

**INQUIRY UNDER THE FATAL ACCIDENTS AND SUDDEN
DEATHS INQUIRY (SCOTLAND) ACT 1976 INTO THE SUDDEN
DEATH OF JOHN MORTON MURRAY**

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT KIRKCALDY

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

DETERMINATION

By

SHERIFF PETER JOHN BRAID, ESQUIRE

in

Inquiry held at Kirkcaldy on
15 and 17 August, 18 and 22 September and 12 October 2006

into the circumstances of the death of

JOHN MORTON MURRAY

Kirkcaldy, 17 November 2006. The Sheriff, having considered all the evidence adduced, Determines:-

1. In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ("the Act"), that John Morton Murray, whose date of birth was 28 November 1946, latterly residing at Wester Balbeggie Farm, Thornton, died at Stand 10, Cluny Clays, by Kirkcaldy between 15:45 hours and 19:12 hours on 2nd November 2004.

2. In terms of section 6(1)(b) of the Act, that the cause of death was a non-accidental, self inflicted shot gun wound to the head (contact range).

3. In terms of section 6 (1)(c) of the Act, that the reasonable precautions, if any, whereby the death might have been avoided were:

(a) an inquiry by Cluny Clays of Mr Murray as to whether he had ever had a shot gun certificate revoked or refused;

(b) an inquiry by Cluny Clays of a friend or relative of Mr Murray as to whether there was any reason why he should not be allowed to shoot.

4. In terms of section 6(1)(d) of the Act, that there were no defects in any system of working which contributed to the death.

5. In terms of section 6(1)(e) of the Act, that the following facts are relevant to the circumstances of the death:

(a) that Mr Murray had suffered from depression since 2003 and consequently had his shot gun certificate revoked in December 2003;

(b) that the Data Protection Act 1998 prevented those facts from being disclosed to Cluny Clays;

(c) that access by legitimate third parties to a national computerised database on the basis of consent previously given by an applicant for a shot gun certificate at the time of application would not contravene the Data Protection Act 1998 and would reduce the risk of shot guns being issued to unsuitable persons;

(d) that the adoption by other shooting establishments of a "referee" system such as is now operated by Cluny Clays would also reduce the risk of shot guns being issued to unsuitable persons.

NOTE

PART I: INTRODUCTION

Parties represented at the Inquiry

[1] Ms Gray presented evidence on behalf of the Procurator Fiscal. Mrs Eldridge, solicitor, represented Mr Murray's family. Mr Munro, solicitor, represented the Chief Constable of Fife Constabulary. Mr Robin Shedden represented Cluny Clays, of which he is a partner.

Witnesses

[2] The following witnesses were called to give evidence at the Inquiry: Morag Murray; Robin Shedden; David Moog; Anthony John Murrey; PC Scott Finnie; Stephen Robert Young; Alexander McKenzie Moffat; Dr Alison West, Consultant Psychiatrist; Mary Fleming Jack; and Andrew Stewart.

[3] In addition, affidavit evidence was given by: James Gilchrist; Michael Cain; Dr David William Sadler; and Dr Roderick Brown Pattison.

Legal Framework

[4] Section 1(1)(b) of the Act provides for the holding of a public inquiry into the circumstances of death where it appears to the Lord Advocate to be expedient in the public interest to enquire into the circumstances of the death, on the ground that the death was sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern. In terms of section 6 of the Act, as soon as possible after the conclusion of the evidence and any submissions thereon, the sheriff must make a determination setting out the following circumstances of the death so far as they have been established to his satisfaction-

- (a) Where and when the death and any accident resulting in the death took place;
- (b) The cause or causes of such death and any accident resulting in the death;
- (c) The reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided;
- (d) the defects, if any, in any system of working which contributed to the death or any accident resulting in the death;
- (e) any other facts which are relevant to the circumstances of the death.

[5] The Court proceeds on the evidence before it and the Sheriff's powers do not go beyond making a determination in relation to the circumstances established to his satisfaction by evidence. In Part II of this Note, I set out my findings on the basis of the evidence (much of which was non-contentious). In Part III, I summarise the parties' submissions. Finally, in Part IV, I discuss the major issues which emerged at the inquiry; give reasons for my determination; and make certain recommendations.

PART II: THE EVIDENCE

John Morton Murray ("Mr Murray")

[6] Mr Murray (d.o.b. 28 November 1946) resided at Wester Balbeggie Farm, Thornton with his wife, Morag Murray. He was a farmer all of his working life.

[7] In the course of his occupation as a farmer, it had been necessary for Mr Murray to possess two shot guns for the purpose of vermin control. He had held a shot gun certificate for many years. Most recently, he applied for, and was granted, a renewal of his certificate in March 2000 (see para. 44 below).

[8] Mr Murray enjoyed good health until 2003 but in that year he began to suffer from depression. He first consulted his general practitioner after an attempted suicide by electrocution. Following a diagnosis of depression, he received treatment at Queen Margaret Hospital, Dunfermline, including a course of ECT in March 2003 which did not alleviate his condition. He was also prescribed medication, which he took. Prior to his death in the manner described below, he made a second attempt on his own life when he took an overdose of sleeping tablets. As a result of his illness, he looked older than his age.

[9] In December 2003, Mr Murray's shot gun certificate was revoked, as described in paragraph 47 below. He was consequently required to surrender his shot guns.

[10] On Friday 29 October 2004, Mr Murray, accompanied by his wife, consulted Dr Stewart at Victoria Hospital, Kirkcaldy. Mr Murray asked Dr Stewart if his treatment could be changed. Dr Stewart said that she would consider doing so. Mrs Murray asked if consideration could be given to Occupational Therapy, so as to stimulate Mr Murray. Dr Stewart said that she would arrange something. Mr Murray was disappointed by the outcome of this consultation.

[11] On 2 November 2004, the date of his death, Mr Murray appeared depressed although no worse than he had been. He did not exhibit great interest in the farm, but at about 10.00am he talked to his son about what had to be done that day. He then returned home and spent most of the day there, although at some stage he went to the bank to withdraw a sum of money. He had been invited by a family friend to pay a visit to see an extension to the friend's business. Mrs Murray suggested that he do that before it got dark. Mr Murray left the house by car, ostensibly to visit his friend.

[12] Mr Murray did not visit his friend but instead went to Cluny Clays, at Cluny Mains Farm, Kirkcaldy.

Cluny Clays

[13] Cluny Clays is a business run in partnership by Robin Shedden and his brother, Drew Shedden. The business was established in the early 1990s and offers a variety of leisure pursuits including golf, archery, falconry, off-road driving and clay pigeon shooting. The clay pigeon shooting is extremely popular and, although no accurate figures were available Mr Shedden's best estimate was that it attracted more than 1,000 visitors per month.

[14] Robin Shedden is in charge of the clay pigeon shooting. He is a fully qualified clay pigeon shooting instructor and is also a safety officer qualified by the sport's governing body, the Scottish Clay Target Association. He is an experienced shooter. He has held a shot gun certificate for many years. He also holds a firearms certificate and is a registered firearms dealer. Although Mr Shedden displayed an occasionally dogmatic forensic style, there is no doubting his commitment to safety at Cluny Clays.

[15] The clay pigeon shooting at Cluny Clays is carried on subject to a periodic approval granted in accordance with section 11(6) of the Firearms Act 1968 as amended (a "section 11(6) approval")[1]. The approval relevant for present purposes was granted by letter dated 22nd September 2004 (production No 7). That letter authorised Mr Shedden to organise and conduct clay pigeon shooting at Cluny Mains Farm, Cluny. Insofar as relevant, it is in the following terms:

"This authorisation entitles persons who do not possess shot gun certificates to use shot guns for clay pigeon shooting subject to compliance firearms legislation (*sic*) and the following conditions: -

- a) Novice shooters are properly supervised on a one-to-one basis.
- b) Adequate measures are taken so as to prevent any unauthorised person from straying into the shooting area.
- c) Trained instructors/stewards are available for general supervision.
- d) All shot guns when not in actual use are kept in a secure place and prevent access to them (*sic*) by unauthorised persons."

[16] The purpose of the section 11(6) approval is to permit Cluny Clays to allow persons who do not hold a shot gun certificate to shoot on their premises. No specific permission is required for the provision of clay pigeon shooting to persons who do hold such a certificate.

