

**SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH**

[2017] FAI 26

**UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY  
(SCOTLAND) ACT 1976**

**DETERMINATION  
By Sheriff Kenneth Maciver QC**

**Following an Inquiry into the circumstances of the deaths of**

**JOY PAULA ROBSON  
JOHN LEONARD STERN  
ELIZABETH ALLAN  
IAIN JOHN PROVAN**

**Edinburgh 20 November 2017:**

The Sheriff, having heard and considered all the evidence and the submissions of parties, finds and determines as follows:

**1. In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976**

**A.** That Joy Paula Robson, born 20 October 1961, latterly resident in Portree, Isle of Skye died within Glenurquhart Forest, near Balnain, Highland Region, at approximately 11.00am on 16 February 2013.

**B.** That John Leonard Stern, born 27 November 1942, latterly resident in Bearsden, Glasgow died near to the Leet Bridge, Swinton, Scottish Borders Region, at approximately 16.30 hours on 31 May 2014.

**C.** That Elizabeth Allan, born 18 January 1951, latterly resident in Barrhead, Glasgow died near to the Leet Bridge, Swinton, Scottish Borders Region, at approximately 16.30 hours on 31 May 2014.

**D.** That Iain John Provan, born 10 January 1950, latterly resident in Barrhead, Glasgow died near to the Leet Bridge, Swinton, Scottish Borders Region, at approximately 16.30 hours on 31 May 2014.

**2. In terms of section 6(1)(b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976**

A. The cause of death of Joy Paula Robson was the sustaining of multiple injuries due to a collision with a motorcar (spectator at a car rally).

B. The cause of death of John Leonard Stern was the sustaining of multiple injuries due to a collision with a motorcar (spectator at a car rally).

C. The cause of death of Elizabeth Allan was the sustaining of multiple injuries due to a collision with a motorcar (spectator at a car rally).

D. The cause of death of Iain John Provan was the sustaining of multiple injuries due to a collision with a motorcar (spectator at a car rally).

E. The cause of the accident and the collision with a motorcar which resulted in the death of Joy Paula Robson, was the involuntary loss of control of motor vehicle T414 KRD, then being driven by Graham Schoneville during the running of the Highland Car Club 2013 Snowman Rally, following upon said motor vehicle running at speed in competition and striking stones in the roadside verge, as a consequence of which it left the track, struck trees and caused said vehicle and trees to contact and fatally injure Joy Paula Robson.

F. The cause of the accident resulting in the deaths of John Leonard Stern, Elizabeth Allan and Iain John Provan, was the involuntary loss of control of a motor vehicle registered number KR900 PC, then being driven by David Carney during the running of the Jim Clark Rally 2014, when said motorcar, while running at speed in competition and for reasons which cannot be precisely ascertained, slewed and skidded on the road there before leaving the road and entering a field where it collided with John Leonard Stern, Elizabeth Allan and Iain John Provan, causing fatal injuries in each case.

**3. In terms of section 6(1)(c) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976**

In terms of 6(1)(c) the following are the reasonable precautions whereby the deaths might have been avoided.

**A.** In the case of the Highland Car Club Snowman Rally 2013, there are no reasonable precautions which I can identify whereby Mrs Robson's death or the accident causing her death might have been avoided.

**B.** In the case of the Jim Clark Rally 2014, I identify the following reasonable precaution:

“For the designated prohibited area north of the Leet Bridge to have been created, delineated and identified in accordance with the 2014 Jim Clark Rally setup plan so that it clearly prohibited spectators or photographers from standing anywhere in that area”.

**4. In terms of section 6(1)(d) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976**

This subsection deals with the defects, if any, in any system of working which have contributed to the deaths or any accident resulting in the deaths, and in this Inquiry I have decided that the organisation and running of a rally is properly to be considered as “a system of working” and thus is covered by the terms of the subsection.

**A.** In respect of the Highland Car Club Snowman Rally 2013, I make no findings under this subsection.

**B.** In respect of the Jim Clark Rally 2014, I find that there was a weak, ambiguous, and ultimately inadequate verification system for checking the proper performance of the work of stage commanders or stage setup crews in delineating and clearly identifying areas which, for safety reasons, were prohibited for spectators.

**5. In terms of section 6(1)(e) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976**

In this subsection I am required to set out any other facts which are relevant to the circumstances of the deaths and I now do so.

In my narrative of facts there are many circumstances which in the case of each of the rallies may have had a bearing on the eventual outcome, but these facts do not all have direct relevance, and some are more heavily weighted than others. Where a combination of facts has produced a consequence, I have not thought it appropriate to detail under subsections (c) or (d), each of those facts, but rather to identify in these subsections only discrete areas which qualify by virtue of direct relevance for selection as specific precautions or defects. However, I have detailed in the Note which follows a number of situations which lead me now to consider that they are relevant under this subsection for the purpose of making recommendations. These recommendations are specific and seek to deal with matters which are close to the heart of the issues which have led me to deal as I have done with the above precautions and defects. There are other matters, perhaps somewhat more peripheral, which I deal with under the section which follows, since it is appropriate for me at this Inquiry to suggest other matters which should be taken into consideration by those who organise and run rallies.

## **6. Recommendations**

I make the following recommendations:

- A.** The organisers of the Snowman Rally and generally the organisers of rallies with forest stages, should in all of their pre-event publicity ensure that potential spectators are fully and properly advised of the geography of more remote locations, are clearly directed to safe viewing areas, and are actively discouraged from entering potentially difficult or dangerous viewing locations.
  
- B.** That in all rallies there should be clear and properly prepared plans in relation to the setup arrangements for areas which have been identified by the rally organisers as areas in which there will be a prohibition for spectator viewing.
  
- C.** These prohibited area setup plans must be given to marshals who are allocated to these areas so that they are clear as to the precise limits of the areas of prohibition, and are thus able to ensure that they do not permit entry by spectators into these locations.

