SHERIFFDOM OF NORTH STRATHCLYDE AT DUMBARTON

FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

DETERMINATION

of

SHERIFF SIMON C. PENDER

Following an Inquiry into the circumstances of the death

of

CHAD HYSLOP

Dumbarton: 5th September 2008

The Sheriff, having resumed consideration of the evidence and submissions, determines as follows:

1. Under section 6(1)(a) of the Fatal Accidents and Suddenly Deaths Inquiry (Scotland) Act 1976 ("the Act"), that Chad Hyslop, whose date of birth was 17th November 1987, died between about 06.45 hours and about 08.43 hours on 25th February 2007, within Cell No.3 at Dumbarton Police Office, Stirling Road, Dumbarton.

2. Under section 6(1) (b) of the Act, that the cause of Chad Hyslop's death was heroin intoxication.

3. Makes no determination under sections 6(1) (c) or (d).

4. Under section 6(1)(e) of the Act,

    (a) that the Strathclyde Police document, Care of Prisoners Standard Operating Procedures, is unclear as to the need at hourly (or more frequent, where required) visits to prisoners, to obtain from each prisoner who is asleep, or apparently asleep a positive verbal response;

    (b) that, contrary to what is recorded in Chad Hyslop's custody record, Chad Hyslop did not accept a breakfast, and nor was he awake, at 08.10 hours on 25th February 2007;

(c) that the strip search of Robert Hastings carried out by Robert Campbell on 23rd February 2007 shortly after Robert Hastings had been brought in to Dumbarton Police Office at around 21.30 hours, was incomplete, in that a full search of the prisoner's mouth was not carried out;

(d) that there is a practice, contrary to what is provided at section 19.4 of the Standard Operating Procedures, of prisoners being allowed to receive food and soft drinks handed in by relatives/friends, provided such food and drinks are in sealed and unopened containers or packaging.

Note:

This Fatal Accident Inquiry into the death of Chad Hyslop on 25th February 2007, whilst in custody at Dumbarton Police Office, took place between 2nd and 25th June 2008.

The Crown was represented by Mrs McDermid, Procurator Fiscal depute. Also represented at the Inquiry were the deceased's mother Margaret Hyslop, who was represented by Mr Murphy, solicitor, the deceased's father Hugh O'Neill, who was represented by Mr Cairns, solicitor, the Chief Constable, who was represented by Mr Sanders, Advocate, Police Constable James Bolling, who was represented by Mr Anderson, solicitor, Robert Currie, who was represented by Mr Thomson, solicitor, and Robert Hastings, who was represented by Mr Adair, solicitor.

The Crown led evidence at the Inquiry from the following witnesses:

1. Sarah O'Neill, Chad Hyslop's half-sister.
2. Rosemary Cairns, a cleaner employed by Strathclyde Police at Dumbarton Police Office.
3. Police Constable Jim McGurk.
4. Police Constable Thomas McCreadie.
5. Chief Inspector Fergus Byrne (who had held the rank of Inspector at the time of Chad Hyslop's death).
6. Police constable Mark Gillies.
7. Dr Edwin Robertson, Police Casualty Surgeon.
8. Andrew Mackie, paramedic.

9. Robert Currie, cellmate of Chad Hyslop.
10. Inspector Brian Auld.
11. David Docherty, Divisional Assistant Custody Officer.
12. Robert Hastings, cellmate of Chad Hyslop.
13. Inspector Andrew Hutton.
14. Inspector Ian Wallace.
15. Jenna Melville.
16. Police Constable Jann McColl.
17. Detective Constable William Parker.
18. Detective Constable Geoff Fisher.
19. Robert Campbell, Divisional Assistant Custody Officer.
20. Luke Buist.
21. George Sharp.
22. Christopher O'Neill, cousin of Chad Hyslop.
23. Gordon Wason, Divisional Assistant Custody Officer.
24. Jonathan Dey.
25. Sharon Brooks.
26. Margaret Methven.
27. Andrew Wilson.
28. Police Constable James Bolling.
29. Detective Sergeant Calum Crawford.
30. Detective Constable Fraser Shields.
31. Detective Sergeant Kenneth Simpson, Drugs Squad STOP Unit.
32. Detective Inspector Duncan Hamilton.
33. Dr John Clark, Consultant Forensic Pathologist.

Evidence was also given on behalf of Chad Hyslop's mother, Margaret Hyslop, by Professor Anthony Busuttil, Regius Professor of Forensic Medicine, and Emeritus & Medical Director of the Forensic Medical Examiner Service – NHS Lothian, and on behalf of PC Bolling by Professor Gerhard Kernbach-Wighton, Professor of Forensic Medicine, The University of Edinburgh.

Certain facts were the subject of agreement in two Joint Minutes of Admission.

The facts of the matter in so far as agreed, or not in dispute, were, in summary, as follows:

At around 14.30 hours on Friday 23rd February 2007 the deceased, Chad Hyslop, and Robert Currie were arrested in Dumbarton on charges of breach of the peace. Robert Currie was also charged with carrying a sword. There were both conveyed to Dumbarton Police Office. Both were under the influence of alcohol. Chad Hyslop had also consumed a quantity of

diazepam tablets. Each was subjected to a "pat down" search and a search of his clothing. Nothing untoward, and in particular no drugs, were found during these searches They were placed in separate cells (Chad Hyslop in Cell 2, and Robert Currie in Cell 3), to be held in custody until the following Monday morning. Their arrests, and detention in custody, were lawful.

It was decided that Chad Hyslop's condition did not warrant more frequent checks on him than the hourly checks provided for in section 15 of Strathclyde Police's Standard Operating Procedures (a copy of which document forms Crown Production 14). It is a requirement on carrying out such checks, if a prisoner is asleep, to rouse the prisoner and obtain a positive verbal response. Such routine checks were carried out. By early evening on 23rd February 2007 Chad Hyslop was awake, and had made a significant recovery from the effects of the alcohol and drugs he had earlier consumed. He announced that he was a Valium addict and that he wished to see a doctor. Dr Robertson, the Police Casualty Surgeon was contacted. He attended at the Police Office shortly before 19.00 hours.

Dr Robertson examined Chad Hyslop, and declared him fit to be detained. To assist Chad Hyslop with the possible effects of withdrawal from diazepam, Dr Robertson prescribed diazepam for him, and left the medication, along with instructions for its issue to Chad Hyslop, in a box designed for the purpose, known as a "dosset box".

At around 21.00 hours on 23rd February 2007 Robert Hastings was lawfully detained in Dumbarton. He appeared to be under the influence of drink and/or drugs. He was arrested in respect of matters occurring earlier that day, and conveyed to Dumbarton Police Office. There he was subjected to a "pat down " search of his person and his clothing, during the course of which a tobacco tin containing the remnants of what appeared to be cannabis resin was found. Robert Hastings told the police that he had taken methadone and heroin earlier. Inspector Wallace, the Duty Officer at the time, accordingly instructed a "strip search". That involved a search beginning at the top of his body with his clothing on. Firstly the officer conducting the search checked in his hair, behind his ears, and in his mouth. He was then required to remove one item of clothing at a time. Each item of clothing was thoroughly searched. In one sock a piece of brown resinous material was found, which Robert Hastings admitted was cannabis. Once Robert Hastings was naked he was instructed to part his buttock cheeks, between which a small cellophane wrap was found. Robert Hastings said that the wrap contained Valium tablets, 24 in number. He was instructed to squat and part his buttock cheeks again, but nothing further was found. He was then instructed to lift his scrotum. Nothing was found behind his scrotum. He was then instructed to pull back his foreskin. Nothing was found under his foreskin. At the conclusion of the search he was permitted to dress himself, and was placed alone in Cell 1.

Hourly checks on Chad Hyslop in Cell 2 continued. At 21.30 on 24th February 2007 Chad Hyslop was removed from his cell to be fingerprinted and for a DNA sample to be taken. He was returned to his cell at 21.38 hours. Diazepam had been issued to him as instructed by the Police Casualty Surgeon. At around 23.00 hours, because of overcrowding in the cells at the police office, the Duty Officer spoke to Chad Hyslop, Robert Hastings and Robert Currie about the prospect of them being accommodated in one cell. Not only were all in agreement with this proposal, they were all delighted at the prospect (notwithstanding that there had been an altercation between Chad Hyslop and Robert Currie the day before). Accordingly, Chad Hyslop and Robert Hastings were removed to Cell 3, which was already occupied by Robert Currie. Hourly checks on each of them continued. At one point Chad Hyslop was removed from the cell and taken back to his previous cell, so that he could clean off some graffiti he had written on the wall there.

Hourly checks on Chad Hyslop and his two cellmates continued through the night until 06.45 hours on 25th February 2007. When necessary each was roused and spoken to, and gave a positive verbal response. Up to this point there had been no concerns whatsoever about Chad Hyslop's health or welfare.

