during his cross-examination of PC Bayliss, their mindset as the morning evolved was that they did not want to prolong their enquiries because of the inclement weather, they might have been expected to depart at this point

in the morning. Instead, they walked back to the buildings where the witnesses lived and spoke to them face to face.

[148] Once again, I am not satisfied that, on this occasion, Mr Dark made any mention of the number 11, or that he otherwise identified the 11th floor of Elphinstone Court as a potential location of interest. Both officers were adamant in their evidence that he did not. According to my notes of evidence, which were not disputed when I referred to them in relation to this point during submissions, Mr Dark was not asked, and did not say, what he had had told the officers during their visit to his flat. Mr Burton for the Crown explicitly accepted that no evidence had been taken from Mr Dark to contradict the officers' evidence that, during this visit by the officers to his flat, he did not make any reference to the 11th floor or the number 11. I accept the evidence of the officers that he did not.

[149] The officers then made their way to Ms Esan's flat and spoke with her. The conflict between Ms Esan's evidence and the officers' evidence about what Ms Esan told them during this visit was the focus of considerable attention during the inquiry hearing and submissions. One point of apparent agreement was that Ms Esan accepted in her evidence that, during this visit by the officers to her flat, she went with them to a window in the common stairwell of the building and, in response to a request by the officers to point out where in Elphinstone Court she had seen the man who was shouting, she made some attempt to identify the floor by counting up from ground level. The evidence of the officers was that she counted up seven floors and that she did not mention flat 47. Ms Esan's evidence was that, although she tried counting up from

ground level, she could not complete the task because she did not know which floor the man had been on and that she told the officers that she did not know the floor but that the man had said "flat 47" and that he was on a high floor of the block. These two accounts of this interaction are difficult to reconcile.

[150] On one hand, as already noted, I am satisfied that James Forbes was in fact within flat 47 of Elphinstone Court that morning and that, when Ms Esan heard him shouting from the window of that flat, he said that he was in flat 47. Ms Esan could not otherwise have known that he was in flat 47. Thus, when the officers came to speak to her at her flat, Ms Esan was in a position to tell them that she had heard the man shout a reference to flat 47.

[151] On the other hand, Ms Esan's evidence that she went to a window of her block with the officers and made some attempt to count up from the ground floor of Elphinstone Court to indicate how high in the building the man had been, is difficult to reconcile with her insistence that she did not know which floor the man was on. Although I accept that Ms Esan did not know precisely which floor of Elphinstone Court the man had shouted from, I am satisfied that she was in a position to make some attempt to estimate approximately how far up the block he was when she had seen and heard him.

[152] The only explanation suggested by any of the participants for the failure of the officers to attend at flat 47 of Elphinstone Court, on the hypothesis that Ms Esan did tell them about flat 47 during this visit to her flat, was suggested by Mr Wickham during his cross examination of PC Bayliss, namely that the officers simply did not want to return

to Elphinstone Court, possibly due to the prevailing inclement weather. Having regard to the issues discussed in the following paragraphs, I do not accept that any explanation of this nature accounts for the fact that the officers did not focus their attention on flat 47 after their visit to Ms Esan's flat.

[153] As already noted, I am satisfied that the sole reason for the officers attending at Ms Esan's flat at this point in the morning was to check and confirm whether she had information which might be relevant to their enquiries. In that context, the identification by Ms Esan of the precise flat specified by the man she had heard shouting would clearly have been very significant. The officers accepted in their evidence that, had Ms Esan told them about the man's reference to flat 47, they would have been obliged to go and make enquiries at that flat. However, when they left Ms Esan's flat, the officers did not update sergeant Arton or the control room with any reference to flat 47, despite the multiple real-time updates which they provided at other points during the morning. They did not return to Elphinstone Court to pursue enquiries at flat 47. PC Bayliss did not include any reference to flat 47 in the lengthy update which he added to the STORM record 30 minutes or so later, after returning to Tillydrone Police Office, despite including references to other information the officers had gathered in the course of the morning, including the information which came from the group of workmen including James Mutch, which is considered in more detail below. Elphinstone Court was only a short walk from Ms Esan's flat. The officers' car was parked close to Elphinstone Court. Thus, even if the officers had been keen to leave the area by the time they spoke to Ms Esan, they had to walk back to the vicinity of Elphinstone Court in order to do so.