- D.** That the crews of all safety cars should have these setup plans, so that it is clear to everyone, including race officials, marshals, other course cars and spectators, that the area is prohibited for viewing.
- E.** That at least one safety car has a specific remit in relation to ensuring that prohibited areas are fully and properly marked out at the setup stage.
- F.** That rally organisers seek to institute a system of recording crashes, accidents, cars leaving the track, or significant “near misses” which will permit them to identify areas of their rally course, which in the past appear to have a history of track departures which, if repeated, could place spectators at risk of injury.
- G.** That until the Motor Sports Association institute a warning light system within rally cars, the current yellow flag arrangements should be urgently reviewed in order to ensure that as many cars as possible can be stopped as quickly as possible in the event of stage commanders or rally control being advised of an incident requiring stage stoppage.
- H.** That all marshals be clearly clothed with coloured and marked tabards to ensure that there is no confusion in the minds of spectators as to their identity and role.
- I.** That the Motor Sports Association consider including in their marshal training scheme, specific advice and information on how to deal with situations where spectators put themselves on a live rally track for whatever reason.
- J.** That the Scottish Government Review Group recommendation in relation to the appointment of an event safety delegate, is treated by the Motor Sports Association as a matter of the utmost importance and that a high standard of training of these safety delegates is maintained.
- K.** Rally organisers must at an early stage of planning appoint a spectator safety officer and event safety officer and must create an event safety plan based on an assessment of all of the risks.
- L.** The Motor Sports Association should arrange training for event safety officers and spectator safety officers and should understand that the creation and

submission by the rally organisers of an acceptable event safety plan, will be a condition of the granting of a rally permit.

## **7. Matters for consideration**

While I have not seen fit to deal with the following matters as specific issues of precaution; defect or recommendation, they are nonetheless matters which are important and which I suggest be given consideration by those concerned.

7.1 In forest rallies there should be discussion and cooperation between the organisers and the relevant forestry authorities in relation to the creation or marking of safe routes from one spectator viewing area to another, in order to reduce any perceived need to walk on the rally track.

7.2 Rally organisers should investigate and consider the feasibility of remotely viewing spectator movement and congregation in areas of concern in order to anticipate a need for additional marshalling at that location.

7.3 In rallies where crowd behaviour has in the past been an issue particularly in relation to spectators moving back into unsafe areas after advice from safety cars, consideration should be given to having an additional safety officer for each stage so that any such movements can be dealt with up to a point as close to the start of the rally as possible and if necessary the stage should be delayed to allow that officer to get to the location swiftly and assess the situation. The Scottish Government Review Group's recommendation concerning the addition of a further safety car for swift intervention may assist in this area.

7.4 The Motor Sports Association should consider further ways of disseminating a safety code to spectators pre-event, by means of videos linked to their or the rally websites, by warning videos attached to TV footage of championship events; and around the event itself by bold and obvious signage, and by use of more prominent and informative safety taping. Proximity to the track should be a key area of cautionary advice.

7.5 Rally organisers should upgrade the visibility and profile of the spectator safety car and bear in mind that it is important that spectators see, and hear messages from that vehicle, and that the vehicle itself be of a type which allows good visibility into areas not immediately adjacent to the roadside.

7.6 While the 2006 Safety Car Guidance documents issued by the Motor Sports Association have been updated in the light of the Scottish Government review in that area, the Motor Sports Association should look again at the recommendation of that group in the light of the finding in this Inquiry that a patent omission was missed time and again by several different cars and should consider and investigate whether there may be either gaps or cause for confusion in the current guidance.

7.7 The car which crashed at the Jim Clark Rally in 2014 came to rest just within what would and should have been the 3m prohibition area, but in fact that was good fortune linked to the fact that it hit a large solid strainer post and a substantial hedgerow. It should be recognised that on many occasions a car going off the road at speed in such a location would travel much further, and I therefore suggest that consideration be given by rally organisers, that for open locations such as entrances, the safety zone or box should be many yards deep as was the general pre-2014 policy at that rally.

7.8 Prohibited areas should be very clearly marked with positive and easily recognised taping and signage, and that signage should be carefully positioned so as not to create confusion as to where the prohibited area starts and finishes.

7.9 While I have approved the Motor Sports Association's preferred "predicted" number description for marshal complement, the safety delegates must understand that at the two rallies with which this Inquiry has been concerned, marshal numbers were, at certain pressure points close to being insufficient, and accordingly, a firm line must be taken by the safety delegates in relation to the organisers assessments of the predicted number. Rally organisers must also understand that the safety plan may not be approved if the predicted number is inappropriate for the stage, or for any location on the stage.

7.10 Rally organisers must understand the need to locate the most experienced marshals in sufficient number to the most potentially difficult areas of spectator control and must always bear in mind the need for flexibility on the day of the event, if difficulties arise.

7.11 Where a rally route materially changes from one event to another, as at the 2013 Snowman Rally, or where all or part of a route has not been used for a period of time, organisers must carefully consider all of the potential spectator access and viewing issues which may arise as a consequence of the change, or the passage of time.

**Signed "K.M. MACIVER"**  
**Sheriff, Edinburgh**



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## NOTE

### 1. PROCEDURAL HISTORY

[1] In December 2016 the procurator fiscal at Edinburgh petitioned the court for the holding of this Fatal Accident Inquiry and on 19 December 2016 I ordered a preliminary hearing for 7 February 2017. Since that date there have been a number of further preliminary hearings and the Inquiry began to hear evidence on Tuesday 18 July. Evidence continued to be led without break until 6 September 2017 when the Inquiry was adjourned for 6 days to allow an expert witness to consider evidence earlier led, and thereafter for two weeks for written final submissions to be prepared by all parties. These submissions were heard on 28 September 2017 and on that date I closed the Inquiry and commenced the preparation of this Determination.

[2] The application of the Crown was in respect of the deaths of spectators at two separate multi-venue stage rallies (hereinafter referred to as “rallies”) and although these were patently separate events with no ostensible connection between them, the Crown considered that the fact that spectators had been killed (and others injured) in each of these rallies raised an issue of such public concern that it required the holding of a fatal accident Inquiry into the circumstances of the deaths. In particular it was considered that it was necessary to ascertain whether there were any similarities in the circumstances which would suggest that there may be any issue of a defect in the system of prevention or avoidance of spectator injury at such events, or any measures or reasonable precautions which may be identified whereby such injury might have been avoided on these occasions, or could be avoided in the future.

[3] There was a delay in making the application for this Inquiry but in saying that I am in no sense critical of that delay since I understand that there were a number of procedural difficulties which I need not deal with in this Determination, but which included the fact that until there was a legislative change in 2016 it was not competent for a single sheriff court to deal with deaths which had occurred in different jurisdictions. When that legislative change came about, it became possible for the Crown authorities to seek to hold the Inquiry in relation to a death occurring in Highland region and a separate death occurring in the Borders region in a single court. The court selected after due consideration and consultation was Edinburgh

Sheriff Court. There had been in relation to these separate rally deaths a considerable level of public interest and the Crown also had to take into account the position and views of the relatives of the deceased, together with issues of overall convenience for the many witnesses who had to come from different parts of Scotland and also from further afield.