At 06.45 hours on 25th February 2007 Chad Hyslop, and indeed all other prisoners, were visited by Inspector Ian Wallace and Inspector Hutton, as part of the procedure at changing of the shift, Inspector Wallace being the outgoing Duty Officer, and Inspector Hutton being the incoming Duty Officer. Ordinarily visits to prisoners are recorded in a computerised prisoner processing system by the person carrying out the visit. This, however, was Inspector Hutton's first occasion on duty as Duty Officer. He had not been trained in the use of the computer system, and the entry was made on his behalf, and on the basis of information given by him, by PC Bolling, who had come on duty at 06.30 hours to take over from Robert Campbell as Divisional Assistant Custody Officer. At the time of the visit by the two Inspectors Chad Hyslop is recorded as being sober and asleep, and as having been roused and having given a positive response.

At some point during the night, prior to that visit, Chad Hyslop and his cellmates, Robert Hastings and Robert Currie, had shared a "tenner bag" of heroin. The drug had been divided into three "lines" by Robert Hastings, and each of them had ingested one line of the drug by "snorting" it up his nose.

At 07.50 on 25th February 2007 PC Bolling made his first visit of the shift to the cell, that visit being one of the required hourly visits to check on the welfare of the occupants of the cell. In Chad Hyslop's custody record he entered in respect of that visit status code 2, which, according to the list of status codes produced (Crown production 13), means “sober and asleep --roused, positive response, no complaints or requests”. He also recorded that a wash

had been refused -- and that is to say that he had offered Chad Hyslop an opportunity to go for a wash, but that that opportunity had been declined. Identical entries were made in the custody records of Robert Currie and Robert Hastings.

At 08.10 hours PC Bolling again visited Cell 3, for the purpose of handing out breakfasts. When he opened the hatch in the cell door, Robert Currie got to his feet. PC Bolling passed his breakfast to him through the hatch. Because Robert Currie was having difficulty holding his cup of tea as well as the breakfast tray, PC Bolling took the cup of tea back, and opened the cell door in order to give it to him, and also to give out the other breakfasts, which he handed to Robert Currie, for him to give to the other two. Following that visit PC Bolling entered in Chad Hyslop's custody record status codes 1 and 20, status code 1 meaning "sober, awake -- no complaints or requests", and status code 20 meaning "meal provided, and accepted". He made identical entries in the custody records of Robert Currie and Robert Hastings. It is clear that neither Robert Currie nor Robert Hastings was in fact awake at the time, and also that neither in fact accepted a meal.

At around 08.30 hours PC Bolling again visited Cell 3, for the purpose of giving Chad Hyslop his medication. By this time Robert Currie was once again lying down. He asked Robert Currie to waken Chad Hyslop, and then opened the cell door. PC Bolling and Robert Currie were unable to rouse Chad Hyslop, who was by this time lying face down in what PC Bolling described as a strange position. Having turned Chad Hyslop onto his back and having checked his airway and having found no pulse, PC Bolling went for assistance. Inspector Hutton sent PC Bolling to summon an ambulance whilst Inspector Hutton and Sgt Young commenced CPR. They continued CPR until the ambulance arrived at 08.43 hours, and thereafter whilst the ambulance crew set up their equipment. One of the paramedics then took over the attempt to resuscitate Chad Hyslop. He attached a heart monitor, ventilated the patient, and carried out chest compressions, all to no effect. The heart monitor showed no cardiac activity. After two or three minutes of attempting resuscitation the paramedics ceased their attempts. The Police Casualty Surgeon, Dr Robertson, arrived at about 09.20 hours. At 09.22 hours he pronounced "life extinct".

A post-mortem examination of the body of Chad Hyslop carried out on 27th February 2007 established the cause of his death as heroin intoxication.

The issues which arose in during the course of the Inquiry were as follows:

1. Who brought the heroin consumed by Chad Hyslop and his two cellmates into Cell 3 at Dumbarton Police Office?

2. Whether it was appropriate to place Chad Hyslop, Robert Currie and Robert Hastings in the same cell, by way of "tripling up", particularly given the fact that there had been an altercation between Chad Hyslop and Robert Currie earlier in the day on which they were arrested.

3. Whether there was any defect in a system of working, by way either of lack of clarity in the Standard Operating Procedures, or by way of inconsistency in application of the Standard Operating Procedures.

4. Whether Naloxone, an antidote to opiate poisoning, might have been administered to Chad Hyslop, whether that might have altered the outcome, and generally whether naloxone should be available at police offices. Further, whether nurses should be introduced to police offices outwith Lothian & Borders (where nurses are already in place), to assist in attending to the health and welfare of prisoners.

5. Although not raised by any of the parties participating in the Inquiry, whether the strip search of Robert Hastings was properly and fully carried out.

6. Whether, when PC Bolling carried out the hourly check on Chad Hyslop and his cellmates at 07.50 hours on 25th February 2007, Chad Hyslop would have been able to give a positive verbal response, and whether such a positive verbal response was actually obtained from him.

Submissions for the Crown

Mrs McDermid, for the Crown, invited me, on the evidence, to make only a formal determination, firstly, under section 6 (1) (a) of the Act, that Chad had died in Cell 3 at the Dumbarton Police Office on 25th February 2007 having been found unresponsive at around 08.30 hours, and having been pronounced dead at 09.22 hours, and secondly, under section 6 (1) (b) of the Act, that the cause of death was heroin intoxication.

Submissions for Margaret Hyslop

Mr Murphy, for Chad Hyslop's mother, submitted that I should find that the time of death had been between 07.50 hours and 09.22 hours on 20th February 2007, and agreed that I should find that the cause of death was heroin intoxication. He intimated that he did not intend to seek any findings under sections 6(1)(c) or (d). He invited me to address a number of matters under section 6(1)(e).

The first matter was the question of the ownership of the drugs taken by Chad Hyslop and his cellmates, and how those drugs had got in to the cell. It was his submission that there was sufficient evidence for me to conclude that the drugs had been brought in to the Police Office by Robert Hastings. He made reference to the evidence of Robert Hastings, Robert Currie (the third occupant of Cell 3) and various other witnesses. He suggested that the evidence of Mr Hastings and Mr Currie was unsatisfactory. That evidence had been at best sketchy and at worst contradictory, and neither had given clear evidence as to who had produced the heroin on the night in question. He also made reference to statements given by Mr Hastings and Mr Currie, submitting that each had been reluctant in evidence to confirm what they had said to the police. In his submission, however, each had in the end accepted that what was in his statement must be true if he had given the statement. Mr Murphy further made reference to the evidence of Jonathan Dey, Sharon Brookes, Luke Buist and George Sharp, all of whom had given evidence to the effect that in conversations with Robert Hastings he, Robert Hastings, had indicated that he had been the one who took the drugs into the Police Office. There had also been the evidence of Margaret Methven, who had been with Robert Hastings earlier in the day on Friday 23rd February 2007, before his arrest, to the effect that Hastings had at that time concealed a quantity of heroin under his foreskin. It was, said Mr Murphy, also significant that on the evidence Chad Hyslop was not known to be a regular user of heroin. He reminded me that Chief Inspector Byrne had given evidence that in his opinion it was highly unlikely that Chad Hyslop had been in possession of the heroin, on the basis that if he had been he would have been likely to consume it earlier. Chief Inspector Byrne's previous dealings with Chad Hyslop indicated that he was more often under the influence of alcohol than heroin. There had also been the evidence of Detective Sergeant Simpson to the effect that the person who divides up a drug is normally the person who owns it (Robert Hastings had said in his police statement that he had opened the bag of heroin and had divided it among the three occupants of the cell). On the basis that Robert Hastings had had heroin in his possession earlier on Friday 23rd February 2007, that he was a known user of heroin, and that during the course of being processed at the police station other drugs had been found on his person during a strip search, Mr Murphy submitted that I should conclude that it was Robert Hastings who had brought the drugs into the Police Office.

Mr Murphy then turned to the question of the use of Naloxone, an antidote used to reverse the effects of heroin overdose. He referred to the evidence of Detective Sergeant Simpson, and more extensively to the evidence of Professor Busuttil. The Professor had given evidence about practices within Lothian and Borders Police, where nurses are employed to assist in looking after persons in custody. Mr Murphy suggested that on the basis of that evidence I might consider commenting on the desirability of nurses being introduced elsewhere, and on the desirability of having Naloxone available within police custody premises for administering to prisoners who might be suffering from heroin overdose. Mr

Murphy did, however, accept that before such steps could be taken many issues would require to be addressed, including the issues of cost. The practicalities of training police officers and/or civilian custody support officers to administer intravenous medication would also have to be considered.

Mr Murphy then commented on the Standard Operating Procedures document which had been produced in evidence. Section 11.2 of that the document required that any prisoner removed from his cell for interview, medical examination or other reason must be searched prior to being returned to the cell, and that the prisoner's custody record be updated accordingly. Mr Murphy referred to evidence given that Chad Hyslop had been removed from his cell for fingerprinting. It was Mr Murphy's understanding that he had not been searched again before being returned to his cell. That, said Mr Murphy, appeared to be contrary to the requirements of the Standard Operating Procedures.