[17] Visitors arriving by car at Cluny Clays park in the visitors' car park. The clubhouse is to the north west of that car park. A staff car park lies to the north east of the visitors' carpark and to the north of that lies the ground where the clay pigeon shooting takes place. Access to the clay pigeon shooting is gained by a path which runs from the staff car park. A stone wall separates the staff car park from the visitors' carpark. The path leading to the clay pigeon shooting is shown in photograph 1/29.

[18] A person wishing to shoot must first go to the reception area in the clubhouse. The reception area is always manned, usually by two people. Next to the reception is a gun room, where Cluny Clays' guns are stored. The gun room is permanently locked and is secured by a caged door. It has an internal window, protected by a roller metal shutter. It has no external window. Only Mr Robin Shedden and selected members of staff, namely the managers and receptionists, have access to the gunroom keys.

[19] The precise procedure which is followed varies depending upon whether a person wishing to shoot brings his or her own gun, which about 60% do. In general, it is assumed that such a person is a safe and competent shot. No assessment is carried out, beyond a subjective observation of how the gun is handled. Cluny Clays proceed on an assumption that the gun is possessed legally. The person might be asked if he or she holds a shot gun certificate but does not require to produce a certificate. An electronic counter is then issued and the person is allowed to shoot unsupervised.

[20] As regards the remaining 40% of visitors who wish to hire a gun, Cluny Clays satisfy themselves before issuing a gun that the visitor is a safe and competent shot. Unless the visitor is the holder of a Cluny Clays "passport" (see paragraph 22 below), the assessment relies exclusively on the subjective judgment and experience of the member of staff carrying out the assessment. Visitors are asked to give basic personal information, comprising name, address, telephone number and occupation. No identity check is carried out. Sometimes, they are also asked whether they hold a shot gun certificate, but the determining factor in deciding whether they will be allowed to shoot unsupervised is whether they are a safe and competent shot or not. To that end, they are asked questions about their shooting experience. If the visitor claims to have experience, that will be tested by questioning about the detail, such as the precise location, the type of gun and ammunition used, and the type of target. If the view is formed that the visitor is not a safe and competent shot, or if there is any doubt about the matter, that visitor will not be allowed to shoot unsupervised but will be offered the choice of shooting with an instructor, or not at all.

[21] In November 2004, only four persons were entitled to make an assessment of whether someone was a safe and competent shot and to authorise the issue of a shot gun. They were Robin Shedden, Drew Shedden, Stephen Young (the shooting manager) and Lucy Hill (the Operations Manager). They are all sufficiently

knowledgeable about, and experienced in, shooting to be able to detect if someone is lying about, or exaggerating, their experience.

[22] The assessment process is carried out on every occasion when a person wishes to shoot with a Cluny Clays gun whether or not that person has visited before, although regular visitors soon become known. It is now bolstered by a so-called "passport" system, which Cluny Clays themselves devised and introduced some time before November 2004. The purpose of this is to allow novice shooters to obtain informal certification that they have gained sufficient experience to be regarded as a safe and competent shot. The number of lessons required in order to attain that standard varies according to the skill of the pupil but is generally between two and five. Once issued, the passport is then exhibited to the receptionist and is accepted by Cluny Clays as evidence that the visitor is a safe and competent shot. The system is not a formal one, but was devised entirely by Cluny Clays purely for its own use. There is no set period for which the passport remains valid.

[23] The personal details of visitors are recorded in the Cluny Clays computerised database; but no record is kept of the precise questions asked about their shooting experience nor of the answers given.

[24] The instructors are trained in-house and are also required to complete a training course run by the Scottish Clay Target Association.

[25] Although the position has now changed (as noted below in paragraph 39), in November 2004 no cross-check was carried out with any third party before a gun was issued to a visitor. If the visitor was assessed by the member of staff on reception as a safe and competent shot, a shot gun was then issued without further inquiry.

[26] Once a visitor has been assessed as a safe and competent shot, to whom a Cluny Clays gun may be issued, a form then requires to be signed. The visitor fills in his name and address, and signs and dates the form. The gun serial number and the time at which the gun is issued are then filled in by the Cluny Clays member of staff responsible for issuing the gun. There is a space on the form for noting whether the customer is a certificate holder and whether the gun is for joint use. The form in use in November 2004 contained the following declaration:

"I [NAME AND ADDRESS] certify that I am a safe and competent shot and that I am fully proficient in all aspects of shot gun handling and shooting safety. I am aware of the risks involved in clay pigeon shooting, from the shot gun, from the clay pigeon launching traps, and from the clays themselves. Further,

- I know of no reason whatsoever why I should not be permitted to use the shot gun provided by Cluny Clays.
- I accept that the shot gun, (serial number below), is provided solely for the purpose of shooting clay pigeon targets on the ranges operated by Cluny Clays.
- I accept full responsibility for the safe-keeping, and care, of this shot gun, until such time as I have finished my shooting, and returned the shot gun to reception.

- I will not allow any other person to carry or use the shot gun, while I am responsible for it.
- I will immediately report any incidents or accidents involving this shot gun to the Cluny Clays staff.
- I will also report any malfunction or defect relating to this shot gun when I return it to reception."

[27] Mr Shedden maintained that one of the purposes of the form was to confirm that the visitor was a safe and competent shot and permitted to shoot; and that if someone were to lie on the form, there was not much which Cluny Clays could do about it. However, it is clear that Cluny Clays do not in fact rely on self-certification as to whether someone is a safe and competent shot but require to, and do, satisfy themselves on that issue. By the time the form is proffered to a visitor, Cluny Clays has already formed its own assessment, on which it exclusively relies, that that visitor is a safe and competent shot to whom a shot gun may safely be issued. Despite Mr Shedden's submission to the contrary, I find from the wording of the form that its purpose is not to provide any form of reassurance to Cluny Clays that the visitor is a safe and competent shot. Rather, its primary purpose was and is to attempt to impose certain contractual obligations on the visitor and to relieve Cluny Clays of liability in the event of an accident. Indeed, Mr Shedden in his evidence on the first day of the Inquiry referred to the document as a disclaimer, and I also observe that the footer contains the word "disclaimer" which perhaps gives a flavour of its purpose.

[28] Once the form has been signed, the visitor is issued with a gun and an electronic counter along with any cartridges which he has purchased and is then allowed to go to the clay pigeon shooting area. That area is accessed by going back into the car park, through the staff car park and along the path which leads to the clay pigeon shooting area. There is no physical barrier, or any other form of control, to prevent the visitor from getting into his car at that point and leaving the premises, unobserved by any member of staff. Indeed, there is nothing to prevent a visitor from leaving with a gun at any time after it has been issued to him.

[29] Although the time of issue of the gun is noted, there is no formal procedure for checking on the return of guns. Shooting finishes no later than 6 pm, or, in winter, when darkness falls. It would be noticed if a gun had not been returned by the end of the day and it might be noticed if someone had been out shooting for an abnormally long time having regard to the amount of ammunition bought. However, there is no general expectation as to when a person will return. The rate at which ammunition is used can vary enormously; and not everyone buys ammunition - some people take their own. As in certain other sports, the participant is free to take as little or as long a time as he wishes. Some shoot quickly and then leave. Others take a more leisurely approach. It is not unusual for someone to shoot in the morning, then participate in another activity, or perhaps consume a meal, before returning to shoot again later in the day. A visitor's whereabouts would not necessarily be checked after any particular lapse of time, but the shooting area is adequately supervised by instructors and by Cluny Clays staff.

[30] Shooting at Cluny Clays is carried out in the clay pigeon shooting area. There are 10 to 12 cages from which the shooting takes place. One of the cages is shown in production 1/5. All shots are fired in the same direction, over a wooded area. Shooters are free to wander from cage to cage, so as to enjoy a variety of types of shot, ranging in degree of difficulty from "easy" to "difficult". There are different targets at each stand. The electronic counter counts the number of clays released. The counter is inserted into a box within the cage, which enables a handset to be operated, allowing the shooter to control the release of targets.