## 2. FACTUAL BACKGROUND

[4] Turning more directly to the factual situation, the Highland Car Club Snowman Rally (hereinafter referred to as “Snowman”) was held on 16 February 2013 and began on the morning of that day at Inverness. During the first forest stage of that rally in Glenurquhart Forest, Inverness-shire, (special stage 1) a rally car left the track and crashed into trees near Post 16 at high speed, causing the death of Joy Paula Robson (born 20 October 1961) formerly residing in, Portree, Isle of Skye. She was a spectator at the rally and was struck either by the rally car or by trees felled by the car in the course of the crash, or by both, and she died there as a direct consequence of these injuries.

[5] That death was fully investigated at the time, but before any final decision was reached about future procedure there was a second tragic event when on 31 May 2014 a rally car crashed during special stage 16, on the second day of the Jim Clark Rally (hereinafter referred to as “JCR”) just north of a bridge known as the Leet Bridge on an unclassified road near to the B6461 Kelso to Swinton Road in the Scottish Borders. Again, in this case the car left the rally stage and crashed into a group of spectators, colliding particularly with three spectators who were instantly killed. These spectators were John Leonard Stern (born 27 November 1942) formerly residing in Bearsden, Glasgow; Elizabeth Allan (born 18 January 1951) and her partner Iain John Provan (born 10 January 1950) both formerly residing in Barrhead, Glasgow. Their deaths were also as a direct result of the impact with the rally car, and again each died there and then as a consequence of major traumatic injury.

[6] While again they were spectators at the rally, it is of significance that Iain John Provan and Elizabeth Allan had signed in with the organisers of JCR as accredited members of the media in their capacity as a photographer and journalist respectively. To that extent it was a factor that they could each be viewed as being in the course of their employment at the time of their deaths. It was also a factor in the overall safety consideration that a spectator had been injured in each rally and that many more were exposed to high risk of serious injury.

[7] Accordingly, these two accidents while clearly separate and unconnected events in themselves, had the common feature that deaths of spectators had occurred in the

course of formal and organised motorsport events of the same general character. Because these events were closely connected in time, and because there had been only two (2006 and 2009) similar events in the recent past anywhere in the UK, it was understandably felt necessary at Scottish Government level, for there to be formal consideration of issues of safety at motorsport events of that type. The Review Group on Motorsport Event Safety, (hereafter “the Review Group”) was established, and the membership of this group consisted of acknowledged experts in the motorsports area, with Sir Jackie Stewart appointed as the expert advisor. In addition to his universally recognised status in active participation in motorsport, he also has a distinguished record in the field of motor racing safety and has been actively involved in that for many years. The Review Group understood that a fatal accident Inquiry would inevitably be held and so was careful to avoid investigation into the facts and background of the particular accidents at Snowman and JCR, but reviewed very fully safety issues at rallies generally and of course had in mind the types of situation in which these deaths had occurred. Their report was swiftly produced and by the beginning of the 2015 rally season the import of their recommendations, which were instantly seen to be useful and practicable, began to be brought into effect. In the course of this Inquiry I heard about many of these and make reference to them later. At this stage it should simply be acknowledged that I heard nothing but praise for the work of that Review Group from the witnesses who give evidence about the changes effected to date.

### 3. PROCEDURE AT THE INQUIRY

[8] At the Inquiry, counsel for the Crown was Mr A Brown QC, Advocate Depute, and there was separate representation for a number of the interested parties. Before dealing with these individually I should indicate that while the relatives of the three deceased at JCR were not legally represented at the Inquiry, the Crown took on board the duty of keeping them advised, and on some days certain of them attended court and heard evidence. The representatives for Joy Robson withdrew after the second preliminary hearing. I was advised of that by them in writing, and I responded personally, undertaking that the Inquiry would deal very fully with all issues and circumstances which were likely to affect them.

[9] It is disappointing to record at this stage that Mrs Robson's son, a young man of quiet and reserved disposition, who was a witness at the Inquiry and who had been present with her at the rally and at her death, was pursued in a persistent and intrusive, if not aggressive, way by media photographers outside the Sheriff Court and was considerably upset by that, sufficiently to raise a complaint which was brought to my attention. This type of pursuit was a feature of this Inquiry which continued with other witnesses, and which I had to review by looking at television news footage in order to assess the scale of the problem, which affected many witnesses as they arrived at and left the court building. Eventually the court had to make special arrangements to try to obviate the harassment of the witnesses and others who attended with them in the public areas outside the precincts of the court by unsolicited and unwelcome photography of persons who were already considerably upset by the circumstances which led to them being at court. The media signally failed to observe the right of privacy of Mr Robson in particular, and also of other witnesses subsequently. The fact that I was obliged to deal with issues of conduct of photographers is particularly ironic given the circumstances surrounding the death of Mr Provan the photographer who was killed at JCR.

[10] The parties who were represented at this Inquiry were as follows:

The Royal Automobile Club Motor Sports Association Ltd (hereinafter referred to as the MSA) was represented by Mr Gray QC. The MSA is recognised as the sole four wheeled motor sport governing body for the UK, and as such is responsible for the

governance and administration of all forms of MSA licensed motorsport in the UK, controlling the technical and sporting rules across the various forms of motorsport. Snowman 2013 and JCR 2014 were properly licensed events and therefore fell under their governance. Further detail of the role of the MSA and of the relationship between them and other parties is dealt with in a dedicated chapter below, as are the duties and responsibilities of the various parties and bodies represented at this Inquiry.

[11] The Highland Car Club Ltd was represented by Mr Stewart QC, and that club is the organising body for the annual Snowman Rally and was the holder of a valid MSA organising permit to cover the running of it in 2013.

[12] The Jim Clark Memorial Motor Club Ltd is a limited company which has since 2006 been responsible for the organisation and management of the annual JCR event and it is a not for profit organisation whose office bearers all work on a voluntary basis. At the time of the 2014 event it was known as Jim Clark Rally Ltd but has since changed its name. It was not a registered car club in 2014 and was therefore unable to apply to the MSA for the permit which is required to hold a rally. The MSA were aware of the position and understand that the permit holder for a rally may not be the body which organises the event. Mr Duncan ceased to represent the company partway through the Inquiry and representation thereafter was undertaken by Mrs Macmillan, solicitor, Edinburgh, the original instructing solicitor.

[13] Mr Smith, Advocate, represented the Berwick & District Motor Club Ltd who are a longstanding MSA registered motor club, and who applied for and were granted the licence or permit to run the 2014 event. Again, while this is a limited company there are no paid employees within the structure and all office bearers and others work on a purely voluntary basis.

[14] Mr Bowie QC represented Russel Blood who held the position of clerk of the course for JCR 2014 and who was also at the time of that event a director of the Jim Clark Memorial Motor Club Ltd (then known as Jim Clark Rally Ltd).



[15] Mrs Duff, Advocate, represented Lock Horsburgh. Mr Horsburgh held the position of stage commander for the Swinton special stage of JCR 2014, during which the accident giving rise to the deaths occurred.