The next matter addressed to Mr Murphy was the question of "tripling up". It had been explained that when the number of persons in custody makes it necessary, prisoners are required to share cells. This is always done by way of putting at least three persons into one cell. A cell is never occupied by two prisoners. Mr Murphy referred to section 14 of the Standard Operating Procedures, which says that prisoners who are likely to disagree with one another are not to be placed in the same cell. Mr Murphy accepted that the question of the placing of Robert Currie and Chad Hyslop in the same cell was not material to the Inquiry. However, he said that it was concerning that they had been put in the same cell on Saturday evening, having been involved in a fairly serious disagreement on the Friday afternoon.

Lastly, Mr Murphy turned to the evidence of Police Constable Bolling. Evidence had been given by PC Bolling that he had made visits to the cell occupied by Chad Hyslop and the two other prisoners at 07.50 hours and 08.10 hours on 25th February 2007, and that he had made entries in the prisoners' records. In Mr Murphy's submission, in any system where an individual is being monitored, accurate input into the records is essential. An entry had, however, been made by PC Bolling regarding Chad Hyslop accepting a meal at 08.10 hours, when it was clear from the evidence that he had not accepted a meal. PC Bolling had also made an entry in respect of the visit at 08.10 hours, by entering status code 1, that Chad Hyslop was at that time sober and awake, when in fact he was clearly not awake. PC Bolling had also explained, in respect of status code 1, that there was an obligation on the person checking the prisoner to obtain from the prisoner of positive verbal response. It was clear that no such positive verbal response had been obtained at 08.10 hours. In Mr Murphy's submission, the monitoring of prisoners must be the priority of the Duty Officer and of those working with him, and that accurate recording of monitoring was essential to ensure the welfare of prisoners.

Submissions for Hugh O'Neill

Mr Cairns, for Chad Hyslop's father, began by adopting Mr Murphy's submissions in respect of sections 6(1)(a) and (b), except that in respect of the time of death, if I took the view that no response had been obtained from Chad Hyslop at 07.50 hours on 25 February 2007, he submitted that it might be right to determine the time of death as being between 06.45 hours and the time when the paramedics attended, at about 08.43 hours, although the doctor who had attended did not formally pronounce death until later.

With regard to section 6(1)(c), Mr Cairns submitted that, depending on the view I took of the evidence, I might conclude that there were some precautions which could have been taken whereby Chad Hyslop's death might have been avoided. If I accepted the evidence of Professor Busuttil and Dr Clark I would be entitled to take the view that no check, or that no proper check, on Chad Hyslop had been carried out either at 07.50 hours or at 08.10 hours on the morning he died. I could infer from their evidence (although this was not wholly supported by the other pathologist who gave evidence, Professor Kernbach-Wighton) that at those times Chad Hyslop was unlikely to have been able to give any response. If I drew that inference, said Mr Cairns, the inevitable conclusion would be either that no check was carried out at 07.50 hours, or that it was not carried out properly, and that had it been carried out and carried out properly, given the evidence as to how recently death had occurred, detection of a problem at 07.50 hours might have allowed steps to have been taken which might have saved Chad Hyslop's life.

With regard to section 6(1)(d) Mr Cairns made certain submissions, which, however, he accepted might be more apt in respect of section 6(1)(e). He referred to Mr Murphy's submission about the Standard Operating Procedures not being followed in respect of Chad Hyslop being searched after being taken out of his cell for fingerprinting. In his submission, from the evidence of the various officers involved in custody visits, it appeared that there was a least a lack of consistency in the implementation of some of the provisions of the Standard Operating Procedures. Mr Cairns suggested that there was perhaps a degree of confusion as to how the duties addressed in that document were to be carried out. There was, he said, perhaps a lack of clarity in the Standard Operating Procedures, which might explain the inconsistency. He accepted, however, that individually the examples of inconsistency were of no great moment in relation to the death of Chad Hyslop. The first example he gave was that there appeared to be a difference in the practices of Mr Docherty and PC Bolling with regard to giving breakfast to prisoners. A further example was that Chief Inspector Byrne had given evidence that visits by prisoners to the toilet were more often than not recorded. On the other hand PC Bolling had distinguished between "official" and "unofficial" visits, the official visits being those required on at least an hourly basis in terms of section 15.3 of the Standard Operating Procedures. It was PC Bolling's evidence that whilst the official visits had always

to be recorded, some unofficial visits would not be recorded. Mr Cairns did not suggest that either was right or wrong -- in his submission there just appeared to be variations. It had been Mr Docherty's evidence that if visits in addition to the hourly checks were carried out, it was good practice to record them. On the evidence there was, said Mr Cairns, a practice that if there were no response from a prisoner to an invitation to wash, then that was recorded as "wash refused". Further, according to PC Bolling, if there were no response to an invitation to accept breakfast, then that must be recorded as "breakfast accepted". Clearly both of these were inaccurate. Further, there were differing views among the witnesses as to whether, in place of a positive verbal response at an hourly check, a prisoner giving the "thumbs up" was an acceptable response.

Mr Cairns referred to the Standard Operating Procedures at section 15.3, which required that all prisoners be roused and "spoken to". There was nothing in that section, he said, regarding obtaining a response from a prisoner. However, it appeared to be the understanding of all witnesses that a response was required, although there was some difference as to whether such a response strictly required to be verbal.

Mr Cairns submitted that if I accepted that there was a lack of clarity in the Standard Operating Procedures, I might make some recommendations as to revision. In particular, he suggested that it might be desirable that the Standard Operating Procedures specify the response to be obtained by prisoners at hourly (or more frequent) checks.

Was regard to section 6(1)(e), again Mr Cairns adopted Mr Murphy's submissions on the issue as to which of the three prisoners in Cell 3 had introduced the drugs, and he made some additional points. Firstly, Mr Cairns reminded me that Robert Hastings had accepted that he had previously used the technique of hiding drugs under his foreskin, but had denied using that method on this occasion. He also said that one of the many puzzles, on the assumption that the drug came in to the police cells on the Friday, was why it had not been used until what appears to have been a relatively late stage.

Of the three prisoners in the cell, Robert Hastings was known to be a heroin addict, and this was recorded in his custody record. Mr Cairns suggested that it might well be that if Robert Hastings had received methadone that would have enabled him to delay using the heroin in his possession. He accepted, however, that it might equally be because Robert Hastings had, for example, swallowed the bag of heroin, and would have had to wait for it to be passed through his body before being able to use it.

Taking the points made by Mr Murphy and these additional points, Mr Cairns suggested that the evidence was such that I could conclude that Robert Hastings had introduced the heroin

into the cell. However, whether the evidence was of such quality that I would be prepared to do so was, he accepted, another matter.

Mr Cairns then turned to the evidence of PC Bolling. He suggested that PC Bolling's position was open to considerable question.

Mr Cairns reminded me that at a preliminary hearing a list of objectives of the Inquiry had been produced, which posed a number of questions which the Inquiry might address. The first of these was whether or not it was appropriate for Chad Hyslop, Robert Hastings and Robert Currie to be detained in a cell together. Mr Cairns said that he could not suggest that this was inappropriate. He accepted that it clearly was. The next question was whether Chad Hyslop had taken the heroin which led to his death after he had arrived in police custody. In Mr Cairn's submission the answer must be that he had. The next question was that if Chad Hyslop had taken the heroin after being taken into custody, did he take it in, or was it supplied to him? This was a question which was of particular concern to Chad Hyslop's family. Mr Cairns said that he could not suggest that there was no evidence that Chad Hyslop had taken the drug into custody with him. There were statements by Mr Currie and Mr Hastings. However, said Mr Cairns, they had a considerable self interest in the matter. He submitted that no weight could be attached to the evidence of Mr Currie or Mr Hastings, and I should reject their evidence to the effect that Chad Hyslop had brought the drug into the cell. Mr Cairns invited me to find that it had not been established that Chad Hyslop had brought the drug into the cell, even if I was not prepared to find how it did get there. The next question was the appropriateness of the police search procedure. Mr Cairns said that he made no criticism of the police search procedures, and accepted that on the evidence he was not entitled to make any such criticism.

Mr Cairns concluded by commenting that it was a matter of regret that my ability to come to satisfactory conclusions had been obstructed by Mr Currie and Mr Hastings, who had both demonstrated that they were simply not prepared to tell the truth, the whole truth and nothing but the truth.

Submissions for the Chief Constable

Mr Sanders, for the Chief Constable, accepted the submissions made by others with regard to section 6(1)(a) and (b), except that in his submission the time of death should be recorded as having been between 08.44 hours and 09.20 hours on the morning in question, being respectively the earliest tangible record of a check on vital signs being carried out and the time at which death was formally pronounced, although he accepted that Professor Busuttil had expressed the opinion that Chad Hyslop was already dead by 08.44 hours.

He went on to submit that there was no basis or requirement for any findings under sections 6(1)(c), (d) or (e), and addressed various specific issues which had been raised.