Further, having left Ms Esan's building, the officers did not go straight to their car and leave. The CCTV images showed that, having caught sight of the group of workmen including James Mutch near to the base of Elphinstone Court, they walked to the group and spoke with them for a short time before returning to their car and driving off at 1101 hours.

[154] Again, it must be borne in mind that there is no doubt that the various updates to which I have referred were timed several hours prior to the death of James Forbes. There is no question of their having been created after the death of Mr Forbes, in order to support a more favourable narrative of the actions of the officers.

[155] None of these unchallenged features of the evidence is consistent with the assertion that the officers heard Ms Esan tell them about flat 47 during their visit to her flat, but that they simply and deliberately chose not to act on or even acknowledge that information in any way. In my view the balance of the surrounding circumstantial evidence is more consistent with the officers' position, that Ms Esan did not tell them about flat 47, but that she did count up what appeared to be seven floors from the bottom of Elphinstone Court. Put another way, the evidence strongly indicates that, having left Ms Esan's flat, the officers behaved in a manner which was consistent with their account of what they were told by Ms Esan and indeed with the evidence of the efforts they had made up to that point to progress their enquiries. They did not behave in a manner consistent with Ms Esan's account of what she told the officers during this interaction.

[156] I am not satisfied that Ms Esan make it clear to the officers when they visited her flat that she had heard the man shout that he was in flat 47 or that he was "high in the block". I am satisfied that, whether due to Ms Esan's strong accent, or to her attempt to count up from the ground floor of Elphinstone Court to indicate how high the man was, or for some other reason, by the time the officers left her flat, their understanding was that she had referred to "floor 7", or the "7th floor" of the block, which they had already visited. They did not take any reference to flat 47, as a location of interest, from this interaction.

The officers' interaction with James Mutch

[157] I am satisfied that, after they left Victoria Esan's building, PC Bayliss and PC Valentine approached the group of workmen including James Mutch, who were then standing near to the base of Elphinstone Court. Again, their purpose in doing so was to establish whether the group could provide any information of relevance to their enquiries. This provides further support for the officers' evidence that they were not directed to flat 47 of Elphinstone Court by Victoria Esan. Had they left Ms Esan's flat in the knowledge that she had heard the man who was the focus of their enquiries say that he was in flat 47, I am satisfied that they would have gone to that flat.

[158] Mr Mutch appeared to accept that his original estimate of the time at which he was approached by the officers (shortly after 0800 hours) was mistaken and that he had spoken to the officers later in the morning, as shown in the CCTV images. However, he was clear in his evidence that he told the officers that he believed that the shouting he

had heard earlier that morning had come from between the 10th and 16th floors of Elphinstone Court. Both PC Bayliss and PC Valentine gave evidence that the information provided by the workmen, whose names they did not note, was to the effect that they had heard shouting earlier in the morning and that the person sounded as though they were "under the influence". PC Bayliss's evidence was that the workmen had said the shouting had come from Elphinstone Court. PC Valentine's evidence was that they had said the shouting had possibly come from Elphinstone Court. Both officers gave evidence that the workmen could not be any more specific as to the location of the shouting. No member of the group made any reference to the shouting having come from between the 10th and 16th floors or having come from somewhere high in the block.

[159] In assessing the evidence about this interaction, I bear in mind that the officers did not approach and speak to Mr Mutch alone. He was a member of a group of colleagues. The CCTV images indicated that this was a comparatively brief interaction, in inclement weather with snow falling. My impression from the evidence of both officers was that more than one member of the group spoke to them. Such a scenario, which is probably not uncommon in the course of front-line policing duties, creates scope for individual comments to be misheard, misunderstood or not fully understood. I also accept the evidence of the officers that comments made by one or more members of this group indicated that the person they had heard shouting appeared to be intoxicated and that the shouting had not caused them any particular concern. This is consistent with the evidence indicating that neither Mr Mutch nor any of his colleagues

had called the police to report what they had heard. It is also consistent with the statement noted from the postman, to which I have referred at paragraph [34] above.