[31] In November 2004, Stephen Young was employed by Cluny Clays as the shooting manager. He was employed in that capacity from about 2001 until the end of 2004. He was brought up on a farm where he had shot occasionally but he had no formal shooting qualifications when he began his employment at Cluny Clays. Subsequently he successfully undertook the safety officers' course run by the Scottish Clay Target Association and was also certified as a shot gun coach by the British Association of Shot Gun and Conservation. He also held a shot gun certificate and, after completing the aforementioned courses, shot regularly. He also received in-house training, both in relation to shooting techniques and on general safety issues such as how to set up a safe course. No formal training was given to him on how to assess whether someone was a safe and competent shot. The description of the in-house training was somewhat vague, probably because there is no formal training system in place. Mr Young's evidence did differ from Mr Shedden's in one respect, in that Mr Young's position was that even a visitor who brought his own shot gun would still be asked questions to establish that he was a safe and competent shot; and Mr Young placed more reliance on the holding of a shot gun certificate than did Mr Shedden. Perhaps Mr Young's tendency was to ask more than did Mr Shedden. However, since Mr Murray did not attend with his own shot gun and did not claim to have a shot gun certificate, the differences between Mr Shedden's evidence and that of Mr Young have no bearing in relation to Mr Murray's death.

2 November 2004

[32] Returning to the events of 2 November 2004, Mr Murray arrived at Cluny Clays at about 3.40pm. He went to the reception where he was met by Mr Young. Mr Young did not notice anything unusual about Mr Murray's manner, and thought that he presented as "reasonably normal". He did form the impression that Mr Murray was older than in fact he was, since he thought that Mr Murray was over retirement age, but since he had not previously met Mr Murray there was no particular reason why that should have led him to suspect that Mr Murray was suffering from depression. Although Mrs Murray said that Mr Murray was barely able to function and that would have been obvious to anyone with whom he came into contact, Dr West stated in her evidence that if Mr Murray had formed the intention to commit suicide, that would have enabled him to function in a manner which he would not otherwise be able to do. Mr Young correctly surmised that Mr Murray was a farmer on account of his dress and general demeanour. He formed the opinion that Mr Murray was dour, but thought nothing of that. Mr Young went through the usual assessment procedure, asking Mr Murray questions about his shooting experience. Not surprisingly, Mr Young could not remember the precise questions he asked, nor the answers, but was adamant that even with the benefit of hindsight nothing that was said by Mr Murray was such as to give cause for concern. Mr Young came to

the view - correctly - that Mr Murray was an experienced, safe and competent shot and decided that he could be issued with a shot gun and allowed to shoot unsupervised. Mr Murray did not disclose that his shot gun certificate had been revoked, and Mr Young did not ask. Mr Young's evidence - which I accept - was that if that fact had been disclosed, there were no circumstances in which he would have issued Mr Murray with a shot gun.

[33] Mr Murray then completed and signed the Cluny Clays form (production number 1/6). It records that he was issued with gun serial number 7532MX at 3.45 pm. Mr Shedden maintained that Mr Murray had lied by certifying that he knew of no reason why he should not be permitted to use a shot gun, but I think that the use of the word "lie" in this context is somewhat pejorative. There was no reason in law to prevent Mr Murray from shooting and in a strict sense he was permitted to use the shot gun. Bearing in mind my earlier comments about the purpose of the form, it is not clear to me that that question was designed to identify persons who have had a shot gun certificate revoked or, indeed, have had an application for a shot gun certificate refused. Cluny Clays have recognised as much by subsequently amending their form so that it now specifically asks whether the visitor has had a shot gun certificate revoked. It might be said that Mr Murray did know of a reason why he should not be permitted to use Cluny Clays' shot gun, namely, that he suffered from depression, but at this stage I simply observe that even the form currently in use does not include an inquiry about the mental health of a visitor (in contrast to the application made to the police for issue or renewal of a certificate.)

[34] Having been issued with his gun, Mr Murray went into the shooting area. Although darkness was approaching, it was not so late as to be unusual for anyone to shoot at that time of day. Another group was still out shooting. Mr Murray initially engaged in shooting targets and was seen to move between cages. Mr Young happened upon him and engaged in a normal conversation about the operation of the timer. Again, he was given no cause for alarm by Mr Murray's manner.

[35] Andrew Stewart, an instructor at Cluny Clays, also encountered a man who was probably Mr Murray. Nothing about that man's manner or behaviour gave Mr Stewart any cause for alarm.

[36] At about 5 pm, Mr Young noticed that Mr Murray's gun had not been returned, and that the counter was still out. By this time it was dark. He decided to go to look for Mr Murray. He was accompanied by David Moog, who was employed at Cluny Clays as a groundsman. Mr Moog had not met Mr Murray earlier in the day. Within about 10 minutes they came across Mr Murray's body, in a sitting position, at the furthest shooting station (stand 10), having apparently sustained severe shot gun injuries. The police and ambulance services were called. At about 5.10pm, Michael Cain, paramedic received a telephone call to attend at Cluny Clays. He and a colleague arrived at about 5:18 p.m. and were taken to shooting stand 10 by David Moog and PC Campbell. He noted a man sitting on the ground apparently leaning back against a metal frame, and a shot gun lying at the man's feet. He also noted a massive head injury and that it was evident that man was deceased. At about 5.40 pm, James Gilchrist, Scenes of Crime Officer, attended at the locus. He noted a male with severe injuries to the head and what appeared to be a shot gun lying in the vicinity of his feet. He and a colleague took photographs at the scene which were

subsequently compiled into two books of photographs (Crown productions 1 and 2). Dr Roderick Pattison attended with Mr Gilchrist. He noted that the body was that of an elderly gentleman and was positioned lying in a propped up position in an open cage. The injuries were entirely consistent with suicide.

[37] Mrs Murray was visited by PC Scott Finnie, a family liaison officer employed by Fife Constabulary at about 8:30 p.m. on 2 November 2004. The purpose of his visit was to inform her of the suspected death of her husband. Mrs Murray described a cyst on Mr Murray's chest, which was of unusual appearance. PC Finnie accompanied Mrs Murray and her son, William Murray, to Victoria hospital the following day, where they identified the body as being that of Mr Murray. PC Finnie subsequently obtained a death certificate (Crown Production No 3).

[38] An external examination was carried out by Dr David William Sadler MB, ChB, FRCPath, MD, Senior Lecturer of Forensic Medicine on 4 November 2004 at Dundee Police Mortuary. He established that the cause of death was a shot gun wound to the head (contact range). The presence of blood staining on the radial border of the right hand led him to form the opinion that the gun had been held at the forehead in the right hand and fired by pressing the trigger with the left hand. He also observed a large cyst on the centre of the chest. He prepared a post-mortem report (Crown production number 4) and a forensic toxicology report (Crown production number 5)

Changes to Cluny Clays' procedures

[39] Cluny Clays have changed their procedures in two respects as a result of Mr Murray's death. First, they have amended the declaration which requires to be signed by someone wishing to hire a gun, so that it now specifically includes a declaration to the effect that they have not had a shot gun certificate refused or revoked, thus removing any ambiguity which might previously have existed. Second, they have introduced a referee system, whereby, before a gun can be hired out, the staff at Cluny Clays must contact a referee whose details are provided by the visitor. The referee can be someone attending in person with the visitor, or someone, usually friend or family, who can be contacted by telephone. A gun will be hired to the visitor only if the referee confirms that there is no reason why the visitor should not shoot.

Applications for grant/renewal of a shot gun certificate

[40] Mr Alexander Moffat gave evidence about the procedure for granting, renewing and revoking a shot gun certificate. He is very experienced in the field of firearms licensing, having been employed by Fife Constabulary for about 41 years until his retirement in 2005. At one time he was a firearms officer and the Force Firearms Instructor. Following his retiral as a police officer, he became manager of the Firearms Licensing Department, a position which he held for 11 years.

[41] An application for the grant or renewal of a shot gun certificate is submitted on a statutory form. Part A of the form contains personal details of the applicant. Question 14 asks whether the applicant has been convicted of any offence. Question 15a asks whether the applicant suffers from any medical condition or disability including

alcohol and drug related conditions. Question 15b is not relevant for present purposes. Question 15c asks whether the applicant has ever attended his or her present or a previous General Practitioner ("GP") for treatment of depression or any other kind of mental or nervous disorder. Question 16 seeks details of the applicants GP and the applicant is then required to consent to the police approaching his/her GP to obtain factual details of his/her medical history. Parts B and C give information about the shot guns and any current certificate respectively. Part D is signed by a countersignatory who certifies that the information given by the applicant is (to the best of the countersignatory's knowledge and belief) true; and that there is no reason known to the countersignatory why the applicant should not be permitted to possess a shot gun.