The first issue was the question of the administering of Naloxone, and in a wider sense the issue of prisoner care. Professor Busuttil had, he said, given considerable background information as to what has been done in Lothian and Borders. These matters had not however been raised at any preliminary hearing, and Mr Sanders had therefore not anticipated that they would be raised during the course of the Inquiry, until Professor Busuttil's report became available a very short time before the commencement of the Inquiry. As a consequence, whilst Professor Busuttil's evidence was interesting, it only scratched the surface of what is an area raising many questions, including questions of resourcing and prioritisation, and the issue of the willingness of civilian custody support officers and police officers to go beyond the administration of basic first aid. In Mr Sander's submission the issue of the administering of Naloxone to prisoners had not been explored in sufficient detail for me to make any comment or recommendation. He reminded me that Professor Busuttil had stated that it would have made no difference whatsoever to the outcome for Chad Hyslop if the paramedics who attended on the morning in question had administered Naloxone to him. Mr Sanders, accordingly, invited me to make no specific findings on these matters.

The next issue addressed by Mr Sanders was the issue of medical care. Whatever the differences between Lothian and Borders and Strathclyde Police practice, it was clear from Chad Hyslop's custody record, together with the evidence of Dr Robertson, the Police Casualty Surgeon, that as a matter of fact shortly after he was admitted to custody Chad Hyslop was seen by a doctor. Dr Robertson had taken Chad Hyslop's history, had spoken to him in detail regarding what drugs he had taken, and what alcohol he had consumed. He had carried out an examination of Chad Hyslop and an assessment of his condition, and assessed him as fit to be kept in custody. It had been accepted by Professor Busuttil that Doctor Robson's assessment was more than a cursory one. Dr Robertson had prescribed Diazepam with a view to preventing sudden acute symptoms of withdrawal from Diazepam during Chad Hyslop's detention over the weekend.

Mr Sanders then turned to the issue of how the heroin had got into the cell occupied by Chad Hyslop and his two cellmates. He said that he fully understood why this was of considerable its interest to Chad Hyslop's family. Given the lack of evidence as to Chad Hyslop being a heroin addict or a regular heroin user, it was understandable why his family would be reluctant to countenance the possibility that Chad Hyslop had himself taken the heroin into the police cells. It was the family's position that Robert Hastings had taken the drug into the cell. In Mr Sanders' submission I was regrettably not in a position to find in fact who had taken it in. He concurred with Mr Cairns' remarks as to the quality of the evidence of Mr Hastings and Mr Currie. That evidence was, said Mr Sanders, self-serving, and he invited me

to treat it with great care and scepticism. He too was of the view that Mr Hastings and Mr Currie had in the giving of their evidence behaved in an unacceptable manner, given that someone had died.

As to the suggestion that it had been Robert Hastings who took the drug into the cell, Mr Sanders submitted that all the Inquiry had was a lot of anecdotal evidence from people who had spoken to him after the event. He suggested that, in fairness to Robert Hastings, I should treat that evidence with particular care. He reminded me that during his cross-examination of Sharon Brookes I had had cause to warn a person in the public gallery not to coach the witness or give signals to her. It was Mr Sanders' position that the evidence as to who had brought the heroin into the cell was so unsatisfactory that I should not make any finding beyond stating that the heroin had found its way into the cell, and had not been there before any of Chad Hyslop, Robert Hastings and Robert Currie went into Cells 1,2 or 3. It was simply not possible to conclude how or by whom the heroin had been taken in to the cell.

On the question of searches, Mr Sanders made no criticism of the searches which had been carried out. He referred me to the evidence of Detective Sergeant Simpson on the question of searching in general. He invited me to take the view that he was someone with considerable expertise and knowledge of drug and other searches. In particular he had given evidence to the effect that quite large quantities of drugs can be hidden in a person's back passage. Whilst it was regrettable, it was Mr Sanders' submission that the Inquiry had not established how the heroin had found its way into the cell in question.

As to tripling up, Mr Sanders submitted that it was clear from the evidence of Mr Campbell and Inspector Wallace that the decision to triple up, that is to say to put Chad Hyslop, Robert Hastings and Robert Currie into the same cell, was an entirely reasonable one. There had been mention of Mr Currie and Mr Hyslop having a serious disagreement earlier in the day on which they were arrested. He reminded me that Mr Campbell had given evidence that people when drunk often fall out with one other and then make up again. It was not, he said, a case of Chad Hyslop passively agreeing to share a cell with the others. He had, on the evidence, been delighted at the prospect. Accordingly, without the benefit of hindsight, the decision had been entirely appropriate. The alternative, said Mr Sanders, given the influx of prisoners on that night, would have been to move prisoners to other Police Offices. He submitted that I should make no criticism of the police in respect of this decision.

With regard to PC Bolling's evidence, Mr Sanders said that he would have little to say. His evidence was that he had visited Chad Hyslop at 07.50 hours and at 08.10 hours on the morning of 25th February 2007. That was supported by the custody record of Chad Hyslop. The visit at 07.50 hours was being called into question -- not whether it took place, but what had happened during it. It was PC Bolling's position that at 07.50 hours he obtained a

positive response from Chad Hyslop. Mr Cairns and Mr Murphy had questioned how that could be, given the evidence of Dr Clark and Professor Busuttil. However, said Mr Sanders, if one took all of the forensic evidence, none of the witnesses could discount the possibility that PC Bolling did get a positive response at 07.50 hours. He said that he understood that the court had to consider all of the background and PC Bolling's evidence in respect of this matter.

With regard to Mr Cairns' submissions in respect of amendments to the Standard Operating Procedures, Mr Sanders' response was that the Standard Operating Procedures was an electronic manual, a live document which was always changing. In his submission unless one could see something in it which screamed out as being wrong or contradictory, then there was no necessity for any change to be made. Section 15.3 of that document provided that prisoners were to be roused. Section 15.4 the document provided that a drunk prisoner was to be visited at regular intervals, at least once every 30 minutes and more frequently if the Duty Officer considered it necessary. It further provides that if no distinct verbal response is obtained, then immediate consideration must be given to having the prisoner removed to hospital. Mr Sanders submitted that if I were to make any findings in respect of this matter, they would clearly come under section 6(1)(e), and not section 6(1)(d).

Lastly, Mr Sanders pointed out that there had been no suggestion whatsoever that the ingestion of heroin by Chad Hyslop had been anything other than a voluntary act.

Submissions for PC Bolling

Mr Anderson invited me to make formal findings only, under section 6(1)(a) and section 6(1)(b). He invited me to determine that Chad Hyslop had died between 07.50 hours and 09.22 hours on 21st February 2007 in Cell 3 at Dumbarton Police Office, Stirling Road, Dumbarton. In his submission 07.50 hours was the time at which Chad Hyslop had last given a positive verbal response, and 09.22 hours was the time at which he was pronounced dead. As far as Section 6(1)(b) was concerned, Mr Anderson agreed that the cause of death should be determined as heroin intoxication.

He then turned to the evidence of PC Bolling, an experienced police officer, with 28 years service. His evidence was that he took his duties seriously. He had started work at 06.30 hours on 25th February 2007. At around 06.45 hours he had updated the computer records after Inspector Hutton and Inspector Wallace had visited the prisoners in the course of handing over the duties of the Duty Officer. PC Bolling had not taken part in that visit -- he had only updated the computer record.

Mr Anderson reminded me that according to PC Bolling the next visit to the cell in which Chad Hyslop and his cellmates were being detained was at 0.750 hours. It had been PC Bolling's clear evidence that Chad Hyslop had been asleep in the cell, and that in response to his name being called he had responded either "Yes" or "Aye". PC Bolling had noted nothing untoward and continued with his duties. Mr Anderson submitted that there was no evidence that Chad Hyslop was obviously unwell at that time, or that he should have been identified as being under the influence of heroin. He maintained that the actions of PC Bolling had been reasonable in the circumstances. Mr Cairns had suggested to PC Bolling in cross-examination that with the passing of time he may have remembered things happening which in fact had not happened. However, PC Bolling's evidence was that he had a clear recollection of events. It had not been suggested to him in cross-examination that the visit at 07.50 hours had not taken place, and it was, in Mr Anderson's submission, unfair of Mr Cairns to make submissions on a matter not put to the witness in the course of his evidence.

With regard to Mr Cairns seeking a finding under section 6(1)(c) or (e) that the check said to have been carried out at 07.50 hours was insufficient, and that a proper check might have amounted to a reasonable precaution, Mr Anderson submitted that there had been no evidence to suggest that Chad Hyslop's death might have been prevented. He submitted, with reference to Carmichael, Sudden Deaths and Fatal Accident Inquiries, third edition, at page 174 that to make a finding under section 6(1)(c), I would have to be satisfied that there was a real or lively possibility that Chad Hyslop's death might have been avoided. Further, he said, to make a finding under section 6(1)(e) I would have to be satisfied that the matter was relevant to the circumstances of the death.

With regard to the visit to the cell at 08.10 hours, Mr Anderson reminded me that it had been PC Bolling's evidence that he had gone to the cells to distribute breakfasts. At Cell 3 he had handed one breakfast through the hatch to Robert Currie, with Robert Hastings and Chad Hyslop appearing to remain sleeping. He then opened at the cell door to hand in the other two breakfasts. It had been PC Bolling's evidence that he had observed a movement in Chad Hyslop's leg, which he thought might have been in response to a nudge from Robert Currie. PC Bolling had later in his evidence accepted that any movement he had seen might have been involuntary, and merely the leg moving as a direct result of any nudge, and not as a response to it.