[160] However, I accept Mr Mutch's evidence that, during this interaction with the officers, he said that the shouting appeared to have come from between the 10th and 16th floors of Elphinstone Court. The surrounding circumstances which are described in paragraph [159] may have impacted on the clarity with which those comments were received and understood by either or both of the officers. Having said that, I am satisfied that PC Bayliss came away from this interaction having understood, whether on the basis of comments made by Mr Mutch or by one or more of his colleagues, that the shouting which had been heard earlier that morning had come from the upper floors of Elphinstone Court. As noted in paragraph [92] above, PC Bayliss included a note in those terms in his update to the STORM record 30 minutes or so later, at about 1130 that morning. I have already explained the evidential significance which I have attached to the updates provided or created by the officers that morning. The same level of significance attaches to this entry in PC Bayliss's near-contemporaneous update to the STORM record. The terms of this update point to PC Bayliss having understood, by the time he created the update, that one of more of the workmen had communicated this information to him.

[161] Further, when he was interviewed on behalf of the PIRC on 23 April 2024, I am satisfied that PC Bayliss said, in reference to this interaction with the workmen, that:

> "…they [the workmen] gave an indication that it [the shouting] was <u>somewhere high in the block</u> but could not be any more specific than that. I did not take

> great cognisance of that information, we had two witnesses who were providing information about the 7th floor." (emphasis added).

[162] This statement was noted a little over three months after the death of James Forbes and over two years before PC Bayliss gave evidence to the inquiry. It is reasonable to proceed on the basis that his memory of the events described in his statement would still have been relatively clear when he gave the statement. It would also have been clear to PC Bayliss that the statement was being taken in connection with an investigation arising from the circumstances of James Forbes's death, including the actions of the police that day, and that when he gave the statement he would have been focusing on his recollection of the events of that day. Having regard to these factors, and to the consistency between this passage from PC Bayliss's statement and the terms of his update to the STORM record on the morning of 15 January 2024, the passage from the statement is further evidence which points towards the conclusion that PC Bayliss came away from the interaction with Mr Mutch and his colleagues having received information, and developed an awareness, that the shouting which had been heard earlier in the morning appeared to have come from the upper floors, high in Elphinstone Court.

[163] I reject as not credible PC Bayliss's evidence to the inquiry that he did not hear any of the workmen say anything to this effect and that he may have "mis-spoken" when he made the comments noted above in the course of giving his statement to the PIRC. I regret that I found PC Bayliss's evidence on the latter point to be evasive.

[164] These sources of evidence are sufficient to satisfy me, on balance of probabilities, that PC Bayliss did come away from the interaction with the workmen having understood that at least one of them had said words indicating that the shouting had come from somewhere on the upper floors, high in Elphinstone Court, whether or not he heard or absorbed the detail which I am satisfied that Mr Mutch did contribute to the exchange.

[165] PC Valentine's evidence was that she did not hear any of the workmen say that the shouting had come from the 10th to 16th floors, or from "somewhere high in the block". No witness statement in contradictory terms was put to her. She did not update the STORM record. However, she was with PC Bayliss during the interaction with the workmen. She was clearly aware that the purpose of approaching the workmen was, essentially, to ask them whether they had heard, or knew anything about, the shouting which she and PC Bayliss were investigating. The CCTV images showed that the interaction between the officers and this group was brief. On her own evidence, at least one member of the group made reference to having heard shouting and, before parting company with this group, she asked them to call the police if they heard any more shouting. Having regard to all of these circumstances I am satisfied, on balance of probabilities, that PC Valentine also came away from the interaction with the workmen with the same general understanding as PC Bayliss, that at least one member of the group had said words indicating that the shouting had come from somewhere on the upper floors, high in Elphinstone Court. I reject as not credible PC Valentine's evidence to the contrary.

[166] Thus, I am satisfied that Mr Mutch did indicate during this interaction that he thought that the shouting had come from between the 10th and 16th floors of Elphinstone Court and that the general thrust of either that comment or a comment made by another member of the group to similar effect was understood by both PC Bayliss and PC Valentine as a reference to somewhere on the upper floors, high in the block. I am also satisfied that the officers did not attach significance to the information gained from the group because of the previous focus on the 7th floor, the fact that the indication given by the workmen was explicitly an estimate formed from ground level and the comments made by one or more of the workmen to the effect that the shouting which they had heard earlier had not caused them any concern and that the person who had shouted sounded as if he was intoxicated. For these reasons, the potential significance of the indication from this group that the shouting had come from somewhere on the upper floors, high in the block, was not acted upon by the officers. They neither updated sergeant Arton with regard to this information nor acted upon it by returning to Elphinstone Court and carrying out any further enquiries on floors above the 8th floor.