[42] The general procedure followed in Fife is that all applications are checked before being allocated to a firearms officer for inquiry. That inquiry includes an interview with the applicant to ensure that there is a good reason for the certificate to be held. Irrespective of how question 14 has been answered, a check for previous convictions is carried out. However, the applicant's GP is contacted only if some medical problem had been indicated on the application. In the case of a renewal, the countersignatory is normally contacted by telephone, unless there is some particular cause for concern.

[43] When a shot gun certificate is granted or renewed, the applicant is notified and in the normal course of events, his or her family and shooting friends would normally learn that (s)he had been granted a certificate. However, no notification is normally made to the applicant's GP, except (at least in Fife) when the GP has been contacted in the course of the inquiry into whether a certificate should be granted or renewed or not. In those cases, the GP is usually notified of the outcome of the application.

[44] As regards Mr Murray's application for renewal (Chief Constable's Production No. 1), nothing in it gave rise to any cause for concern. Mr Murray correctly answered questions 15a and 15c in the negative. The application was checked and a Standard Firearm Enquiry Report (Chief Constable's Production No 2) was prepared. It recorded that Mr Murray had had no medical, emotional, drink or drugs problems admitted or apparent; that he was not on medication; and that he had a good attitude to firearms. In accordance with the procedure, Mr Murray's GP was not contacted. The countersignatory was Mr Brian Wood, a solicitor, who certified that he had known Mr Murray personally for 25 years. The application for renewal was duly granted.

[45] There is no formal system for notifying the police of any change in the circumstances of a certificate holder. Sometimes, a member of the certificate holder's family will contact the police; sometimes a member of the public will express concern; and sometimes the police come by information in other ways. When concern is expressed about the suitability of a certificate holder, the case is automatically referred back to the Firearms Department who will mount an investigation.

[46] GPs are under no legal obligation to inform the police if a patient, who is the holder of a shot gun certificate has developed a mental illness or other condition

which might make them unsuitable to have access to guns. The BMA has rejected a suggestion that they should be under such an obligation. In practice, some GPs do, on occasion, contact the police to express concern about a particular patient. Since GPs are not automatically notified of the grant of a certificate, they do not necessarily know whether a patient held a shot gun certificate or not in any event.

[47] In or about December 2003, the Licensing Department of Fife Constabulary became aware of Mr Murray's illness. Mrs Murray said that she had asked the nursing staff at the hospital to let the police know of her husband's illness. I accept that evidence but Mrs Murray conceded that she did not know whether the nursing staff had ever complied with her request (which they were under no obligation to do). In fact that was not the route by which that information reached the police. I accept Mr Moffat's evidence that he learned of Mr Murray's illness at a social event and immediately instigated an investigation. As a consequence of his doing so, Mr Murray was informed by letter dated 15 December 2003 (Production No. 6) that he could not be permitted to possess a shot gun without danger to the public safety or to the peace and that the certificate was revoked in accordance with section 30C(1) of the Firearms Act 1968 as amended.

[48] Neither during the course of his application nor at any other time prior to his death were the police aware that Mr Murray was likely to shoot at Cluny Clays.

[49] Intimation of the revocation was not made to any third party. In particular, intimation was not made to Cluny Clays. Since Mr Murray was not known to shoot there, and had never shot there, such lack of intimation was not surprising and moreover, if made as part of a blanket disclosure to the world at large, would have contravened the Data Protection Act 1998 [see paras. 54 to 66].

[50] If Mr Moffat had known of any connection between Mr Murray and Cluny Clays, he would not have notified Cluny Clays of the fact of revocation, nor of the reason behind it. Rather, he would have asked an officer to call at Cluny Clays to report simply that Mr Murray should not have access to a gun but without saying why.

[51] There is no reason why the statutory application form currently in use should not be amended so as to include a consent to the fact of revocation being disclosed to third parties, including in particular shooting establishments such as Cluny Clays. Even if there were such a consent, it would not be practicable for a police force to notify all shooting establishments by letter on every occasion when a shot gun certificate was refused or revoked. Neither would it be practicable to make disclosure by telephone in response to an enquiry from a shooting establishment in relation to a particular visitor. The most practicable means of disclosure, from the point of view of both the police and shooting establishments, would be by means of a computerised database.

[52] Section 39 of the Firearms (Amendment) Act 1997[2] provides for the establishment of a central register, to be kept by means of computer to which all police forces have on-line access, of all persons who have applied for a shot gun certificate or to whom such a certificate has been issued (or renewed). No such central register has yet been established. Mr Moffat said that there were two competing views. One view is that the SCRO database, which contains details of

persons who hold a certificate and of those who have had an application refused or a certificate revoked, complies with section 39. The other view is that it does not, and that the section requires the establishment of a separate database. I did not hear detailed argument on this point but for what it is worth, my view is that the second interpretation is the correct one and that a separate database is required. An attempt has been made to set up such a database in Scotland. However, that attempt has been plagued by technical difficulties. Each police force in Scotland maintains its own separate register, some of which are computerised and some not. The original intention was to have a comprehensive computerised licensing system throughout Scotland, but that plan has not yet reached fruition. The Scottish system is still under development. Police forces in England and Wales have decided to implement a separate system but that, too, is still under development.

[53] If and when a computerised register is established under section 39 of the 1997 Act, it would be technically possible to allow any person having an interest to access it. However, such a person would be able to access information about all persons on the database. This leads on to a more detailed consideration of data protection.

Data Protection Act 1998

[54] Data protection is now governed by the Data Protection Act 1998 ("the Data Protection Act"). Mr Anthony Murrey, who was formerly employed by Fife Constabulary as their Information Security and Data Protection Officer, gave evidence about the meaning and operation of the Data Protection Act. I have to say that interpretation of any Act of Parliament seems to me to be a matter of law. Nonetheless, it was useful to have an overview of the meaning and purpose of the Data Protection Act, and the evidence of how that Act was viewed by the police was also useful. It is also relevant to inquire whether Fife Constabulary were interpreting the Act correctly.

[54] I do not propose to look in detail at the provisions of the Data Protection Act but some explanation is necessary. The basic principle is that, by virtue of Schedule 1 of the Act, all data must be processed [3] fairly and lawfully, and in particular must not be processed unless one of the conditions in Schedule 2 is satisfied. Those conditions include:

- Consent of the data subject has been given;
- The processing is necessary for compliance with any legal obligation to which the data controller is subject;
- The processing is necessary to protect the vital interests of the data subject;
- The processing is necessary for the exercise of any functions conferred on any person by or under any enactment.

[55] So, in the context of data held by the police, data can in certain circumstances be disclosed for the lawful purpose of prevention or detection of crime, or protection of the public, provided that such disclosure is necessary and that it is fair.

[56] Sensitive personal data - including information about health - is subject to a more stringent test. In addition to the foregoing conditions being satisfied, at least one of the conditions set out in Schedule 3 of the Act must also be satisfied. Those conditions include:

- Explicit consent has been given (that is, consent to the specific disclosure in question, rather than a general consent given in advance);
- The processing is necessary in order to protect the vital interests of the data subject or another person in a case where either consent cannot be given by the data subject or the data controller cannot reasonably be expected to obtain that consent;
- The processing is necessary for the exercise of any functions conferred on any person by or under an enactment.

[57] Although a distinction was drawn in the evidence between disclosure of the mere fact of revocation on the one hand, and disclosure of information about the reason for that revocation (which might include, as in this case, sensitive personal data on the other) in fact it can be seen that disclosure which is *necessary* for the exercise of any functions conferred on the police would satisfy both schedule 2 and schedule 3, in that paragraph 7 of schedule 3 contains the same provisions (with one exception, which is irrelevant for present purposes) as paragraph 5 of schedule 2. Sub-paragraph (2) of schedule 7 does allow the Secretary of State, by order, to exclude the application of sub-paragraph (1) in such cases as may be specified or to provide that sub-paragraph (1) shall not apply unless further conditions are also satisfied; but my attention was not drawn to any such order having been made in relation to the functions conferred on the police.

[58] Thus, it seems to me that where disclosure of data can be said to be *necessary* for, say, the protection of life, such disclosure may occur even where the data includes sensitive information such as the existence of mental illness. Of course, there may be situations where disclosure only of the mere fact of revocation would be sufficient, and to go further by disclosing the underlying reasons could not be justified by the necessity test. Equally, there may be situations where the recipient of the information does need to know the underlying reason.