PC Bolling's position was that as he had had a positive response 20 minutes earlier, he did not require to wake each prisoner and get a positive verbal response at 08.10 hours, the visit at that time not being an "official visit". PC Bolling had recorded that a meal had been offered to and been accepted by Chad Hyslop. He was examined in evidence in relation to that and other entries. In cross-examination he had referred to the alternative option of recording that the meal had been offered and refused, but maintained that to record the meal as having

been accepted was more accurate. PC Bolling had next visited the cell at 08.30 hours, when Chad Hyslop was found unresponsive, and assistance was summoned.

Mr Anderson submitted that there had been no evidence that any perceived inaccurate recording was relevant to, or contributed to, Chad Hyslop's death.

Mr Anderson then turned to the forensic evidence. He reminded me that Dr Clark had given evidence as to the usual course of heroin overdose, with the affected person falling into a deeper and deeper sleep and eventually dying. It was Mr Anderson's understanding that Dr Clark had not excluded the possibility that Chad Hyslop could have given a verbal response at 07.50 hours on the morning of his death. He had seen in his practice something new every day. It was his evidence that if Chad Hyslop had been able to respond at that time, he would have been more likely to have responded by way of one word than by way of a sentence. He had said that each case should be treated individually, and that it could not be assumed that this case was not an unusual manifestation of heroin overdose. Dr Clark had said that the majority of cases do not involve the deceased being closely observed in the hours immediately before death.

It was Mr Anderson's submission that Professor Kernbach-Wighton broadly agreed with Dr Clark as to the usual progress of heroin overdose, as did Professor Busuttil. However, Professor Kernbach-Wighton had departed slightly from the others in relation to periods of less disturbed consciousness, during which a deceased person might be able to respond to his or her name being called, that being a strong trigger to the brain. He had also considered the findings of the police casualty surgeon as to the absence of rigor mortis at 09.22 hours, its presence at 12.35 hours, photographs taken at 10.00 hours showing lividity, and evidence of temperature. Mr Anderson submitted that the scientific evidence as to rigor mortis, lividity and temperature supported the view that Chad Hyslop had died after 07.50 hours, and perhaps pointed towards his being able to provide a positive response at that time. Professor Kernbach-Wighton had given evidence that the level of morphine in Chad Hyslop's blood was a relatively low, albeit a fatal dose. He said that if the level had been higher his views would have been different.

Mr Anderson then turned to the evidence of Professor Busuttil, who had described the giving by Chad Hyslop of a positive verbal response at 07.50 hours as incongruous. He had said that periods of less disturbed consciousness were not known to him. Mr Anderson pointed out that Professor Kernbach-Wighton had spoken of one case in the 1990s involving a period of less disturbed consciousness.

On the divergence of professional opinion, Mr Anderson referred me to the case of Davie v Magistrates of Edinburgh 1953 SC 34, and in particular to what was said by Lord President

Cooper at page 40, and Lord Russell at page 42. He submitted that it was a matter for me to assess the evidence as a whole, both the evidence of fact and opinion, and to form a view of it as a whole. All three experts were, he said, experience in the field of forensic medicine. Professor Kernbach-Wighton had particular expertise with regard to heroin intoxication. None of the experts had said that it would be impossible for Chad Hyslop to have provided a response at 07.50 hours. Mr Anderson invited me to accept the evidence of PC Bolling, to the effect that the necessary check had been carried out at 07.50 hours and that a positive verbal response had been obtained from Chad Hyslop. If, however, my view was that the evidence did not support that, he invited me to conclude, given the divergence of expert opinion, that I could not find positively one way or the other on that matter.

With regard to the evidence of Andrew Wilson, Mr Anderson invited me to reject him as an incredible and unreliable witness, and in particular to reject his evidence to the effect that he was not checked at all whilst in custody. He invited me to prefer the evidence of PC Bolling on that matter. Otherwise I would have to conclude that the entries in the computer system in respect of Andrew Wilson had simply been manufactured. Andrew Wilson had conceded that he was heavily intoxicated. Mr Anderson pointed out that the custody record was a matter of agreement.

Submissions for Robert Currie

Mr Thomson, on behalf of Robert Currie, said that he did not dispute that Chad Hyslop had died between around 0750 hours and 0922 hours on the morning of the 25th February 2007. He also did not dispute that the cause of death was heroin intoxication.

Mr Thomson invited me to make no findings under section 6(1)(c), (d) or (e).

As far as Robert Currie was concerned, Mr Thomson said that whilst he could not commend his client's evidence to me, there appeared to be nothing upon which I could make any positive finding that Mr Currie had been involved in introducing heroin into the cell. As far as "tripling up" was concerned, Mr Thomson submitted that there was no evidence that any earlier volatility between Mr Currie and Chad Hyslop had in any way contributed to Chad Hyslop's death. Accordingly, he invited me to make no formal findings in that respect.

Submissions for Robert Hastings

Mr Adair, for Robert Hastings, adopted the same position as Mr Thomson with regards to the time and place of death, and the cause of death. He said that he had no submissions to make with regard to section 6(1)(c), (d) or (e).

With regard to the possibility of his client, Robert Hastings, having brought the drugs into the cell, Mr Adair submitted that that I could not make any finding that he was so involved, given the unreliable and incredible nature of the evidence suggesting that he was. That evidence had generally come from witnesses who did not fall to be regarded as credible and reliable, some of whom had come forward at a very late stage with "hidden agendas". As far as Margaret Methven was concerned, she had come forward in response to a suggestion that she may have been involved. All that evidence had been countered to an extent by the evidence of officers who dealt with Robert Hastings. Robert Campbell, an experienced police custody/security officer had strip searched Robert Hastings and found no heroin. Inspector Byrne had said that if Robert Hastings had had heroin hidden in his clothing or on his person he would have expected Mr Campbell to find it. Further, Robert Hastings' statement made on 25th February, at a stage where he had been separated from Robert Currie, was consistent with the statement of Robert Currie. In Mr Adair's submission they were clearly not criminal masterminds who had got together to concoct a story. In his further submission Robert Hastings did not fit the profile of someone who would delay taking heroin which was in his possession. He was a chaotic drug user and would have used any drugs in his possession as soon as he felt the need. There had been no evidence that the drugs had been passed through someone's body. For example, said Mr Adair, there had been no evidence of anybody going to the toilet or asking for toilet paper. Detective Sergeant Simpson had said that he thought swallowing and passing the drugs later was an unlikely method of getting a "tenner bag" into the cell.

Mr Cairns, in respect of Mr Adair's final submission, pointed out that there had in fact been evidence that Robert Hastings had been provided with toilet paper. This was recorded in his custody record (Crown production 9), at the record for the visit at 22.00 hours on 23rd February 2007.

Discussion

The purpose of a Fatal Accident Inquiry is not to establish any criminal or civil liability in respect of the death in question. Those are matters for other courts. The Act therefore provides that the determination of the Sheriff may not be admitted in evidence or be founded upon in any judicial proceedings of whatever nature (including criminal proceedings or civil litigation in connection with the death in question).

Rather it is the purpose of the Inquiry to carry out a fact-finding exercise, in public and strictly within the parameters of section 6(1) of the Act, so that those with a legitimate interest, in particular the relatives of the deceased, might be informed as to the cause of death. An Inquiry will also try to ascertain, in the public interest, whether there were any precautions which might have been taken, which might have prevented the death, or whether there were

any defects in any system of working which contributed to the death. The Sheriff may, in his determination, make comment, or indeed recommendations, in respect of such precautions or defects, with a view to deaths in similar circumstances being avoided in the future.

Section 6(1) provides that the Sheriff is to set out in his determination, in so far as established in evidence to his satisfaction, the following circumstances of the death:

(a) When and where the death and any accident resulting in the death took place;
(b) The cause or causes of 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 defect, if any, in any system of working which contributed to the death or any accident resulting in the death; and
(e) Any other facts which are relevant to the circumstances of the death.

It was not disputed and was clear from evidence that the place of death was Cell 3 at Dumbarton Police Office. It was a matter of agreement that the cause of death was heroin intoxication. I have determined those matters accordingly.

I will turn now to the various issues raised at the Inquiry, and deal with them in turn.

Who brought the heroin into the cell?

I have been invited on the one hand it to make a finding that the drug was brought into the cell by Robert Hastings, and on the other hand to conclude that it is impossible to reach any conclusion as to who brought the drug into the cell.

It seems to me, on the evidence, that there are two realistic possibilities as to how the drug came to be in Cell 3. The first is that one of the three occupants of that cell brought the drug into the Police Office concealed on his person, or possibly internally (for example by swallowing the drug or inserting it into his anus), notwithstanding the searches which were carried out. The second is that the drug came into the Police Office hidden within the foodstuffs brought in for Robert Currie by his girlfriend.

As far as the second of these possibilities is concerned, there was evidence from Robert Currie's girlfriend, Jenna Melville, that on the afternoon of 24th February 2007 she had taken plastic bottles of Irn-Bru, packets of sweets and crisps, and newspapers into the Police Office for him. It was her evidence at that she had not interfered with the containers or packaging in any way.