[16] Mr Cairns solicitor Edinburgh represented Darren Smith who was a director of the Jim Clark Memorial Club Ltd and also a director of the Berwick & District Motor Club Ltd. He held the position of logistics officer for JCR 2014.

[17] The Scottish Borders Council was represented during the Inquiry by Mrs Fraser of Clyde & Co, Solicitors. The only real involvement of the council was the fact that JCR takes place on public roads which are at various points over the three day event closed by valid statutory orders. No issues of controversy in that connection arose in the course of the Inquiry.

[18] All of the private individuals mentioned above, Russel Blood, Lock Horsburgh and Darren Smith were also witnesses at the Inquiry, as were the drivers of the two rally cars involved in the fatal crashes. The driver of the car at Snowman 2013 was initially legally represented but after the first preliminary hearing he elected not to be represented further. Both drivers gave evidence on oath without the administration of any caution against self- incrimination, and both answered fully all questions put to them.

[19] In this Inquiry I heard the evidence of over 100 witnesses and admitted by Joint Minute the evidence of a further seven. Annexe 1 lists all of these. I saw, read and took into account dozens of items of documentary evidence, photographs and video footage which it is not practicable to annexe, and where necessary, I simply refer to these in this Determination by reference to content, and on occasion by extracting and including a relevant portion.

[20] There were four lengthy Joint Minutes of Agreement, and it is proper to record here my appreciation of the painstaking work and co-operative discussion between parties which lay behind the detailed and careful acceptance by Joint Minute of so many important and detailed portions of evidence. This was a case in which the Crown originally disclosed hundreds of listed witnesses and thousands of

pages of productions in written form, and thus a great deal of court time was saved. While I do not consider it necessary to reproduce these joint minutes as part of this Determination, it should be understood that the content, while it may not be referred to specifically in terms of its source, forms a substantial part of my findings, and in places I have incorporated the terminology of the Joint Minutes when recording matters which I have found to be established.

[21] In this Determination I have decided that it is not necessary or appropriate to detail a long list of findings in fact, and instead the Determination is set out in a narrative form from which it will be clear what I have and have not found to be established from the facts led during the Inquiry. Assessment of the totality of the evidence led, leads me to certain stated conclusions arrived at from full consideration of the evidence of witnesses, from the Joint Minutes, from pieces of generally uncontroversial evidence obtained from examination of documents, from a detailed viewing of photographs and video footage, from the evidence of certain expert, professional and technically qualified witnesses, from elements of judicial knowledge, and from inferences drawn from combinations of all of these features.

[22] The Inquiry was raised and commenced at a time prior to the introduction of the new rules of 2017 but was conducted with the spirit of these new rules firmly in mind, and this Determination also follows, in general terms, the format which is recommended there.

#### 4. REMIT AND LEGAL FRAMEWORK

[23] This Inquiry was held under section 1(1) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. The petition of the procurator fiscal sets out the information available in relation to the four deaths and indicated that it appeared to the Lord Advocate to be expedient in the public interest to publicly enquire into the circumstances of the deaths, and in particular the court was asked to make enquiry into the following matters:

1. Where and when each of the deaths occurred;
2. The cause or causes of each of the deaths and the accidents resulting in the said deaths;
3. The identification of reasonable precautions whereof the said deaths and the accidents resulting in the said deaths might have been avoided;
4. The identification of the defects in any system of working which contributed to the said deaths and to the said accidents;
5. The establishment of any other facts relevant to the circumstances of the said deaths.

[24] In that respect the application mirrored the words of section 6(1) of the 1976 Act, which provides the objective for the holding of a Fatal Accident Inquiry. Such an Inquiry is essentially a fact finding exercise and the court has no power to find, establish or apportion blame. Nonetheless, it is appropriate if there is evidence which points to the conclusion that individuals, public bodies, organisations or systems of working may be criticised, that inferences may be drawn from such findings which can form a basis for alleging fault. The Determination must proceed solely on the evidence led at the Inquiry and be defined by the matters set out in section 6(1) of the 1976 Act, as listed above.

[25] In the somewhat complex and wide ranging factual background in this particular case, I deal later with the precise extent of the court's remit, the areas of evidence which will require particular scrutiny, and the areas which are not problematic and will not require distinct treatment.

[26] I have carefully considered how best to produce and present this Determination so that it properly covers all of the desired elements and deals with the whole range of positions presented to me in the evidence and in the closing submissions. These were two separate rally events with some common features, but also distinct and individual in important respects. I considered whether it was appropriate to produce two separate Determinations, but I think it right to respect and understand the position initially adopted by the Scottish Government and subsequently by the Crown, in asking for a review and then an Inquiry which encompasses both events. Having considered the position fully now in the light of all the evidence, I find myself in agreement with that original stance of Scottish Government and Crown, largely because of an overarching common aspect which applies to and connects the two separate events. The matter which I consider makes this properly a joint Fatal Accident Inquiry is the overall general issue of spectator safety, specifically at such rallies. That same issue makes it necessary and appropriate in my view to present the Determination in such a way that similar and dis-similar, joint and separate, factual areas are clearly set out in such a way as to enable them where appropriate to be considered together and in conjunction with each other.

[27] I will therefore deal with the various issues raised at this Inquiry in separate sections, occasionally having little or nothing to add because no issue of dispute or difficulty arises, on other occasions making comment in relation to one rally and not to the other, but generally proceeding in a way which reviews and assesses the central and over-riding issue of spectator safety, against the background of what was being done in that area by the organisers of each of the two rallies.

[28] I propose therefore to deal with these various areas by summarising the evidence in each, and in so doing making it clear what evidence I have accepted and what facts I have found to be established, but without at that narrative stage making specific comment, observation, or recommendation in the areas being discussed.

[29] Having done that, I will revisit each of these topics as necessary, and deal with each of them in the manner desired by the application of the legislation and rules which apply to this Inquiry.

[30] During all of this, the careful submissions of parties on the evidence led at the Inquiry are key to the process, particularly to the matter of whether or not it is appropriate for the court to identify any failures in the systems at these rallies, any specific precautions for future rally preparation and organisation, and whether it is appropriate in that connection to make recommendations for the future.

## 5. PRELIMINARY OBSERVATIONS

[31] Before proceeding to deal with this specific area I feel bound to make a general observation having heard the evidence of around fifty individuals who were closely involved with these two rallies either as office holders, marshals, organisers or as volunteer workers in setting up the various rally stages. It is appropriate to say that I was greatly impressed with the personal qualities which exuded from these men and women. In general they were highly experienced at a number of different levels of rally sport, many had been drivers or co-drivers, many had been marshals for many years and had moved up through the various functions surrounding rally organisation to become holders of responsible offices in many different rallies, and all had a clear and lifelong love of rallying, and were both enthusiastic and knowledgeable about all aspects of it. Importantly they were also all clearly and very genuinely concerned and interested in the issue of safety, and I had no difficulty in terms of their credibility and reliability with the acceptance of the vast majority of the evidence which was led before me.