[59] Data held by the licensing department of Fife Constabulary is not routinely disclosed but each request is looked at on a case by case basis. Data is not normally disclosed over the telephone due to the difficulties in establishing whether disclosure to the person making the enquiry by telephone is justified in terms of the Act.

[60] As regards consent, the consent in the statutory application form - that is, permission for the police to approach the applicant's GP to obtain factual details of his medical history - would not in general permit disclosure of information about the applicant to the GP. The form contains no consent to the disclosure of any other information to any person.

[61] In the event, it seemed to me that Mr Murrey's, and therefore Fife Constabulary's, interpretation of the Data Protection Act was in fact correct. The

approach of Fife Constabulary as to disclosure of data is entirely consistent with the provisions of the Data Protection Act.

[62] Given that Fife Constabulary had no reason to know that Mr Murray was likely to attend Cluny Clays, or that he intended to harm himself there, an unprompted disclosure to Cluny Clays that Mr Murray's certificate had been revoked would not have been consistent with the Data Protection Act principles. Mr Murray had neither consented to such disclosure, nor was it necessary for the police to make disclosure. To have been lawful, there would require to have been a high degree of probability that he was going to cause harm, in which case disclosure to every gun club might have been justified (if impracticable in the absence of a database to which every gun club had access). If the police had known that Mr Murray was likely to shoot at Cluny Clays, whether in response to an inquiry by Cluny Clays or otherwise, then disclosure of the fact of revocation would probably have been justified.

[63] *A fortiori*, since explicit consent had not been given, disclosure of Mr Murray's mental illness would also have contravened the Act (and rendered the data controller subject to criminal prosecution).

[64] As regards changes which might be made, Mr Murrey said that there was no reason why the statutory application form should not be amended so as to include both a consent to disclose information to gun clubs and a consent to disclose information to an applicant's GP. However, any consent would have to be strictly construed, so that consent to divulge to one person for one purpose would not cover disclosure to another person for a different purpose. Thus, consent to speaking to a GP in connection with an application does not permit subsequent disclosure of a revocation. Mr Murrey's conclusion was that there was definite merit in having a consent to disclose in the application form but that, even then, the police would never be justified in making a blanket disclosure.

[65] Mr Murrey also gave evidence about Information Sharing Agreements, which he described as agreements among joint partners in a particular field to share specific types of information. The main advantage of an Information Sharing Agreement is that the passing of information between the partners is facilitated, in that no further enquiry requires to be made as to the entitlement of the recipient to receive the information being passed. The Agreement would also cover the type of information to be shared. However, even where such an Agreement exists disclosure must still comply with the principles of the Data Protection Act.

[66] Mr Murrey's evidence on the practicability of entering into an Information Sharing Agreement was that, although there would be nothing to prevent police forces from seeking to enter into Information Sharing Agreements with local gun establishments, it would be extremely difficult to manage and run such Information Sharing Agreements. He did not wish to venture an opinion as to whether an attempt to do so would be successful. He thought that the possibility of entering into a national Information Sharing Agreement had been considered but that it had been considered to be impracticable. Gun clubs could not be compelled to enter into an Agreement. They would have to consider the interests and wishes of their members, who might not wish information to be shared with the police. Even with such an Agreement, or Agreements, in place, care would still have to be taken to ensure that the fact of

revocation was not disclosed to someone who did not need to have that information. Disclosure of revocation only would normally be easier to justify than disclosure of the reason behind it. A distinction might have to be drawn between persons who were, and those who were not, members of a particular gun club. Computerisation, with password-controlled access, would assist in the processing and sharing of information. However, the problem would still remain that it might not be lawful to disclose even the fact of revocation to a club of which the data subject was not a member.

Firearms Legislation

[67] It may be helpful to set out the key provisions of the firearms legislation, so as to set the hiring of the gun to Mr Murray, and the practicability of accessing a nationwide database, in context.

[68] The basic principle is that no person may possess a shot gun without being licensed to do so. Section 2 of the Firearms Act 1968, as amended, provides:-

"Subject to any exemption under this Act, it is an offence for a person to have in his possession ... a shot gun without holding a certificate under this Act authorising him to possess shot guns."

[69] Exemptions are provided for in section 11(5) and 11(6).

[70] Section 11(5) provides:

"A person may, without holding a shot gun certificate, borrow a shot gun from the occupier of private premises and use it on those premises in the occupier's presence."

[71] Section 11(6) provides:

"A person may, without holding a shot gun certificate, use a shot gun at a time and place approved for shooting at artificial targets by the chief officer of police for the area in which that place is situated."

[72] Section 39 of the Firearms (Amendment) Act 1997 provides:

"(1) There shall be established a central register of all persons who have applied for a firearm or shot gun certificate or to whom a firearm or shot gun certificate has been granted or whose certificate has been renewed.

(2) The register shall-

(a) record a suitable identifying number for each person to whom a certificate is issued; and

(b) be kept by means of a computer which provides access on-line to all police forces."

PART III: SUBMISSIONS

[73] At my request, parties very helpfully provided detailed written submissions. I then gave parties the opportunity to elaborate on these, and to comment on the other submissions, at the hearing on 12 October. In the interests of brevity I propose simply to summarise the main points of the submissions.

Procurator Fiscal's submission

Section 6(1)(c)

[74] Ms Gray submitted that the following were reasonable precautions whereby the death might have been avoided. First, Mr Murray could have been asked whether he had ever had a shot gun certificate revoked or refused. If he had answered truthfully, he would not have been provided with a gun. Second, the existence of a database against which Cluny Clays could have checked Mr Murray's details would have disclosed the fact of revocation. The creation of such a database, including details of refusals and revocations, was practicable. It may be possible to allow third parties to have access to the SCRO database.

[75] Consideration should also be given to the creation of an Information Sharing Agreement between the police and shooting establishments like Cluny Clays, under which information about revocations and refusals could automatically be passed. It could be made a condition of section 11(6) authorities that such an agreement be entered into.

[76] In Ms Gray's submission, the referee system was not an adequate safeguard, since there was no means of verifying the identity of the referee.

Section 6(1)(d)- defects in system of working

[77] Ms Gray accepted that Cluny Clays' procedures were followed on the day of Mr Murray's death, and that his behaviour did not give cause for concern. However, she submitted that the procedures themselves were in some respects deficient (in that, for example, there were no systems in place to check for how long someone had been out shooting). If such systems had been in place, Mr Murray's failure to return may have been noticed sooner and it may be that had a search been instigated for him his death would have been averted. Further, if the safe and competent shot test were bolstered by reference to a database, that would help with assessment of issues Cluny Clays cannot assess, for example, mental health.

Section 6 (1)(e)

[78] The lack of fences preventing access back to the car park area after a gun had been hired, gave cause for concern, particularly having regard to the potential for a gun being issued to an unsuitable person.

Chief Constable's submissions

Section 6 (1)(c)

[79] Mr Munro submitted that having regard to the Data Protection Act, no further precautions could have been taken by the police.

[80] Cluny Clays could not be criticised other than that they had relied wholly on the honesty of Mr Murray. The referee system was an appropriate precaution. Had it been in place at the time of his death, Mr Murray's death would have been avoided. The referee system should be extended to other establishments.

[81] Mr Munro submitted that the creation of a database was not without its problems and the operation of such a database, particularly controlling third party access, would be fraught with difficulties. Anyway, it would not provide complete protection since it would not identify those who had become unsuitable but still held a certificate.

Section 6 (1)(d)

[82] The weakness in Cluny Clays' system was that it concentrated too much on the question of whether persons *could* shoot rather than whether they *should* shoot. Cluny Clays relied too much on the honesty of the applicant. The absence of such a system was not a contributory factor to Mr Murray's death but nonetheless, it allowed him to take his own life.

Section 6 (1)(e)

[83] Mr Munro made reference to a number of other issues. The possible abolition of section 11(5) and (6) would be disproportionate. Those provisions might be amended so as to prohibit persons whose certificates had been refused or revoked from shooting. Blanket disclosure was not permissible under any circumstances. Specific disclosure of a revocation would be impracticable due to the possibility of a person whose certificate had been revoked in one part of the United Kingdom shooting in another part.