Evidence was also given by Inspector Wallace that relatives frequently hand in newspapers, magazines and food for prisoners. Accordingly he was not surprised that two magazines and torn bits of paper had been found in the cell, although he had not actually been aware of anything being handed in for Robert Currie. Inspector Auld also gave evidence that on occasion relatives or friends hand in items for prisoners. He said that they allowed in clothing, sealed food (unsealed food, for example sandwiches wrapped in cling film, would not be allowed), and newspapers and magazines. Crisps, for example, would be allowed in only if in the original packaging which was sealed. He said that that whoever received the items checked to ensure that food packaging was all sealed, and would go through every page of any newspaper or magazine to ensure that nothing was taped to it. No items had been handed in whilst he was on duty. Robert Currie's custody record records that at 15.20 hours on 24th February 2007 food and papers from Robert Currie's girlfriend were received by Inspector Byrne.

Whilst this was one possible way in which the drugs may have come in to Cell 3, there was nothing in the evidence to suggest that that is actually what happened. I mention this possibility because of the provisions of section 19.4 of the Standard Operating Procedures of Strathclyde Police, Crown Production 14, which provides that prisoners may not receive food handed in to police officers by friends or relatives. It seems to me that it would not be beyond the wit of someone determined to introduce drugs into police cells carefully to open food packaging (for example a packet of crisps), put drugs within the packaging, and re-seal it with some sort of adhesive, so that it has the appearance of being unopened. Although not established as the actual method by which drugs were introduced to the cell occupied by Chad Hyslop and his two cellmates, the existence of the practice of accepting food for prisoners, contrary to the Standard Operating Procedures, is in my view relevant to the circumstances of Chad Hyslop's death, particularly because food was actually brought into the Police Office for one of his cellmates, and I have accordingly made an appropriate determination under section 6(1)(e) of the Act as to the existence of that practice.

Turning now to the first possibility mentioned above, namely that the heroin was brought into the Police Office and then into the cell by one of the occupants, I have considered the evidence of Robert Currie and Robert Hastings, and have concluded that both of these witnesses are to be regarded as incredible and unreliable. The manner in which each gave his evidence was wholly unsatisfactory. They were evasive and feigned loss of memory. Their evidence was in full of inconsistencies. This was particularly the case as far as Robert Currie is concerned—his evidence in court was inconsistent with statements he had given to the police, which statements were also inconsistent with each other. Accordingly, I am not prepared to conclude that the heroin was brought into the Police Office, and then the cell, by Chad Hyslop.

As far as the suggestion that the heroin had been brought in by Robert Hastings is concerned, to conclude that it was would require me to accept hearsay evidence as to what Robert Hastings is alleged to have said to various other witnesses, in particular Sharon Brookes, Jonathan Dey, George Sharp, and Luke Buist. I found all of these witnesses to be less than impressive. In any event, given that I regard Robert Hastings as an untruthful person, and given also that one of the witnesses described Hastings as "bragging" about getting drugs into the Police Office without being found, I would not be prepared on the basis of that hearsay evidence to conclude that Robert Hastings had indeed brought the drugs into the Police Office. It was evidence of one of the witnesses that Hastings had claimed to have hidden the heroin under his foreskin, and thus managed to get the drugs into the Police Office. That, however, did not square at all with the evidence as to Robert Hastings being strip-searched, and in particular been required to pull back his foreskin, and as to nothing been found there.

In the end I have concluded that it is not possible, on the evidence, to determine how the heroin got into Cell 3 on the night in question.

Tripling up

As to the suggestion that placing Chad Hyslop, Robert Hastings and Robert Currie in the same cell was inappropriate, given the evidence of an altercation between Chad Hyslop and Robert Currie earlier in the day of their arrest, I have considered the evidence as to how and why the decision was reached to place them in the same cell.

Section 14 of the Standard Operating Procedures provides that, whenever possible, only one prisoner is to be lodged in each cell. When that is not practicable, and more than one person requires to be placed in a cell, on no account are only two prisoners to be placed in one cell. It was explained that the purpose of that requirement is to avoid possible confrontation between two individuals detained in the same cell. It is also a requirement that prisoners who for any reason are likely to disagree with each other are not placed in the same cell.

I accepted evidence given during the Inquiry that there was a necessity to "triple up" because of the number of prisoners within the Police Office on the night in question, which was particularly busy. There was evidence, again which I accepted, that prior to the three individuals being placed in Cell 3, they had each been asked whether they had any difficulty with that. Not only that none of them had any difficulty with that, the evidence was that each of them had been enthusiastic at the prospect of sharing a cell. As a matter of fact there had been no confrontation between any of them whilst they were in the same cell. There was also evidence, again which I accepted, that persons, whilst drunk, often fall out with each other, only to make up again a short time later, particularly once sober. The confrontation alleged to

have taken place between Chad Hyslop and Robert Currie on Friday 23rd February 2007 had been at a time when each of them was heavily intoxicated. But the time they were placed in the same cell they had both largely recovered from the intoxication. Given the steps taken to ensure that none of the three prisoners had any objection to sharing a cell with either of the others, prior to placing them in the same cell, I am satisfied that the decision to put them in a cell together was entirely appropriate.

Standard Operating Procedures – whether there was any defect in a system of working which contributed to the death

Mr Cairns, in addressing me on the question of defects in a system of working, accepted that his submissions might be more relevant to a determination under section 6(1)(e) of the Act, rather than section 6(1)(d). The defects he suggested might exist were, firstly variances in practice among officers, secondly a certain lack of clarity in the Standard Operating Procedures as to exactly what was required by way of response from a prisoner at regular checks, and thirdly one actual instance of failure to comply with the requirements of the Standard Operating Procedures.

He gave as examples of variations in practice, differences in the way in which breakfasts were handed into prisoners (whether through the hatch in the cell door, or by opening the cell door), differences between witnesses as to whether various matters required or did not require to be recorded in a prisoner's custody records (for instance, whether every visit by a prisoner to the toilet required to be recorded). I did not regard these as defects in a system of working -- certainly there was no evidence that any such variances in practice contributed to the death of Chad Hyslop. It seemed to me that what is important is that there is proper recording of the required hourly (or more frequent) checks on each prisoner, and of anything else directly relevant to the health or welfare of a prisoner or of importance in respect of his continued detention, release, or processing in respect of the crime or crimes allegedly committed by him. The variations in practice in respect of, for example, how breakfasts are handed out to prisoners, do not appear to me to be of great importance. I have accordingly made no determination in respect of these matters.

Mr Cairns also made something of what was recorded in respect of invitations to prisoners to have a wash, and invitations to accept a meal. Whilst I agree with Mr Cairns that it does not seem quite right, where a prisoner is invited to have a wash and does not respond, that it is recorded that a wash has been refused, or where a prisoner is asked whether he wishes a meal and does not utter a positive refusal, that it is recorded that a meal has been accepted, I certainly did not regard these practices as defects in a system of working which contributed to the death of Chad Hyslop. I further do not think they have any direct relevance to the circumstances of his death, and have therefore made no determination in respect of these

matters generally. I have, however, included in my determination, for the reasons given below, a finding that it was incorrectly recorded that Chad Hyslop was awake at 08.10 hours on the morning of his death, and that he then accepted breakfast.

I turn now to Mr Cairns' suggestion that there is a lack of clarity in the Standard Operating Procedures as to what exactly is required by way of a response from a prisoner at regular checks. It was, with one exception, accepted by witnesses who gave evidence to the Inquiry that what is required at hourly (or more frequent, where required) checks on the health and welfare of prisoners, is the rousing of the prisoner and the obtaining from the prisoner of a positive verbal response. One witness indicated that he might on occasions accept, in place of a verbal response, the giving by the prisoner of the "the thumbs up".

Section 15.3 of the Standard Operating Procedures provides that all prisoners are to be visited at least once per hour, and at each visit are to be roused and spoken to. There is reference to the Health Care of Prisoners -- Observation Checklist, which appears later in the document. There is provision that a prisoner found unconscious is to be removed immediately to hospital. Section 15.4, which refers to drunk prisoners, provides that particular care is to be taken in relation to prisoners who are drunk or under the influence of drugs. If a prisoner appears drowsy, the prisoner is to be placed in the recovery position. It is provided that a drunk prisoner is to be visited at least once every 30 minutes (or more frequently if considered necessary by the Duty Officer). It is further provided that if no distinct verbal response is obtained from a drunk prisoner, then immediate consideration must be given to having the prisoner removed to hospital. The Observation Checklist provides that if any prisoner fails to meet certain criteria a police casualty surgeon or ambulance must be called. The criteria are, "rousability" -- can the prisoner be wakened, "response to questions" -- can the prisoner give appropriate answers to questions, and "response to command" -- can the prisoner respond appropriately to certain commands? The reader is directed to take into account the possibility of the presence of illness, injury or mental condition.

When making entries in a prisoner's custody record, officers have available to them status/visit codes, which enable a simple number to be entered in the computer, indicating the status of the prisoner. There is a list of such codes, which forms Crown Production No 13. Codes 2, 4, 6, 8 and 10 all indicate that the prisoner was at the time of being checked asleep (whether sober, under the influence of drink, drunk, under the influence of drugs, or under the influence of solvent), and that he or she was roused and gave a positive response.