[167] In this context it is noteworthy that, although sergeant Arton gave evidence that he would have regarded the 7th floor of Elphinstone Court as an "upper floor", despite it being located in the lower half of the block, neither PC Bayliss nor PC Valentine sought to explain the failure to act upon the information gleaned from the interaction with Mr Mutch's group on that basis. Both officers simply gave evidence (which I did not accept) to the effect that no-one within the group had made any reference to the effect that the shouting had come from the upper floors or from high in the block.

Sergeant Arton's communication with PCs Bayliss and Valentine about "the witnesses"

[168] Sergeant Arton's evidence was generally supportive of the evidence of PCs Bayliss and Valentine with regard to his understanding of their attendance in the vicinity of Elphinstone Court and the updates provided to him by them whilst they were there. Sergeant Arton's decision making, particularly in relation to his instruction to the officers to stand down, presupposed the accuracy and completeness of the updates provided to him by the officers. One point in relation to which sergeant Arton's evidence was clearly mistaken concerned the point at which the officers informed him that they were on their way to make enquiries within Elphinstone Court. According to sergeant Arton, in the course of a single update, he was told by one of the officers that they had spoken to a witness who had counted up to the 7th floor of Elphinstone Court to indicate the location of the person who had been shouting and that they were on their way to make enquiries at Elphinstone Court. Sergeant Arton appears to have mistakenly conflated two different updates. The officers had already carried out their enquiries within Elphinstone Court before they went to Victoria Esan's flat, which was when she counted up a number of floors from the ground level of Elphinstone Court.

[169] The only other aspect of sergeant Arton's evidence which calls for comment concerned his request, before standing the officers down, for confirmation as to whether they had spoken to "the witnesses", by which he meant Gail Thomson and Lindsay Barrett, the two 999 callers whose contact details were available on the STORM record. This occurred shortly after the officers had spoken to James Mutch and his

colleagues. However, sergeant Arton did not name the witnesses to whom his question related. According to sergeant Arton, in response to his question one of the officers indicated that they had spoken to "the witnesses" and to a postman, who had not heard any shouting. In fact, the officers had spoken briefly to Lindsay Barrett, from their car, as they drove towards the group of tower blocks including Elphinstone Court. Although they did not note her name, she told them that she had called the police. They had spoken to other members of the public, but they had not spoken to Gail Thomson. Sergeant Arton took the affirmative response from one of the officers to mean that the officers had spoken to both Gail Thomson and Lindsay Barrett in person, at the scene. Based on this and the updates he had received earlier from the officers, he instructed them to stand down and they left the area without carrying out any further enquiries.

[170] I accepted sergeant Arton's evidence about the content of this exchange, which was not recalled by either PC Bayliss or PC Valentine. This miscommunication was significant because of sergeant Arton's evidence that, had he realised that the officers had not spoken to either Gail Thomson or Lindsay Barrett at the scene, although he would not have expected the officers to telephone a witness to whom they had not spoken, he would either personally have telephoned the witness, using the contact details noted on the STORM record, or he would have tasked a member of control room staff to do so, before instructing the officers to stand down.

[171] This passage of evidence indicates the significance which sergeant Arton attached to direct contact with the witnesses who had made the 999 calls, as an opportunity to check and confirm the information they were in a position to provide,

before bringing police enquiries arising from their calls to an end. Despite that, the terms of sergeant Arton's request for confirmation as to whether the officers had spoken to "the witnesses" were so vague as to leave significant scope for misunderstanding and miscommunication. As a result, an opportunity to contact Gail Thomson was lost. I am satisfied that, had she been contacted by the police at that stage, she would have been able to correct the error in the original STORM record by indicating that the man to whom she had referred during her 999 call was around six floors from the top, rather than from the bottom, of Elphinstone Court. Flat 47, where James Forbes was when the officers were stood down, was on the 12th floor of the block, six floors from the top.