[84] A further issue was the need to ensure that information held by relevant third parties, such as doctors, was passed to the police. Firearms Licensing Departments should be obliged to notify GPs when their patients became certificate-holders, and the GPs should in turn be obliged to notify Firearms Licensing Departments should they become aware of any mental illness suffered by such patients. Such obligation on a GP could be achieved either by the consent of the applicant in the application form, or by the introduction of an Information Sharing Agreement between the individual Police Force and the respective GPs.

Mr Murray's family's submissions

[85] Mrs Eldridge submitted, on behalf of Mr Murray's family, that various recommendations should be made. The first category related to the overall safety of shooting establishments. So, she submitted that the certification of Cluny Clays and

similar premises in terms of Section 11(6) of the Firearms Act 1968 should be amended so as to include: one-to-one supervision of novice shooters; a statutory framework for assessing and defining the status of "safe and competent shot", and that records of such assessment should be kept; fencing of shooting areas; a formal means of recording the distribution of a shot gun to a person entitled to shoot without supervision and the timing of return of said gun with regular checks being made that the gun is being used for lawful purpose at all times, and is confined within the said fenced off shooting area; a means of ensuring that all guns loaned by shooting establishments to persons who are allowed to shoot without one-to-one supervision are only held by the borrower of said gun whilst within the shooting area and that the guns are required to be returned to the said shooting establishment in the event of the customer wishing to undertake other activities; and that the shooting area, when in use, should be supervised at all times by a fully qualified member of staff.

[86] Then, Mrs Eldridge had another batch of suggested recommendations which related in one way or another to the medical profession. These were: that the application form for a shot gun certificate should be amended so that permission is given to any member of the medical profession treating the applicant at any time during the currency of any certificate granted to disclose any concerns held by that medical professional in respect of the applicant's suitability to be a shot gun certificate holder; that notification should be given by the licensing authority to the applicant's GP of the grant of a shot gun certificate and of refusal, revocation, surrender or withdrawal of an application; that the "medical professionals" should be under an obligation to inform their local Licensing and Firearms Department immediately in the event of information coming to their attention which affected the suitability or otherwise of their patient to hold a shot gun certificate; that there should be a positive obligation on Firearms and Licensing Officers to check the truth of the answers to the questions on the said application form in respect of the applicant's medical condition; and that similar checks with the medical profession should be made on an application for renewal or variation of a shot gun or firearms certificate.

[87] Next, Mrs Eldridge supported the suggestion of granting access to a national database to all persons with a legitimate interest. She suggested that any establishment such as Cluny Clays should be required to check the identity of a person requesting access to a shot gun and to then check on the national database to see whether that applicant has had a shot gun certificate revoked, refused, surrendered or an application withdrawn and in the event thereof, access to a shot gun should be refused except on a one to one supervision basis. She also supported the suggestion that the application form be amended so as to include permission for the applicant's details, and details of the status of his certificate to be held on the database.

Cluny Clays' submissions

[88] Mr Shedden submitted that Mr Murray had visited Cluny Clays with the intention of committing suicide. There was nothing about his demeanour to suggest that he held that intention. The appropriate procedures were followed. He had not completed the declaration on the form accurately. Had he disclosed that his certificate had been revoked, he would not have been given the use of the gun, and his death would not have occurred in the manner that it did.

[89] The Police had no reason to link Mr Murray to any clay pigeon shooting activity (at Cluny Clays or anywhere else) and were bound by the Data Protection Act.

[90] The doctors who treated Mr Murray also had no reason to link him with any form of shooting, believing he had no access to his own or any other guns, and they too were bound by the Data Protection Act. Even Mr Murray's family did not foresee his visit to, or intended actions at, Cluny Clays.

[91] Notification to Cluny Clays regarding Mr Murray's condition/problems from any of the above, or any other person or body, would have averted the tragedy of his death at Cluny Clays on 2 November 2004.

[92] The referee system, coupled with access to a national database, would prevent recurrence. Mr Shedden supported both proposals.

PART IV: DISCUSSION

[93] It is clear that Mr Murray went to Cluny Clays with the intention of taking his own life; and that the circumstances of his death, involving as it did the use of a shot gun issued to him at a time when he was severely depressed and had had a shot gun certificate revoke, are such as to give rise to serious public concern. Insofar as my determination under section 6 of the Act is concerned:

Section 6(1)(a) and 6(1)(b)

[94] I have made formal findings as to the place, date and cause of death.

Section 6(1)(c)

[95] Section 6(1)(c) is not concerned with the attribution of blame, nor with an assessment of what probably caused or contributed to the death. Rather, it involves looking objectively at the death with the benefit of hindsight and asking whether there were any reasonable precautions whereby the death *might* have been avoided. Note that while there must be some causal link between the precaution and the death, it is not necessary to hold that the death would probably have been avoided had the precaution been taken. Rather, it is sufficient to find that there is a possibility that the death would have been avoided.

[96] On that approach, I have determined that it would have been a reasonable precaution for Cluny Clays to have asked Mr Murray whether he had ever had a shot gun certificate refused or revoked. They did not ask that specific question, the wording on the form then in use being too general to elicit that information. Had they asked, Mr Murray might have disclosed that his certificate had been revoked and his death might then have been avoided. Cluny Clays changed the wording of their form following Mr Murray's death and they do not suggest that this would have been an unreasonable precaution for them to have taken at the time of the death.

[97] Of course, in the absence of any checking procedure, it may be that the asking of such a question only of the person wishing to shoot, would have little practical effect in deterring those who have their mind set upon using the gun to effect

damage upon themselves or others. On the other hand, the question might elicit a truthful answer and the asking of it could do no harm. It would seem sensible for the practice to be extended to other shooting establishments and I so **recommend**. (How that is achieved is for consideration by others, although one possibility may be to write it into the conditions contained in in section 11(6) authorisations.)

[98] I have also determined that it would have been a reasonable precaution for Cluny Clays to have asked Mr Murray to provide the name of a referee and to have inquired of that person whether there was any reason why Mr Murray should not be allowed access to a gun. Had that been done, the death might have been avoided, particularly if the referee had been Mrs Murray or another member of Mr Murray's immediate family. Again, the referee system was introduced after the death and Cluny Clays do not suggest that it would have been unreasonable to have taken this precaution at the time of Mr Murray's death.

[99] It could not be suggested that the referee system provides an absolute safety net. It is dependent upon the person wishing to shoot giving his true identity, and providing the name of a referee who knows that person well enough to provide an accurate answer. It is dependent on the honesty and integrity of the referee. A telephone inquiry can never be as exhaustive as a face to face meeting and does make it impossible to verify the identity of the referee. However, if the telephone call is initiated by the person seeking the reference, that is perhaps less of an issue and verification of the identity of the visitor seems to me to be more crucial than verification of the identity of the referee. I agree that the system would not prevent a determined person from gaining unauthorised access to a shot gun in every circumstance. However, in the context of preventing mentally ill persons from having access to a gun, it is in practice likely to prevent such access in most cases. The referee who knows the applicant well ought to say that access to a gun should not be given; while the responsible referee who does not know the applicant well should decline to express any opinion. Further, the advantage of the referee system over a database is that it gives at least some prospect of identifying persons who should not be allowed to shoot but who have never applied for or held a shot gun certificate (and who therefore would not appear on a database of refusals or revocations.) Again, I **recommend** that the practice should be extended to other shooting establishments. One improvement which should be made to the system currently operated by Cluny Clays is that the visitor should, in all cases, be asked to prove his identity by producing a passport, driving certificate or similar along with vouching of his address; and a record should be kept that this has been done.

[100] Although various other possible precautions were canvassed, I do not consider that there were any other reasonable precautions which might have resulted in Mr Murray's death being avoided. In particular, there were no other steps which Cluny Clays could reasonably have taken at the time. Supervision would not have been reasonable and may not have prevented the death in any event. As for the police, there were no other steps which they could reasonably (or lawfully) have taken, whether in terms of notifying Cluny Clays of the revocation of Mr Murray's certificate or otherwise in the absence of a known link between Mr Murray and Cluny Clays.

[101] As for the creation of a database, I will revert to this topic below in the context of section 6(1)(e), but I do not consider that it is correct to regard this as a

"precaution" in the normal sense of that term. As matters stood, there was no database which Cluny Clays could have accessed to have gained information about Mr Murray.