[32] They were in general mature individuals in responsible full time occupations, and giving much - in some cases all - of their free time towards the sport. It struck me while listening to the organisers and operatives at the Snowman event of 2013, that if I was tasked to organise such an event I would be hard pushed to find a more suitable group of knowledgeable, dedicated, and responsible individuals to organise and run it. Similarly in the JCR scenario, I was again hugely impressed with the experience, application, and attitude of the organising team of this even bigger event, and I was also struck by the extent to which they were prepared to move outside of their own local car clubs and to involve knowledgeable and experienced people from clubs elsewhere in Scotland and in the north of England, bringing in people from there who were not only highly experienced but also very loyal to JCR in that they returned to help year after year. These two events are major undertakings and the scale of the preparation, organisation and delivery work should not be underestimated.

[33] Even in such circumstances however things can go wrong, and sometimes the consequences of oversights or failures can be dramatically out of proportion with the original act or omission, and may not be a reasonably foreseeable consequence. In the paragraphs which follow I will discuss what could and could not have been done in various situations which arose at these rallies, but in all of that it has to be borne in mind that the individuals from whom I heard evidence during this Inquiry, have been of superior quality, and have been event organisers who have displayed the highest level of dedication and responsibility in organising difficult and risk-filled events which took place over many miles of road and in circumstances where they were required to plan in advance for a wide range of eventualities over some of which they could not always have knowledge or control. I heard nothing in this Inquiry which would indicate that either team could not now, or in the immediate future, safely and competently run their event.

[34] Any suggestion later in this Determination that something could or should have been done, or done differently, in any given situation, or where there is a recommendation for a change in working practice, should not necessarily be seen as being a criticism of any individual or of any system of work. It is a sad, but acknowledged fact, that change and the evolution of new practices and techniques often stems from the occurrence of a tragic event which was genuinely considered to be unexpected or unlikely at the time of its occurrence.

[35] Finally in these reflections on the shape, form and content of this Determination, I should say that I considered whether or not it was possible to include links which would allow readers to more fully appreciate the events by being able to see much of the video footage which the Inquiry saw. This would for example have allowed those interested to see exactly where spectators were standing and/or moving around the times of these accidents, and also other visual evidence of particular situations which are described within the Determination, and would allow them more easily to understand the circumstances and mechanisms which preceded and surrounded the crashes. Regrettably, I find that that is not a

technically realistic aspiration, and accordingly parts of this Determination may be a little cumbersome in that it is necessary to precisely describe matters such as the movement of spectators or rally cars, and to explain the geography of particular locations, all of which could have been more simply understood if such a link was available. I have however considered it helpful to attach and annexe a small number of important maps and photographs without which it would be more difficult for a reader to fully appreciate what is being conveyed in the description of important aspects of the evidence.



## 6. MOTORSPORT (IN GENERAL)

[36] Motor sport in general is woven deeply into the fabric of Scottish social history over the past half century with world renowned drivers such as Sir Jackie Stewart and Jim Clark both of whom were multiple world champion Formula One drivers. Motorsport however takes a number of different forms and this Inquiry is mainly involved with rallying although considerations of safety at other motor sport events may have a useful input. Scottish rallies have a long and distinguished history and again in this field Scotland has produced a world rally champion in Colin MacRae, with Scottish rally events playing a prominent part in both the Scottish and the British rally championships. Snowman was in 2013, and continues to be, the first event in the annual Scottish championship, and JCR was one of the events which count towards the British championship.

[37] In fact, JCR has not been held since this tragic accident and that simple fact is something that has caused concern in its home area. That rally commemorates the life of Jim Clark, a two-time Formula One champion who was born and lived in the Duns area and died in a racing accident in 1968. He is a legendary figure in Border history, and the JCR event is of both cultural and economic significance to the area in which it is held. It is a three day event with a separate rally (the Reivers Rally, a Scottish Championship event) being held on the third day over many of the same stages. That rally still runs at present, albeit in a different form from previously.

[38] The Scottish Borders has played a prominent part in motorsport over this period, producing many famous drivers in addition to Jim Clark, and even in the course of this Inquiry a Duns man won the 2017 Scottish Rally Championship. Coincidentally, that man was a witness at the Inquiry having been a spectator close to the locus of the JCR fatal crash, and a competitor in Snowman the year before.

[39] Accordingly, that history gives rallying an important position and has meant that it is a sport that is traditionally well supported in various areas of the country with spectators attending in good numbers from far and wide. I was advised in the course of the Inquiry that the number of spectators at Snowman 2013 was estimated at between 10,000 and 15,000 and that approximately 20,000 spectators viewed JCR

annually up to 2014. Accordingly, with such numbers involved, the safety of these individuals is an important matter, and these factors certainly played a part in the understandable decision of the Scottish Government to consider that it was necessary to swiftly and expertly review issues of spectator safety immediately after JCR 2014. The ensuing Review Group's report deals with all "multi-venue stage rallies", but with reference now to Snowman and JCR particularly, it has to be observed at the outset that they are not identical in nature, and indeed there are distinct differences even within rallying in the nature of the competition, the types of vehicle and the surface on which the rally is held. It is not appropriate for my purposes to stray from my remit and to deal in detail with all forms of rally, but of course spectator safety is a matter that permeates all forms of rallying and all of motorsport.

[40] The rallies with which this Inquiry is directly concerned were stage rallies, with Snowman 2013 being competed on private forest tracks in five 'special stages' linked by non-competitive public road stages, during which the drivers had to follow a set course between the special stages and when they required to observe the normal road traffic laws. The first special stage at Snowman 2013 was a forest stage measuring around nine miles in Glenurquhart Forest, and this was to be followed by four other forest stages in other parts of the Highland area to the west and north of Inverness.

[41] JCR 2014 was different to the extent that there were no rough tracks or forest stages involved in that rally. It also was a multi-venue stage rally, run over 18 'special stages' across the Scottish Borders on two days but the competitive stages were held on tarmac road surfaces, these roads being public roads which were for the duration of the event lawfully closed to the general public. During that period of closure the roads were not subject to the normal road traffic laws. All of the special stages at JCR 2014 were to be run twice during the event and this was the case for the Swinton stage on the second day of the event, run at 08.30 and 15.40. In that situation the roads are closed to the public for a safe period on each side of the start and end of the running of the special stage and are open during the period of several hours between the two runnings of the stages.