Conclusions

[172] The analysis of the evidence which is set out above has informed my conclusions with regard to the matters which I am required to address in terms of section 26 of the 2016 Act.

Section 26(a) to (d)

[173] My conclusions in relation to these matters arise from unchallenged evidence.

[174] In terms of section 26(2)(a) of the 2016 Act, Mr Forbes was pronounced dead at approximately 1545 hours on 15 January 2024 at Elphinstone Court, Aberdeen.

[175] In terms of section 26(2)(b), the fall which resulted in the death of Mr Forbes occurred at approximately 1525 hours on 15 January 2024 at Elphinstone Court, Aberdeen.

[176] In terms of section 26(2)(c), the cause of Mr Forbes's death was:

1(a) Multiple blunt force injuries
1(b) Fall from height

[177] In terms of section 26(2)(d), the fall resulting in the death of Mr Forbes was caused when Mr Forbes, having been detained within flat 47 on the 12th floor of Elphinstone Court in Aberdeen against his will and subjected to repeated acts of violence there by Lee Charles Smith on 14 and 15 January 2024, jumped from the window of the flat in order to escape, whereby he sustained fatal injuries on impact with the ground.

Section 26(2)(e)

[178] I reject the submission on behalf of the participants other than the Crown and Ms Forbes to the effect that I should not identify any precautions in terms of section 26(2)(e) of the 2016 Act which envisaged or depended upon the attendance of PCs Bayliss and Valentine at the door of flat 47 on the 12th floor of Elphinstone Court. This submission proceeded on the basis that, even if such a precaution satisfied section 26(2)(e)(i) in the sense that it could reasonably have been taken, it would not satisfy section 26(2)(e)(ii) because, even if the officers had attended at the door of flat 47 and made themselves known, it would be speculative to suppose that Mr Forbes would have been able to respond to their presence and make himself known to them, for example by shouting for help.

[179] Although I accept that there was no evidence that Mr Forbes was heard shouting at any point after the arrival of PCs Bayliss and Valentine in the vicinity of Elphinstone Court at 1022 hours on 15 January 2024, it is also clear that he remained within flat 47 throughout the day until he jumped from the window at about 1525 hours. We cannot know how he might have reacted had the officers attended outside the door of the flat and made their presence known. He was clearly conscious and, by reasonable inference, mobile both when he shouted from the window of the flat in the morning and when he jumped from the same window in mid-afternoon. The evidence did not explain why he was not heard to shout during the intervening period. Equally, there was no evidence to suggest that he was unconscious or incapable of shouting throughout that intervening period. It is not speculative to contemplate that, if he became aware that police officers were outside the door of the flat, he would have attempted to make them aware that he was within.

[180] If the officers were unaware of the significance of flat 47 but attended at the 12th floor of the block and received no answer at flat 47 or any of the other doors on the landing in the course of their enquiries then, by inference from their actions following their attendance at the 7th floor, it seems reasonable to infer that they would have undertaken door to door enquiries on the neighbouring floors. Had they done so, it is reasonable to anticipate that they would have spoken to at least some of the witnesses later interviewed by the police, who would have been in a position to direct enquiries towards the general location of the shouting they had heard, or even specifically to the

flat occupied by "Lee", from which they had heard that shouting (see paragraphs [32] to [34] above).

[181] Finally, I bear in mind the evidence of inspector Di Meola to the effect that, had the officers attended at the door of flat 47, the reversal of the thumb lock is the sort of feature she would have expected them to notice, even in the absence of any response at the door, and which may have prompted some further enquiry.

[182] Having regard to these features of the evidence I have concluded that any precaution which could reasonably have been taken (in terms of section 26(2)(e)(i)) and which would have resulted in PCs Bayliss and Valentine attending at the 12th floor of Elphinstone Court, might have given rise to a realistic or actual possibility, a real rather than a remote chance, that the death of James Forbes would have been avoided; in other words, that such a precaution might realistically have avoided the death of Mr Forbes (in terms of section 26(2)(e)(ii)). Based on this analysis, I have identified a number of precautions in terms of section 26(2)(e). I have identified these precautions with the benefit of the hindsight which is available to me, but which was not available to those whose actions are referred to below.