[102] Similarly, I do not regard the question of possible amendments to the firearms legislation as being "precautions". Legislation may or may not be desirable but one does not normally speak of it as being a "precaution". Again, I will deal with that question in the context of section 6(1)(e).

[103] Finally, a somewhat half-hearted suggestion was made by Mr Munro that precautions might have been taken by others, in particular by Mr Murray's doctors, which might have prevented his death. However, there was no evidence which would entitle me to make such a determination. I do wish to record that there is no basis whatsoever for criticising the medical treatment given to Mr Murray in any way.

Section 6(1)(d)

[104] Unlike section 6(1)(c), which is concerned with factors which might have prevented the death, section 6(1)(d) is concerned with defects in any system of working which contributed to the death. There must therefore be, on a balance of probabilities, a positive causal link between any such defects and the death.

[105] I have not made any determination under section 6(1)(d). Criticism was made of Cluny Clays having focussed on the "safe and competent shot" test rather than on the question of whether a person should be allowed to shoot. However, in the absence of any available database which they could have accessed, I do not consider that this can properly be categorised as a defect in any system of working. While the referee system constitutes a reasonable precaution whereby the death might have been avoided, that is not the same as holding that the fact that it was not followed at the time of the death should be regarded either as a failure or as something which in fact contributed to a death which was deliberately self inflicted. It should be noted in passing that although Ms Gray submitted that a database would assist Cluny Clays to assess mental health issues, the weight of the evidence was that even if a database were accessible to shooting establishments such as Cluny Clays, it should only disclose the fact of revocation rather than the underlying reason for that revocation.

[106] However, I will make some comments on the "system" issues. Much of the evidence at the inquiry focused on the rigour with which the "safe and competent shot" assessment was carried out. Mr Murray's family in particular criticised this aspect of Cluny Clays' procedures by; and some of the recommendations which Mrs Eldridge urged me to make were aimed at putting such an assessment on to a more formalised and objective basis. Mrs Eldridge also invited me to make recommendations directed at making section 11(6) conditions more stringent.

[107] However, Mr Murray's death did not arise out of any failure by Cluny Clays to carry out a proper assessment as to whether or not he was a safe and competent shot, nor out of any failure to comply with the section 11(6) conditions. Mr Young correctly assessed that Mr Murray was a safe and competent shot. Cluny Clays did comply with the terms of their section 11(6) authorisation. Moreover, by introducing

their passport system (which was done before November 2004), Cluny Clays have put their assessment of a person's ability to shoot on to a more objective basis, at least in relation to those who opt to apply for the "passport". Further, since Mr Murray's death was in no way related to the assessment of him as a safe and competent shot test, and I heard no evidence which would entitle me to conclude that there is a widespread problem with the assessment of persons' ability to shoot safely, I do not propose to make any recommendation regarding the compulsory extension of the passport system to other establishments.

[108] Criticism was also made of Cluny Clays for not having a formal system for checking on visitors who have been out shooting for "too long". However, there is some force in Mr Shedden's riposte that there is no set time which shooting should take, and that some people shoot more slowly than others. I also accept that the shooting area is adequately supervised (as was the case on the day of Mr Murray's death) by Cluny Clays staff or instructors. In particular, I find that there is no basis for holding that a search for Mr Murray ought to have been instigated earlier than it was, or that, if it had been, his death would have been averted. Having regard to the evidence of Mr Shedden and of Mr Young, there was no reason to instigate a search any earlier. Further, the reason Mr Murray did not return was that he had taken his own life. Having regard to the nature of the injuries, it is likely that he died instantaneously. Even if a search had been instigated at the earliest possible moment after which Mr Murray's non-return should have given cause for concern (whenever that was) it would by definition almost certainly already have been too late to avert his death.

[109] Various criticisms were made of some of Cluny Clays' other procedures, such as those for training staff. While admittedly Cluny Clays rely heavily on the skill and experience of their staff, none of the procedures of which criticism was made contributed in any way to Mr Murray's death. It may be that the staff training could be placed on a more formal basis, with a record being kept of which members of staff have been trained in which areas, and on what dates; and that there should be a formal means of identifying staff training needs. However, Cluny Clays receive regular routine visits from the police, who have expressed no concerns as regards safety. I do not propose to make any recommendations for change of Cluny Clays' systems[4].

[110] Turning to the police, there was no evidence of any failure in the police's system of working. As already noted, there was no reason for them to have notified Cluny Clays of the revocation of Mr Murray's certificate. All the evidence points to the police having performed their duties responsibly and efficiently.

Section 6(1)(e) and recommendations

[111] Various other issues relevant to the circumstances of the death were explored at the Inquiry. I have included in my formal determination only the crucial facts which are relevant to the circumstances of Mr Murray's death. Section 6(1)(e) does not permit me to make recommendations as such. I will however make various further recommendations (in addition to those already made) in the course of the following discussion of the relevant issues.

[112] At the outset, I stress that Parliament has determined that a person who does not possess a shot gun certificate may be permitted to shoot in certain circumstances. That of necessity involves a degree of risk. It is not for me to hold that the activity of shooting without a certificate should cease simply because it entails some risk. Risk exists in virtually every aspect of life. For that matter, allowing persons who *do* hold a certificate to shoot also involves an element of risk and no-one has suggested that it would be appropriate for me to recommend a complete cessation of shooting in all circumstances. Accordingly, I do not propose to embark on an exploration of the respective merits and disadvantages of section 11(5) and 11(6) exemptions which, together, allow persons who do not hold a shot gun certificate to shoot, subject to various conditions being satisfied. That is a matter for Parliament. It would be wholly disproportionate for me to recommend the abolition of those exemptions.

[113] However, it is legitimate for me to comment on the extent to which the risk might be minimised. In the context of this Inquiry, the particular risk which I will examine is that of a shot gun being issued to someone who, to put it at its most general, would be unsuitable to hold a certificate and who therefore may pose an unacceptable degree of risk to himself or others.

[114] The starting point is to state what was generally accepted by all who participated in the Inquiry, namely, that persons whose shot gun certificates have been refused or revoked for reasons to do with their fitness to hold such a certificate, should not be permitted to have access to any shot gun thereafter. Such a prohibition seems logical. If a person is not fit to possess a gun, it is difficult to see the justification for allowing that person to shoot with a gun belonging to someone else. From the perspective of the shooting establishment, Cluny Clays confirmed that they would not hire out a gun to any person whose certificate had been revoked. I therefore consider that there should be a specific statutory prohibition against persons whose certificate has been revoked having possession of a shot gun under any circumstances, and I so **recommend**. The corollary to this is that it should also be made an offence for any person knowingly to give a shot gun to any such person, and, again, I so **recommend**. Refusals perhaps fall into a slightly different category, since a certificate might be refused for a reason unconnected with the applicant's suitability: for example, the applicant might simply have been unable to demonstrate good reason for holding a shot gun. There should probably be no absolute prohibition against refused persons being permitted to shoot but the detail of that would be a matter for Parliament.

[115] However, it would be unwise to rely on a prohibition as being the only safeguard against guns falling into the wrong hands at an establishment such as Cluny Clays. It is unrealistic to imagine that any person intent on using a gun to commit suicide is likely to be deterred by a possible criminal sanction. It would also be unwise to think that persons who have had an application for a certificate refused, or a certificate revoked, exclusively form the category of persons who should not be allowed to shoot. There will be persons who hold a certificate but who, due to a change in circumstances, have become unsuitable, whether by illness or for some other reason. There will also be persons who have never held or applied for a certificate. The latter group should to a large extent be identified by the referee system, but that still leaves the problem of how to deal with those certificate holders

who have become unsuitable. The law should, so far as possible, facilitate the passing of information to the police so that certificates which should be revoked, are revoked.

[116] There is then the further problem of how the fact of revocation should best be brought to the attention of those who need to know, and in particular, to the attention of shooting establishments such as Cluny Clays, who clearly do have a need to know, so that the risk of guns being issued to those who should not be shooting is minimised so far as is possible. To that end, it would seem desirable to give shooting establishments some means of checking whether a visitor has had a certificate refused or revoked.