[42] These rallies are highly competitive events for which the competitors pay substantial entry fees and drive expensively prepared and highly tuned motor vehicles which are usually their own property. The events attract members of the public, who are interested in the sport, but historically no entry fee is charged to these spectators - indeed they may be discouraged from attending some of the less accessible forest stages which are on occasions shown on the event programme to be "closed". This was the case in Snowman 2013 but not at JCR 2014. Programmes are prepared and publicity is given so that spectators are aware of the event and are able to make their own way to the various stages which are open. Snowman 2013 was an example of a winter rally which was run in remote surroundings and had both open and closed forest stages, which in each case were either inaccessible or not easily accessible to the public. The rally tracks at Snowman were rough forest roads and anyone electing to attend to spectate could have a long and difficult walk to reach certain parts of the stage. The total distance between the first and final stage of Snowman was around 150 miles of road in total, and while JCR was more compact, and the stages nearer to towns, distances were also considerable for spectators who wished to see more than one stage and the closure of public roads could limit accessibility to parts of the stage.

[43] This is mentioned only so that it is understood that spectators make their own way to rally stages, and at Snowman 2013, they were not directed to stand in any particular location, because there were no areas designed as spectator viewing areas. There were areas where spectating was prohibited, but apart from that and subject to the direction of any marshals who may be present, spectators could select their own viewing area. JCR 2014 was different only in respect that some areas of spectator viewing were identified to potential spectators in advance, but otherwise the same general principles applied there, in that no spectator charges were levied and spectators were, subject to the direction of marshals and any prohibition communicated by notice and tape, able to select their own viewing spot.

[44] Since this was an area of focus in this Inquiry, issues of spectator information, access, control and viewing are dealt with in much greater detail later, and in respect of each event separately.

## 7. SPECTATOR SAFETY (IN GENERAL)

[45] Vast numbers of spectators attend sporting events on a very regular basis throughout the country and the wider topic of spectator safety is a matter of high importance and public concern. Obviously the greatest number and concentration occurs in closed stadia or at locations where pre-erected spectator stands are in place for viewing. Sadly over the years there have been tragic events of high profile where there has been great loss of life and several of these have affected Scotland and the UK directly, although it is recognised that such disasters occur worldwide. The Ibrox disaster in 1966 with 66 dead, the Bradford stadium fire in 1985 with 56 dead and the Hillsborough disaster four years later with 96 dead, were all tragedies which promoted extensive enquiry and massive change, leading thankfully to our current situation where nothing approaching that scale of tragedy has happened for a generation.

[46] Serious incidents in stadia or other enclosed viewing situations are likely to involve a higher death toll, but these are also scenarios which are easier to control, both in terms of physical separation from the activity, and spectator movements. While there are many motorsport events which take place at closed circuits with viewing facilities including stands, most rallies take place in very different surroundings, and I must restrict myself in this Determination to the type of situation which affects rallying, particularly multi venue stage rallies, where spectators are not enclosed or in fixed or seated positions, but are mobile and potentially spread out over many miles of road or track in smaller groups.

[47] Obviously the detailed reports and recommendations which followed these stadia deaths mentioned above are of significance, and the organisers of all events involving the attendance of spectators have to fully consider all of these general safety principles. Having said that, outdoor events with spectators not confined in a structure of any kind, permanent or temporary, and thus able to move around at will in order to get a better and closer view of the sport they came to watch, is a specific area and it is the risk in that area and specifically in rallying, which I require to deal with.

[48] A further difference is that in all of those disasters and other less numerically significant events of like type, the deaths and injuries did not occur as a direct consequence of the performance of the sport which the spectators came to watch, but rather from physical conditions directly involving the numbers of spectators and the conditions affecting them. In the instant situation which this Inquiry examines, the deaths occurred as a direct consequence of the performance of the sport itself, and again, it is only that type of situation which I propose to deal with here, although it must also be recognised that organisers of rallies have to take account of the fact that there are physical dangers involved in spectators being in outdoor locations such as forests in inclement conditions, or in circumstances where other dangers, such as fire, exist.

[49] I therefore confine myself largely to spectator safety issues which are directly related to the performance of motorsport, and particularly to rallying, and with the primary focus on the risk to spectators which is presented by the rally cars competing in the event.

[50] It was said so often during this enquiry that it hardly needs to be repeated but motor sport is an inherently dangerous activity for both drivers and spectators, and in all that follows it has to be understood throughout that the purpose or object of the rally, which is an event primarily for the competitors, is to drive a powerful and specially prepared car as quickly as is humanly possible from point A to point B over varying qualities of terrain.

[51] The drivers are MSA licensed, the cars are scrutineered, classified, and controlled in terms of engine power, and driver safety is strictly regulated, but risk is inherent nonetheless in that the event is a competition which the drivers wish to win. It is equally important to understand that the drivers are absolutely clear that they cannot win unless they complete the course, and so crashing of rally cars, although it happens regularly, is something which the drivers wish to avoid at all costs. Accordingly while these drivers propel their vehicles at the very edge of safety and to the absolute limits of their competence and extraordinary driving

skills, they are at all times doing their utmost to avoid leaving the track or otherwise failing to cross the finish line. They are not mindless of the risks to spectators, they have a co-driver for whose safety they are responsible, and in the two rallies in question the drivers involved in the crashes were experienced and skilled in competition at the upper level of their chosen sport. While I will later comment on the circumstances which led directly to the two crashes involved in this Inquiry, it is important to understand throughout the purpose and remit of the Inquiry, and the primary focus on issues of spectator safety in rallies of the Snowman and JCR type.

[52] There was nothing in the circumstances of this Inquiry to suggest that there was anything special about either of these two rallies, or about their location, which would restrict anything that I say to Scottish rallies, and I heard in the Inquiry that Scotland generally, and the Scottish Borders in particular, are not the only parts of the UK in which there is a long tradition of rallying. I know that those who organise rallies will be interested in applying any lessons learned here, to rallies in the north of England and Wales and in Northern Ireland, to name but three areas of the UK in which rallying has an active and enthusiastic following. Nothing I say by way of recommendation or observation on these recent deaths in Scotland should therefore be seen to apply only to rallies held in Scotland. Indeed one of the features which was clear in the evidence in this case, is the extent to which rallies are in effect borderless, since the JCR rally could not in my view successfully operate without close co-operation and voluntary assistance between motor clubs on both sides of the Scotland/England border. It was an interesting feature of the evidence to see the extent to which the rally community UK-wide comes together to support events outwith their own immediate area, and to supply the volunteers without which rallies simply could not take place.