[183] Firstly, the service advisor Calum Scott could reasonably have taken the precaution of accurately noting the critically important information provided by Gail Thomson during her 999 call with regard to the location, relative to the tower block to which she referred, of the man whose shouting she described during the call. Had that information been accurately noted and entered in the resulting STORM record which was transmitted to the local area control room, police enquiries would have been

directed from the outset to a location around six floors from the top, rather than six floors from the bottom, of the block. For the reasons given earlier in this section, that might realistically have avoided the death of James Forbes, who was in flat 47 on the 12th floor of Elphinstone Court, six floors from the top of the block.

[184] A second precaution which could reasonably have been taken was for an attempt to be made, whether by PC Bayliss, PC Valentine, sergeant Arton or another member of police personnel, to make contact with Gail Thomson before PCs Bayliss and Valentine were instructed to stand down, thereby effectively bringing their enquiries to an end. According to the evidence of Calum Scott, Andrew Durham, inspector Di Meola and sergeant Arton, the number from which a 999 call is made is recorded on the resulting STORM record and it would have been possible for that to be used in order to contact Gail Thomson, had anyone decided to do so. This was acknowledged by PC Bayliss in his evidence as a potentially helpful line of enquiry, which was not pursued. The STORM record was available to a range of police personnel, including PCs Bayliss and Valentine (via their hand-held electronic devices), sergeant Arton and members of the local control room staff. According to sergeant Arton, had he realised that either of the 999 callers had not been spoken to by PCs Bayliss and Valentine at the scene, he would have made arrangements for that to be done prior to instructing them to stand down.

[185] Although I accept the evidence of inspector Di Meola that there was no procedural requirement for PCs Bayliss and Valentine to have contacted Gail Thomson, that is no bar to the identification of a precaution in terms of section 26(2)(e). The option of attempting to contact the 999 callers before the officers were instructed to stand down

was available. I am satisfied that contacting Gail Thomson to check and confirm the information she was able to provide regarding the location of the man who had been shouting, prior to bringing the police enquiries arising from her call to an end, is a precaution which could reasonably have been taken. I am also satisfied that, had that precaution been taken, there is a realistic possibility that she would have been able to correct the error in the STORM record with regard to the location of the man she had heard shouting. The focus of police enquiries would then have moved to six floors from the top of the block, in which case, for the reasons already given, I am satisfied that the death of James Forbes might realistically have been avoided.

[186] The third precaution which could reasonably have been taken, which is linked to the second, was for sergeant Arton, when he asked PCs Bayliss and Valentine whether they had spoken to "the witnesses", to have specified the witnesses to whom he referred. His failure to do that resulted in a miscommunication and a further missed opportunity to correct the misunderstanding of the critical information which Gail Thomson had provided during her 999, with regard to location of the man who had been shouting, prior to bringing the police enquiries arising from her call to an end. Had that precaution been taken, for the reasons given above I am satisfied that the death of James Forbes might realistically have been avoided.

[187] The fourth precaution which could reasonably have been taken was for PCs Bayliss and Valentine to have acted upon the information which I am satisfied that they received from their interaction with the group of workmen including James Mutch, namely that the shouting which members of the group had heard earlier on the morning

of 15 January 2024 had come from the upper floors, high in Elphinstone Court. Having regard to the nature of the original reports to police and the fact that the 8th floor of the block was the highest floor on which the officers had made enquiries by the time of their interaction with this group, it would have been reasonable for the officers to have undertaken enquiries on the floors above the 8th floor, having spoken to this group. Had that been done, for the reasons set out above, I am satisfied that the death of James Forbes might realistically have been avoided.

Section 26(2)(f)

[188] All participants were in agreement that no defects in any system or working contributed to the death of James Forbes or to the circumstances which resulted in his death. I agree with that assessment.

Section 26(2)(g)

[189] I have identified three further facts which are relevant to the circumstances of the death of James Forbes.

[190] The first fact is that Lee Charles Smith was convicted of the culpable homicide of James Forbes, in the circumstances described in the indictment referred to at paragraph [17] above.