[117] These issues lead in turn to the issue of data protection. It is worth stating that the Data Protection Act confers on an individual a right for personal data about that individual not to be disclosed to third parties except in rigidly defined circumstances. As a breach of that Act may result in a criminal sanction, no data controller could be criticised for erring on the side of safety in considering whether or not to disclose any information about a person to a third party. As a general rule, consent to disclosure - both of the grant and of the revocation/refusal of a certificate - should be obtained wherever possible. That still does not permit blanket disclosure but does make it easier for information to be passed to third parties having a legitimate interest. I therefore **recommend** that the statutory application form be amended so as to include express permission for the fact of the application itself, and of any subsequent grant, refusal or revocation of a certificate to be disclosed to any person having a legitimate interest to receive such information including without prejudice to that generality (a) the applicant's GP and (b) any shooting establishment within the UK.

[118] Mr Murray's certificate was, of course, revoked not long after he first became ill. Nonetheless, it is noteworthy that the police discovered of Mr Murray's illness only by accident, Mr Moffat finding out this information at a social event. There must be many situations where such information is not passed to the police.

[119] There are various conduits through which information might be passed. It would be possible to impose a statutory obligation on a certificate holder to inform the police licensing department in the event of any condition or fact coming to his knowledge which ought to have been disclosed at the time of the original application. For that matter, it may be possible to impose an obligation on the countersignatory to inform the police, although that was not something which was canvassed at all at the Inquiry.

[120] However, the most obvious source of information regarding mental illness is the certificate holder's GP, who is the most likely person to be in possession of knowledge of any condition which might affect a patient's suitability to hold a shot gun certificate.

[121] Before the question of disclosure can arise, it is of course necessary first for the GP to be aware that the patient is the holder of a shot gun certificate. I can see no reason why the GP of a certificate holder should not be told that a patient holds a

certificate; so that if the GP subsequently becomes aware of an illness or condition which would make the continued holding of a certificate inappropriate, at least an informed decision could then be taken as to whether or not the police should be notified. I have already recommended that the application form should be amended to include a consent to this effect.

[122] This is a convenient point at which to state that it is also illogical that the police check the veracity of an applicant's statement that he has no previous conviction; but not of his statement that he has no medical problems. I therefore **recommend** that henceforth the police make such a check of the GP in all cases, before either granting or renewing a certificate.

[123] If the foregoing recommendations are given effect, then GPs will be aware in all cases of all patients who hold, or have applied for, a shot gun certificate

[124] The next question is the extent to which there should be a positive requirement on a GP to disclose information to the police. Evidence was given that this has been discussed, but rejected, by the BMA. Without having heard evidence, or being addressed, in relation to the medical profession's interests in this, I am not prepared to make any recommendation about such a requirement. By definition, the information held by the GP will be "sensitive personal data" which should normally not be disclosed. However, if a GP has knowledge of the existence of a certificate, there is nothing to prevent disclosure from being made in cases of urgency if justified by the data protection principles. It follows, of course, that I also consider that a recommendation that there should be an obligation on the "medical professionals" to notify the police, as urged on me by Mrs Eldridge, would not be appropriate. Apart from other considerations, it would not be clear to whom such an obligation would apply.

[125] A further key issue is whether the referee system should be bolstered by allowing third party access to a national database containing details of persons who have had a certificate refused or revoked.

[126] If, as I have recommended, those who have had a certificate refused or revoked should not be permitted to shoot, there seems to be no good reason why the holders of a section 11(6) approval should not be allowed to be told who those persons are. It seems to me that shooting establishments holding an 11(6) approval have a legitimate interest to receive such information. If consent has been given to such disclosure, then disclosure could be made without contravening the data protection principles. I do not see that it would be necessary to disclose the underlying reason except in extreme cases where disclosure would be permitted under the "necessity" test which currently applies.

[127] I do have to say that there is something inherently unsatisfactory about the current practice of the police, however well-intentioned and understandable it may be, of telling inquirers that a particular individual "should not be allowed to shoot" which is tantamount to disclosing information by the back door. It seems to me that in the interests of transparency, either proper disclosure of information should be made or no comment should be made at all.

[128] As regards the means of disclosure, in some cases a direct inquiry might be made of the police and in those cases no real difficulty arises provided that consent to disclosure has been obtained, and that the police are satisfied of the entitlement of the person making the inquiry to receive the information.

[129] As regards proactive disclosure, that is, disclosure other than in response to a specific inquiry, all parties were agreed that for disclosure to be effective it would need to be nationwide. It would not be practicable for the police manually to notify shooting establishments every time a certificate was refused or revoked.

[130] The only feasible means of proactive disclosure by the police is by means of a computerised database which can be accessed by third parties. The information would then, in effect, be disclosed to those with access as soon as it was entered on to the database. Assuming the information were held on computer, it would, at least in theory, be possible to allow password-controlled access to any person with a legitimate interest.

[131] However, before any person can access a national database, there must first be a database in existence. It seems remarkable that notwithstanding the terms of section 39 of the Firearms (Amendment) Act 1997, no national database has yet been established. It would appear that technological difficulties have caused the delay in the establishment of a separate nationwide database, although one would have thought that those difficulties might have been overcome by now.

[132] I have determined that access to a national database would reduce the risk of a shot gun being issued to an unsuitable person. I cannot see any major difficulty in allowing third parties to have access to a "bespoke" database, that is one set up under section 39 which contains only the details of those who hold a shot gun certificate or have had a certificate refused or revoked. Even if the database contained additional information which should only be accessible by the police (such as, for example, the reason why a licence was refused or revoked) it ought to be possible to allow third parties access only to the information they were entitled to receive. It should also be relatively easy to identify at least those shooting establishments such as Cluny Clays who are entitled to access that information and if necessary an Information Sharing Agreement could be entered into between the police and those establishments to regulate the circumstances in which the database will be accessed. It might be more difficult to regulate access to persons entitled to allow shooting by virtue of section 11(5) but that is not a reason in itself for refusing access to 11(6) establishments.

[133] However, as matters stand, the only database which currently exists is the SCRO database and I have no clear feel for the timescale of any other database coming into existence. I cannot state with confidence on the evidence that it would be practicable to permit third party access to the SCRO database in such a way as to ensure that only information about shot gun certificates was accessible. Unlike a "bespoke" database which would contain only information relevant to the licensing of shot guns, access to the SCRO database would give rise to the possibility of information being disclosed which ought not to be disclosed. It was not explained how the third party's access would be restricted only to information about those persons who had been flagged as either certificate holders or as persons who had

had an application refused or certificate revoked; nor was it explained how steps could be taken to deny access to convictions which bore no relevance to shooting whatsoever. While I do not doubt that it might be technically possible to control those matters, I am not satisfied that the cost would not be disproportionate to the benefit which might be achieved. In these circumstances I do not feel able to make any recommendation regarding third party access to a database at the present time, but I do express the hope that if and when the section 39 database is ever established, consideration then be given to allowing third parties with a legitimate interest to access that database.

[134] Finally, there is one area where I consider that Cluny Clays could make an improvement. In my view, it is undesirable that it is possible for a person to whom a gun has been hired to return to the car park from the shooting area at any time, without having to pass back through reception. That is particularly so when it has been acknowledged that there will always be some risk, however small, of a gun being issued to an unsuitable person. I **recommend** that the layout be changed so that the car park cannot be reached other than by passing reception (which is, and should be, permanently staffed). This will probably entail the construction of a fence between the shooting area and the car park.

[135] It will be noted that I have made no recommendations in relation to section 11(5) exemptions. That is because Mr Murray's death occurred on premises to which a section 11(6) approval applied, and section 11(5) has no direct relevance to his death. Further, the identification of persons falling within section 11(5) is much more difficult to determine than of persons falling within section 11(6), and it may be less practicable to allow section 11(5) persons to have access to a national database. The degree of risk is also different, since as was pointed out at the Inquiry, in general there is likely to be a closer link between the certificate holder and the person allowed to shoot in the case of section 11(5) than in the case of section 11(6).

[136] Finally, Mr Murray's death occurred in tragic circumstances which were traumatic for all those directly and indirectly affected by it. It cannot have been easy for any of those persons to give evidence. In particular, I wish to record that Mrs Murray gave her evidence, and conducted herself at the Inquiry, in a most dignified manner. To her and to the other members of Mr Murray's family, including Mr Murray's sister, Mary Jack, who also gave evidence, I extend my sympathy.

[1] The terms of section 11(6) are set out in para. 68.

[2] The terms of section 39 are set out in para. 72.

[3] "Processing" includes disclosing

[4] But see para. 134