Whilst it may well be inferred from the provisions of section 15.4 of the Standard Operating Procedures that in respect of a drunk prisoner it is essential, at regular checks on the prisoner, to obtain a distinct verbal response, it does appear to me that, although it was almost universally accepted by witnesses to the Inquiry, that <u>every</u> prisoner who is asleep

requires to be roused, and that is necessary to obtain from the prisoner a positive verbal response, that the Standard Operating Procedures do not specifically state that, and do not state clearly exactly what is required. Because the question of whether a positive verbal response was, or could have been, obtained from Chad Hyslop at 07.50 hours on the morning of his death, it seems to me that this is a matter which is relevant to the circumstances of his death, and I have accordingly, in my determination, made a finding under section 6(1)(e) of the Act that there is a certain lack of clarity in the Standard Operating Procedures.

It is clear from the evidence that at some point Chad Hyslop was removed from his cell for fingerprinting, and that, apparently contrary to the provisions of Section 11 of the Standard Operating Procedures, he was not searched before being returned to his cell. No doubt such a search is more important where the prisoner has, for the purposes of interview, medical examination or the like, been in the company of somebody from outwith the Police Office, particularly if not supervised by a police officer or divisional assistant custody officer, than where the prisoner has been in the company of a police officer or divisional assistant custody officer at all times whilst outwith his cell. In any event, whilst there appears on the face of it to have been a failure to comply with the Standard Operating Procedures, it does not appear to me that that failure amounted either to a failure to take a reasonable precaution whereby Chad Hyslop's death might have been avoided, nor a defect in any system of work which contributed to his death. Nor, given the purpose of his being removed from his cell, does it appear to me to be a fact which is relevant to the circumstances of his death. There was no suggestion whatsoever that Chad Hyslop might have obtained the drug whilst out of his cell for fingerprinting. Accordingly I have made no finding in my determination in respect of this matter.

Availability and use of Naloxone at Police Offices, and employment of nurses

I was asked to consider making comment in my determination as to the desirability of having Naloxone available at Police offices, for administration to persons suspected to be suffering from heroin overdose, and as to the desirability of introducing nurses to Police offices to assist in looking after persons in custody.

Professor Busuttil gave evidence about the employment of nurses by Lothian & Borders Police, to assist overnight and at weekends with the care of prisoners. It was his evidence that there was an ongoing pilot study in Tayside Police, mirroring the service in Lothian & Borders. He also gave evidence about the use of Naloxone in cases of suspected heroin overdose. He explained that the administration of Naloxone, which requires to be by intravenous injection, to a person suffering from heroin intoxication, would almost instantaneously result in that person coming out of a coma. He also explained that the nearer to the time when the person collapses as the result of intoxication, on becomes comatose,

that Naloxone is administered, the greater its efficacy. Nurses of G Grade and higher are able to give intravenous injections. It was Professor Busuttil's evidence that in this case he did not think that the administration of Naloxone by the paramedics, once they arrived at the Police Office on the morning of Chad Hyslop's death, would have had any effect.

Detective Sergeant Kenneth Simpson, who was called to give opinion evidence on the use of drugs, said that he was aware of an NHS study or programme in respect of providing Narcan (which he understood to be the name of the antidote to heroin intoxication) to families of heroin addicts for use in the event of overdose. He was aware that there was police involvement in that study or programme. He was, however, not sure what stage the introduction of that programme had reached. He was also aware of discussions within Strathclyde Police as to the administration of Narcan in police custody. However, he was not sure what the formal process was. He believed that the matter had been looked at but not pursued.

No indication had been given at any of the preliminary hearings, prior to the commencement of the Inquiry, that the issues of the introduction of nurses to assist with the care of persons in police custody, or the availability of Naloxone in Police Offices, would be raised at the Inquiry. Professor Busuttil recognised that before a Police Force decided to employ nurses, or make Naloxone available at Police Offices, there were several significant and major issues to be addressed and resolved, including resources, prioritisation of resources, and training. If nurses were not employed, then it was Professor Busuttil's evidence that there would be likely to be resistance to Police Officers and civilian support officers being trained to administer Naloxone to prisoners intravenously, particularly given that the prisoners concerned are likely to be persons whose veins have been misused, and are difficult to inject into.

I am of the view that the issues of the introduction of nurses to assist with persons in police custody, and the availability of Naloxone at Police Offices, were only superficially addressed at the Inquiry. Given that, and the fact that there was no evidence from anybody within Strathclyde Police with proper knowledge of previous discussions about the introduction of Naloxone, I feel it would be inappropriate of me to make any comment on either of these issues in my determination. In any event, the results of any pilot study being carried out in Tayside will no doubt be made known to other Forces, which will then be able to consider these matters properly.

Strip search procedure

Whilst there was no criticism of any of the searches carried out on Chad Hyslop, or either of his cellmates, I wish to make some comment about strip search procedure, in view of the

evidence about Robert Hastings being strip-searched, and the evidence given by Detective Sergeant Simpson about strip search procedures generally.

It was Robert Hastings' evidence that when arrested he was always strip-searched, presumably in view of his being an abuser of drugs. Robert Campbell, the Divisional Assistant Custody Officer on duty when Robert Hastings was taken to Dumbarton Police Office, gave evidence about the strip searching of Robert Hastings. He described Robert Hastings as sitting on a bench in a room behind the charge bar, with his arms held by two police officers. He was then told in detail how the search was to be carried out. Mr Campbell then inspected his head, and searched in his hair. Robert Hastings was then told to open his mouth, and to move his tongue from side to side, whilst Mr Campbell looked into his mouth. It was Mr Campbell's evidence that there was nothing in Robert Hastings' mouth. After that Robert Hastings was instructed to start removing his clothing, item by item. He did that, and each piece of clothing, and his shoes, were searched. During this process a piece of cannabis, which had fallen out of Robert Hastings' trouser leg onto the floor, was recovered.. Once Robert Hastings was naked, Mr Campbell noticed a plastic bag held between Robert Hastings buttock cheeks. He removed it. The plastic bag contained a number of Valium tablets. Hastings was instructed to squat and to pull his buttock cheeks apart, for further search of that area. Nothing further was found. He was then instructed, while standing, to lift his scrotum. Nothing was concealed behind it. He was then instructed to pull back his foreskin, which he did. Mr Campbell's evidence was that he ensured that nothing was concealed there.

Detective Sergeant Simpson gave extensive evidence as to the lengths which drug users go to, in order to conceal drugs. He explained that he is involved in training probationers and experienced police officers in search procedures. It was his evidence that searching inside a prisoner's mouth is difficult. It is something which he particularly addresses in training. He explained that a "tenner bag" of heroin is about the size of a pea, and is easily hidden not only under the tongue, but also between the gums and the cheeks. He explained that some persons are able to store a tenner bag in the back of the throat, and later cough it up. He went on to say that the policy is not to put one's fingers into the mouth of a prisoner. The prisoner should be asked to open his mouth and lift his tongue. In Detective Sergeant Simpson's experience searches of prisoners' mouths tend to be done by way of requiring the prisoner only to open his mouth and move his tongue about. He explained that, in training, he and his colleagues advised a more thorough search of the mouth, including requiring the prisoner to lift his lips and to move his cheeks, to enable the person carrying out the search to look into the spaces between the cheeks and the gums. It was his evidence that simply requiring a prisoner to open his mouth and move his tongue about might be useless. He was unaware to what extent advice given by him and his colleagues in this respect was followed, but noted that the Standard Operating Procedures gave no specific guidance on the matter.

I accepted the opinion evidence given by Detective Sergeant Simpson. It seems to me to be illogical to go to the lengths of carrying out the unpleasant tasks of searching between a prisoner's buttock cheeks, under his scrotum, and within his foreskin, but not, when searching within his mouth, to examine the areas between his cheeks and his gums. Given that one of the possible methods by which the heroin in this case came to be in the cell occupied by Chad Hyslop, was that it was taken in, concealed, by one of his cellmates, I am of the view that the extent of the search carried out on Robert Hastings is a fact relevant to the circumstances of Chad Hyslop's death. Accordingly, in my determination under section 6(1)(e) of the Act I have made a finding that the strip search of Robert Hastings was incomplete.

Whether a positive verbal response could have been/was obtained from Chad Hyslop at 07.50 hours on 25th February 2007

This was, I think, the most important issue arising at the Inquiry. The check carried out on Chad Hyslop at 07.50 hours on 25th February 2007, was a required hourly cheque, during which the person carrying out the check, namely Police Constable Bolling, was required to rouse Chad Hyslop and obtain from him a positive verbal response. Clearly, if a prisoner is suffering from a drug overdose, it is important to ascertain that at the earliest possible opportunity, so that appropriate steps may be taken to try to reverse the effects of the overdose.

It was PC Bolling's evidence that when he visited Cell 3 on the morning in question he called out Chad Hyslop's name and asked if he was all right. He said that he heard Chad Hyslop responding with a single word, which he thought was neither "yes" or "Aye". He took the response he heard as a positive verbal response, and made an appropriate entry in Chad Hyslop's custody record.