## **8. ORGANISATION AND GOVERNANCE OF MOTORSPORT**

[53] Rallies are huge organisational undertakings in terms of time and energy and because of the obvious potential danger which is very much part of the sport, it is crucial to organise and manage these events with great care. The sport is self-financing in that rallies are financed by entry fees from the competitors and by any grants or sponsorships which may be available from sport bodies or local authorities. Spectators generally are not charged entry to view the rally and the event is able to generate very little income. I was not told much about the financial position for the JCR event, other than hearing that it had a small grant from Scottish Borders Council, but I know that for the Snowman Event even the programmes and the car parking charges did not come to the event organisers, Highland Car Club.

[54] Rally events are organised by local car clubs who may involve other car clubs as required, and of course the larger the event the more requirement there is to involve others and to enlist assistance. The enlisting of outside assistance is an essential part of the organisation process and rallies simply could not take place without the goodwill of many volunteers. As an example of this, JCR 2014 required around 1000 volunteers for the rally to be able to be run at all. In an event of such scale where public safety is involved, it is only right that there should be some form of overview and sanctioning so that organisers do not become complacent or careless, and so that precautionary measures and safety procedures can be enforced and regularly monitored.

[55] In Scotland, and indeed in all of the UK, rallies can only take place if the relevant car club applies for and is granted a permit or licence for that purpose by the sports' governing body. In the case of all UK four-wheeled motorsport that body is the MSA, a not for profit organisation which exists for the purpose of sustaining, growing, controlling and regulating the sport, with safety for competitors and public alike being at the very forefront of its consideration. It describes itself as a classic governing body in its approach to the sport with its primary duties viewed as creating a level playing field for competitors to ensure that the sport is conducted as safely as is reasonably practicable.

[56] It also provides a judicial process which is important to ensure that the regulations which it creates for the conduct of the sport are able to be enforced. These regulations do not hold any statutory force in a truly legal sense but its authority derives from the desire of the participating motor clubs to be part of the organisation, and to accept willingly the jurisdiction of the MSA in terms of enforcement of regulations. These regulations are contained within yearbooks which are produced by the MSA and which are universally known as “the blue book”. This book is a product of the work of established committees of the MSA and is effectively a fresh set of regulations for each year, since changes are often made to deal with specific situations. A section of the blue book deals specifically with rallying, and Snowman 2013 was regulated by the blue book for 2013. JCR 2014 was regulated by the 2014 edition, and although there were some small differences between these two editions nothing of significance in these changes is relevant to this Inquiry. The more major changes which are referred to later in my Determination were made in the 2015 and 2016 blue books, following upon the report of the Review Group.

[57] The rallying section of the blue book sets out the specific regulations for rallying, including regulations for special stage rallies such as those with which this Inquiry is concerned. The presence of an MSA steward at rally events ensures compliance of the event with the rules, and also oversees the work of the rally officials particularly the clerk of the course since he has overall responsibility for the running of the rally. In a separate document the MSA committees set out written guidance for rally organisers and specify the duties of significant officials and of the course or safety cars which run through the stage before the competitors are allowed to enter it. Further detailed reference will be made to certain of these matters later.



## **9. ROLES AND RESPONSIBILITIES WITHIN RALLYING**

[58] This is perhaps a convenient point to incorporate into this Determination a number of technical and explanatory areas which were contained in the first two Joint Minutes presented to the Inquiry and it is useful for better understanding of some later sections, simply to incorporate here some of the paragraphs of the joint minutes either fully or in part. These deal with the governance of motor sport, and with the duties and responsibilities of various office holders at licensed events.

[59] The MSA derives its status as the governing body for UK motorsport from the Federation Internationale de L'automobile (FIA) which is the governing body for four wheeled motorsport worldwide and the federation of the world's leading motorsport associations. It brings together 236 national motoring and sporting organisations from 141 countries on five continents and its member clubs represent millions of motorists and their families. Through its national member clubs the FIA is involved in every level of four wheeled motorsport and its remit extends to the millions of amateurs and also to the professionals who enjoy four wheeled motorsport in all of its various guises. One of the key objectives of the organisation is to encourage and implement the adoption of common regulations for all forms of four wheeled motorsport and to that end it administers the rules and regulations which include safety guidelines for all international four wheeled motor sport including the World Rally Championship and other sporting events up to the level of the Formula One World Championship.

[60] The MSA is recognised by the FIA as the sole four wheeled motor sport governing body for the UK and as such it is responsible for the governance and administration of all forms of MSA licensed motor sport in the UK, for controlling the technical and sporting rules across the various disciplines and for communicating and administering regulations made by the Motor Sports Council whose work is supported and underwritten by the MSA.

[61] The MSA is an organisation made up of more than 700 motor clubs with a combined membership in excess of 200,000 people organised in 13 regional associations across the UK. As at 2014 the MSA had licensed 28,769 competitors, 3,022 officials or organisers and over 5,782 marshals. In that year it issued permits

for 4,700 four wheeled motor sport events including rallies, and both Snowman and JCR were events for which the MSA issued a licence and would be responsible. The FIA would be responsible only for European or international events and neither of these rallies fell into that category. A permit issued by the MSA can be altered or withdrawn after issue if the MSA become concerned that regulations are not being followed or that they were not satisfied as to the general running of the event. With a permit in place the event is insured under the MSA's public liability policy and this covers the MSA, organisers, landowners and bodies that give permission for the event to be held. It also covers the officials including the clerk of course, stage commanders, marshals and the general public who are present as spectators.

[62] As at 2013 and 2014, the MSA had no input into the compilation of the various documents produced by the rally organisers and did not scrutinise these documents as part of the application process for permission to hold the rally. They were however issued to an MSA steward at or in advance of the rally and were subject to scrutiny at that stage. The MSA steward is completely independent of any other function and of the organisers of the rally and has the power to form an overview of the safety of the event before and during its running. The steward has the duty to travel round the stages of the event prior to the competition beginning and during that journey has an overview of the preparations for the rally including safety provisions. He has the power to withdraw the permit if he is dissatisfied with safety conditions. At the end of the event the steward produces a detailed report covering all aspects of the running of the rally, again including safety.

[63] The roles and responsibilities of a range of rally officials are covered by documents issued by MSA committees, and in a Joint Minute certain of these were agreed for the purposes of this Inquiry, and reflected the positions at the date of the accidents.

[64] The clerk of the course is the official who has overall responsibility for the general conduct and control of the rally in accordance with the terms of the regulations and the organising permit. He has responsibilities in relation to the appointment of other officials and their functions and he may delegate parts of the functions of those officials as appropriate. The clerk of the course must have an

MSA licence for that role and the blue book details further other aspects of the role. Both Snowman and JCR were required by MSA regulations to have a designated clerk of the course, and both did.