[191] The second fact is that, as set out at paragraphs [32] to [34] above, a number of members of the public who heard James Forbes shouting for help on the morning of 15 January 2024 and who had the opportunity to call the police to report what they had

heard and, in the case of some of those individuals, to direct the police to the flat from which the shouting had come, did not do so. There can be no certainty about what would have happened had any of those individuals called the police. However, it seems obvious that, had the police received a higher number of calls from members of the public, particularly if the callers were able to provide specific information such as the location of the flat from which the shouting emanated, or the flat number shouted by James Forbes, the likelihood that police enquiries would have focussed on the 12th and neighbouring floors of Elphinstone Court from the outset would have been greater. I am therefore obliged to note the failure of these various members of the public to call the police as a fact which is relevant to the circumstances of the death of Mr Forbes.

[192] The third fact which I consider to be relevant to the general circumstances of the death of James Forbes concerns the misrecording of a street number given by Lindsay Barrett during her 999 call. As noted at paragraph [67] above, the service advisor who took this call recorded Ms Barrett's reference to the property at numbers 34-48 Gordon's Mills Crescent as a reference to numbers 34-38, despite the caller attempting to correct the service advisor's error. This error had no impact on the course of subsequent police enquiries, since Lindsay Barrett did not in fact know where the shouting she reported had come from. This error played no active part in the sequence of events which resulted in the death of James Forbes. However, I regard it as a fact which is relevant to the general circumstances surrounding the death of Mr Forbes because it represents a second error by a service advisor in the recording of information reported in a 999 call concerning him. Each of the two 999 calls received by the police

concerning Mr Forbes included information of a kind which, at the time of the call, was potentially significant but which was inaccurately recorded by the service advisor who took the call.

Section 26(1)(b) and (4)

[193] I make two recommendations, each addressed to the Chief Constable, in terms of sections 26(1)(b) and (4), which I consider to be capable of realistically contributing to the prevention of other deaths in similar circumstances, by which I mean deaths which follow the receipt by the police of a concern for person report.

[194] The first recommendation is that the Chief Constable should develop and introduce guidance for service advisors with the objective of minimising the scope for the misrecording of information reported by telephone by members of the public. Such guidance might include requiring service advisors, where the nature and circumstances of the call allow, to repeat potentially critical information such as the location of an incident to the caller, so that the caller has an opportunity to correct any misunderstanding or misrecording of that information before any resulting STORM record is transmitted to a local area control room for action. This may not be possible in relation to some calls, such as where a caller does not wish to, or is unable to, engage with the service advisor for any reason, or where the call is abruptly terminated by the caller. However, no issues of this nature were part of the context of Gail Thomson's 999 call regarding James Forbes.

[195] The second recommendation is that the Chief Constable should develop and introduce guidance to clarify: (a) the circumstances in which an attempt should be made to contact a person who has called the police to report a concern for person issue, in order to check and confirm the information which the caller reported, before bringing enquiries arising from the call to an end; and (b) who should be responsible for attempting to make such contact. I am satisfied that, had she been contacted on the morning of 15 January 2024, Gail Thomson would have been able to correct the original misrecording of the information she had provided during her 999 call earlier that day.

[196] The opportunity to contact Ms Thomson before PCs Bayliss and Valentine were stood down was readily available. The potential value of doing so was clear from the evidence led at the inquiry. However, it was equally clear that the question of whether such contact should be attempted is currently a matter of operational discretion. Guidance to clarify the circumstances in which such contact should be attempted and, where it is appropriate, to clarify who should be responsible for attempting such contact would be valuable in the interests of avoiding missed opportunities to correct errors or to access potentially valuable sources of relevant information before enquiries are brought to an end.

Closing remarks

[197] I reiterate that no police officer or member of police personnel is responsible for the death of James Forbes. None of the members of the public who had the opportunity to call the police but did not do so is responsible for the death of Mr Forbes. Although

the attribution of blame is not the function of a Fatal Accident Inquiry, it is a matter of public record that Lee Charles Smith, by his plea of guilty to the culpable homicide of James Forbes, accepted criminal responsibility for the death of Mr Forbes.

[198] The purpose of these proceedings was to establish the circumstances surrounding the death of James Forbes, with a particular focus on the police response to information received from members of the public about Mr Forbes prior to his death, and to attempt to identify lessons which might prevent other deaths in similar circumstances in the future, by which I mean deaths which follow the receipt by the police of a concern for person report.