In view of the evidence given by Professor Busuttil and Dr Clark I was invited to conclude that at 07.50 hours on the morning in question Chad Hyslop would have been unable, due to the effects of heroin intoxication, to give a positive verbal response, and therefore to conclude that the required check had either not been carried out at all, or had not been carried out properly. I should say immediately that I am quite satisfied, on the basis of PC Bolling's evidence, and what is contained in the computerised custody record, that PC Bolling did carry out a check on Chad Hyslop and his two cellmates at 07.50 hours on 25th February 2007.

As to whether or not Chad Hyslop would have been able to give a positive verbal response at 07.50 hours, there appeared, on the face of the reports produced by Professor Busuttil, Dr Clark and Professor Kernbach-Wighton, to be a conflict between the opinions, on the one

hand, of Professor Busuttil and Dr Clark, and, on the other hand, that of Professor Kernbach-Wighton. In the report prepared by him, jointly with Dr Marjorie Black, Dr Clark explained that the expected course of events with heroin intoxication, would be for the person affected to become more and more deeply unconscious and unresponsive before dying. He expressed the view that the report of Chad Hyslop "verbally responding" 40 minutes before he was found dead is somewhat surprising. Professor Busuttil, in his report, expressed the view that it is incongruous, given what is known about the pharmacokinetics of morphine, that Chad Hyslop could have conversed and responded to being woken up, a short period prior to his fatal collapse, and furthermore that he apparently accepted a meal at that time (as will be clear from what is said above, Chad Hyslop did not actually accept a meal on the morning of his death). In his report, Professor Kernbach-Wighton explained that the progress of heroin intoxication involves unconsciousness, and further depression of the central breathing regulation, finally causing respiratory arrest. He explained that the course of an intoxication is usually progressive, meaning that initial drowsiness after taking a certain amount of heroin/morphine will steadily deepen to unconsciousness and then result in death. He agreed with Dr Clark that the most common and expected course is mainly characterised by continuously increasing symptoms with the final point "death". He went on to say that there may be considerable inter individual and intra individual differences regarding the effects of heroin/morphine, and therefore each case has to be assessed individually. In respect of the account given by PC Bolling, Professor Kernbach-Wighton expressed the opinion that it is quite possible that Chad Hyslop responded at 07.50 hours, and possibly also at 08.10 hours, and was then found unresponsive 20 minutes later. He said that this was something he could not express with certainty, and therefore, in his opinion, both alternatives (i.e. to be able to respond, or not) appeared to be equally possible. He expressed the view that it could not be proved that the intoxication in Chad Hyslop had a typical course, with steady deterioration, and that there may have been periods during which he was in a state of less disturbed consciousness, and able to react or respond, respectively.

From what is said in these reports, it would appear that, on the one hand, Professor Busuttil and Dr Clark were of the view, respectively, that the giving by Chad Hyslop of the verbal response at 07.50 hours on the morning of his death would be incongruous or surprising, and on the other hand, Professor Kernbach-Wighton was of the view that he may well have been able to respond at that time, and indeed that he was as likely to have been able to respond as not.

However, in his evidence to the Inquiry, when asked to comment on the content of the reports of Dr Clark and Professor Busuttil, Professor Kernbach-Wighton said (in respect of Dr Clark's report) that from his point of view Chad Hyslop being able to respond at 07.50 hours on the morning in question would not be "surprising" -- it would, in his view, simply indicate that Chad Hyslop's intoxication was not following the usual course, stressing that there are unusual

courses, involving less reduced consciousness and less sleepiness. On Professor Busuttil's use of the word "incongruous", Professor Kernbach-Wighton expressed the view that what Professor Busuttil was saying was that the usual course of intoxication is a steady development, involving drowsiness, then sleepiness, then unconsciousness, and then finally respiratory arrest. In cross-examination he was asked to comment on evidence given by Dr Clark and Professor Busuttil that neither had come across a case where there had been an ability to respond so close to the time in death. In response Professor Kernbach-Wighton said that he could not exclude the possibility. He personally had come across such a case in the 1990s. He accepted that it would not be the usual course, and that it would be unusual. He went on to say that whilst it would be unusual, the possibility could not be excluded, and he could not say which would be more likely. Given the possibility that Chad Hyslop had in fact responded, Professor Kernbach-Wighton said that he could not say whether Chad Hyslop would be more likely to have responded verbally or by moving a limb. He tried to suggest that his use of the words "both alternatives are equally possible" related to the question as to whether a verbal or physical response would be more likely. I did not accept that suggestion. The Professor appeared to me to be departing from the position apparently taken by him in his report, given that at two places in his report the words "to be able to respond or not" appear after the word "alternatives". He also said in paragraph 4 of his Summary that there cannot be given a balance of probabilities regarding the discussed possible responses "verbally or by moving a leg". Later in cross-examination Professor Kernbach-Wighton was asked how frequently intoxication would not follow the usual course. He replied that it would be in a very small number of cases -- lower than 5 percent.

Taking all that together, it appears to me that all the experts were at one in saying that in the usual course of intoxication by heroin, the person concerned would fall into deeper and deeper sleep, then unconsciousness, and then death would occur, and that it would not be possible for that person to give a positive verbal response 40 minutes, or 20 minutes, prior to death. Professor Kernbach-Wighton, partly on the basis of his experience of one actual case, was of the opinion that in less than 5 percent of cases intoxication may, however, follow an unusual course, involving periods of less disturbed consciousness, when the person concerned might be able to respond a short time prior to death, particularly to a strong stimulus such as his name being called. The other two experts had no experience of that, but were not prepared absolutely to rule it out, particularly given the evidence of PC Bolling..

On the basis of the evidence of the three expert witnesses, one might be tempted to conclude, on the balance of probabilities (which is the appropriate standard of proof in an Inquiry such as this), that at 07.50 hours on the morning of his death, Chad Hyslop was not able to give a positive verbal response, perhaps indicating that the check on him at that time had not been carried out properly. However, I formed the view that PC Bolling was a credible witness. It appeared to me that he was doing his best to tell the truth. His reliability is, I think,

more open to question. In his statement, which he gave shortly after midday on the day of Chad Hyslop's death, he said that when asked what position Chad Hyslop was lying in when he visited by him at 07.50 hours, he said that he could not honestly recall. However, in his evidence to the Inquiry he was adamant that at that time he was able to recall clearly. Further, in his statement he said that when he went to the cell at 08.10 hours, Robert Currie nudged both Robert Hastings and Chad Hyslop to wake them up, and they both appeared to move, although he did not hear them speaking. Eventually, in cross-examination he accepted that any movement of the leg of Chad Hyslop had been caused by Robert Currie nudging it, and had not been a response -- he accepted that Chad Hyslop may well have been dead by that time. PC Bolling also accepted during his evidence that the entries he had made in respect of his visit to the Cell at 08.10 hours on the morning in question were erroneous. It therefore appears to me that PC Bolling's reliability as to whether or not Chad Hyslop gave a verbal response at 07.50 hours is somewhat questionable. However, it did seem to me that PC Bolling genuinely believed that he heard a response. It is perhaps not irrelevant to an assessment of PC Bolling's reliability on this matter, that during the whole time Chad Hyslop was in custody, from Friday 23rd February to the morning of 25th February, nobody had any concerns whatsoever about his health or welfare, and that when checking on Chad Hyslop, PC Bolling was the same time checking on his two cellmates.

Having considered all of the evidence, and particularly given PC Bolling's insistence that he did receive a response from Chad Hyslop at 07.50 hours, and the fact that neither Professor Busuttil nor Dr Clark could absolutely rule that out, I have decided that I am not prepared to hold, on the balance of probabilities, that Chad Hyslop was unable to, and did not, respond at that time. It is, in my view, not possible on the evidence to determine this issue one way or the other. Accordingly I have made no finding on this matter within my determination.

In view of that, I have determined that the time of death fell between about 06.45 hours on 25th February 2007, being the last time prior to 07.50 hours at which Chad Hyslop clearly did give a positive verbal response, and about 08.43 hours that day, being approximately the time at which the paramedics could find no sign of life. I am of the view that that timespan is not inconsistent with the evidence of the three experts as to the likely time of death. That evidence was imprecise as to the time of death. It was clear from the evidence that assessment of such factors as the presence of rigor mortis, and the temperature to the touch of parts of the body, at certain times after death, is to a degree a subjective exercise. The three experts were giving evidence on the basis of the observations of others. Further, it is clear that the onset of rigor depends on how long the metabolisation of glucose in the muscles takes after death – the evidence was that the level of glucose in Chad Hyslop's muscles at the time of his death was not known. There was also evidence that in respect both of the onset of rigor and of the cooling of a body after death, the ambient temperature of

the place where the body is situated has a material effect. There was no evidence as to the ambient temperature in Cell 3 on the morning in question.

I would like to conclude by thanking those who appeared at the Inquiry for the helpful way in which they presented the evidence, and made submissions, and to express my condolences to the family and friends of Chad Hyslop.