[199] In closing I wish to join with all of the other participants in the inquiry in expressing the court's condolences to Mr Forbes's family, who have suffered the untimely loss of Mr Forbes in these most tragic and distressing circumstances.

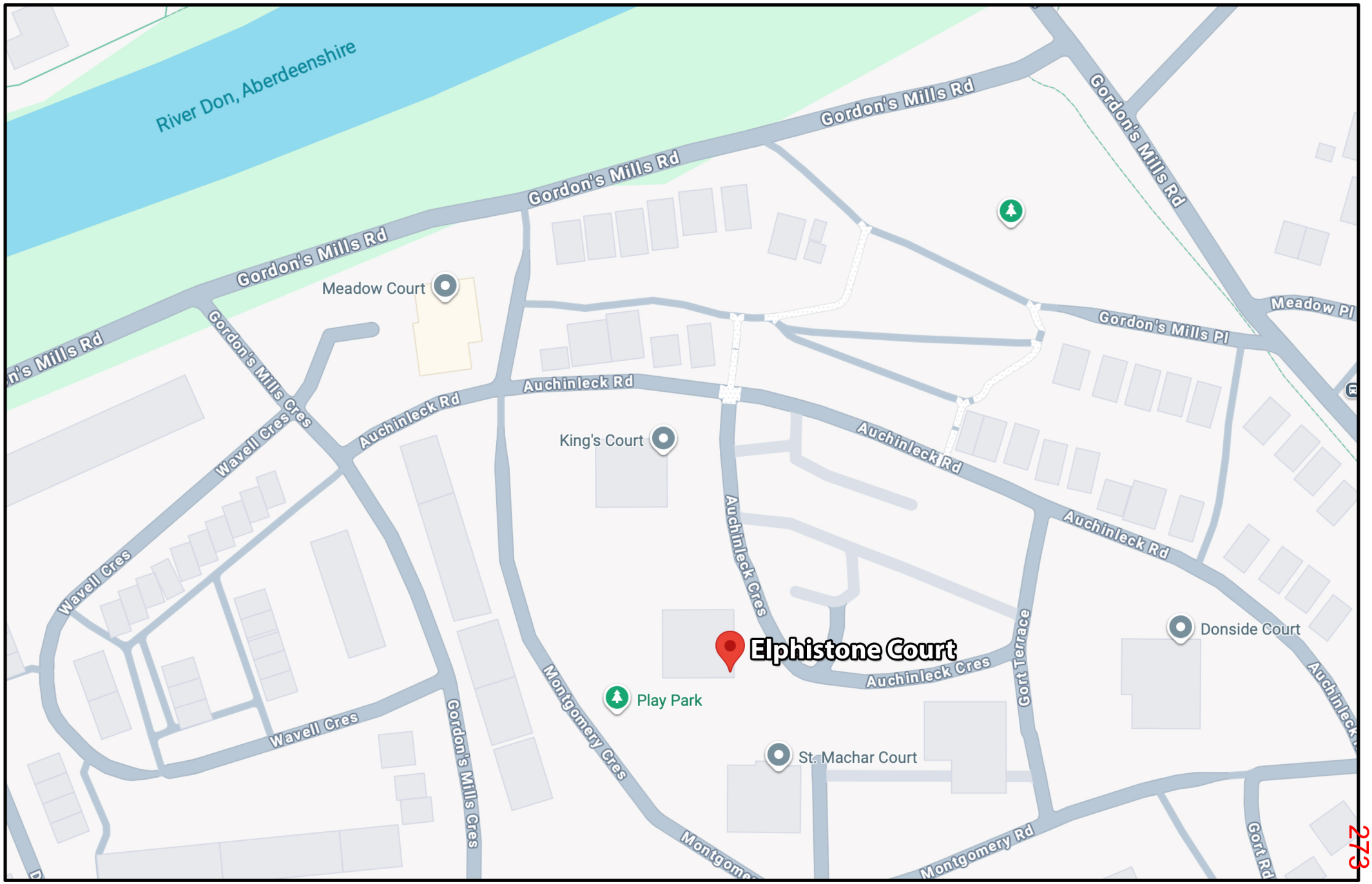
Appendix

1. Pro 20 map

FATAL ACCIDENT INQUIRY

PRO NO 20

DEATH OF
JAMES FORBES

CASE NO: AB24000507

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