[65] The event safety officer is also defined in the blue book and that is a function directly subordinate to the clerk of course. The event safety officer is responsible for ensuring that there are effective arrangements to supplement general marshalling strengths organised by the stage commander as follows:

- a. There must be predetermined arrangements available to every stage commander for summoning appropriate emergency services and
- b. At each stage unless the complete route is visible from the start or finish areas there must be provision of an effective radio communications network operated through a nominated controller under the direction of the clerk of course, linking officials at start, finish and intermediate points with rescue and medical services.

[66] The event safety officer is not an MSA licensed position. The event safety officer must be assisted by a spectator safety officer who is responsible for specific arrangements to accommodate spectators in suitable areas, for the prevention of access to other areas and to make suitable access facilities for spectators use.

[67] The stage commander is the official in charge of the particular special stage concerned and again this is not an MSA licensed position. Responsibility for the appointment of the stage commander rests with the clerk of the course and he must have a deputy stage commander who is commonly the official who is in charge of the finish of the stage. The deputy stage commander does not deputise for the stage commander and the title is not referred to in the blue book, although it is commonly used. The stage commander is regarded as having a principal responsibility also for ensuring that the start of the stage is properly conducted so that the cars enter the stage in accordance with the blue book regulations. This responsibility makes it very difficult for a stage commander to be anywhere other than the stage start after the point where the stage has gone live. It is of particular significance in the case of 2014

JCR, to note that the stage commander is regarded also as having the responsibility for the “setup” of his stage.

[68] Marshals have a variety of roles including timekeeping, maintaining records of start and finish times, but they also have duties in relation to spectator control and safety, and assistance at the scene of incidents including crashing of vehicles. They are there to warn spectators of oncoming rally cars by audible means, typically by a whistle, and they are there to advise and guide spectators on their chosen vantage point and to respond and react to any incident that occurs on the stage. Marshals do not require to be registered although there is a marshal registration scheme which is voluntary and provides access to training and information. Again, the role of a marshal (as at 2014) is fully explained in the blue book where reference is also made to marshals with radios who are specifically trained to operate on the dedicated MSA channel.

[69] There are a number of course or safety cars that proceed round each stage before the start of the rally and this number will vary depending on the nature of the event. For example, in the JCR there is a specific course car which has a duty of ensuring that the public roads are properly closed and that there is no public access to the stage. The chief marshal is expected to drive round the stage to ensure that all mandatory marshal positions are adequately manned and to ensure that all marshals and stage officials are instructed as to their tasks and responsibilities.

[70] Again, specifically in the case of the JCR 2014, and the Swinton stage of that event, there were in fact two road closure cars and four additional “setup” cars whose duty it was to enter the stage at various points and then drive through to the end of the stage ensuring that all the stage furniture and signage was in place. This meant that as each car followed upon the other there should be a continuing check, although the first car to enter the section of the stage would have the principal responsibility of checking that section. A main, though not the sole, focus of this check would be all signage, stage furniture and taping of areas which were not to be entered or occupied by spectators.

[71] The chief safety officer or his deputy should also proceed through the stage to ensure that all stage points are clear of the public and to assess the number of spectators at various points so that extra marshalling could be summoned if required. The chief safety officer, or his deputy, also has the duty of ensuring that the stage has been set up as described by the organisers and that the radio marshals are in safe positions. Stage setup plans were not required in terms of MSA regulations in 2013 or 2014 and none were in existence for Snowman. JCR had a history of good innovative practice and had formal setup plans in place for several years prior to, and including 2014.

[72] Spectator control cars then proceed through the stage to assess the number of spectators and again to advise if extra marshals are required. The penultimate vehicle into the stage is the double zero car which has to observe that all route requirements are met and that the rally may commence, and the final car is the zero car which travels through the stage at around 80% of the speed of the competition vehicles for the purpose of a final check of any obvious problems, and preparing marshals and spectators alike of the fact that the rally cars are about to begin to enter the stage.

[73] The clerk of the course and the event safety officer will have delegated and selected a suitable crew for each of the course vehicles, while there is no specific title for those in the zero and double zero cars and no MSA licence is required. The zero car is however a rally prepared vehicle which should be driven by an experienced rally driver. There is a specific MSA document of 2006 which details the duties of safety cars and reference is also included in the blue book in that connection. Later sections of this Determination deal closely with the positions of the safety cars at both of these rallies, though more so at JCR.

[74] These various duties and responsibilities are not dealt with at great length at this point because I am entirely satisfied that each of the two rallies had the proper MSA required structure of officials at the time of the running of the individual rallies, including in each case not just the officials already mentioned, but also additional supporting officials and communications, medical and rescue personnel. To that extent each rally was properly organised in accordance with MSA rules and

after each of the rallies the report of the MSA steward did not suggest that there was any difficulty in that connection. At later stages of this Determination I deal with the quality of the duty provided by the various post holders and of course I do so in the light of the requirements imposed at that time.

[75] Following on the events at JCR in 2014 matters took a very sharp turn towards an early and urgent review of existing safety procedures with the setting up of the Review Group mentioned earlier. The MSA were fully engaged in that process and immediately upon the publication of the Review Group's report, a member of the secretariat was seconded to the MSA to work on the implementation process which the MSA willingly embraced as a necessary forward step.

[76] A new and improved regulation regime emerged, and it is very much a part of this Inquiry to decide whether these changes are adequate to deal with any altered procedures which may be recommended by me as a consequence of hearing the evidence of these two events. The Review Group very properly and clearly indicated at the outset of their report that the group could not consider the particular circumstances of the recent accidents given that an investigation was still underway at that stage. It is therefore important for me to add in the information gained at this Inquiry in assessing safety overall considerations and in taking a view on whether the changes which have been made in the absence of specific and detailed evidence of the particular incidents, properly and adequately meets the situations presented in the evidence. Around 30 individual recommendations were made by the Review Group and all of these have been considered at this Inquiry, although of course as the evidence developed it became important to understand that specific areas, and the recommendations relevant to them, were put under especially close scrutiny in the Inquiry, while other areas did not require or receive the same level of close attention. In producing this Determination I will however attempt to deal with all of the issues raised in the Review Group report as well as any discrete and separate issues raised in the Inquiry, and opine on the current level and quality of regulation even where a fresh recommendation may not be considered necessary or appropriate. A dedicated section of this Determination will address this area.

[77] Accordingly, while a wide range of topics arose in the evidence, particular focus has to centre on matters which are directly related to issues of spectator safety since that was the catalyst for the formation of the Review Group and for the Crown's application to hold this Fatal Accident Inquiry.

[78] I will therefore examine in this Determination the circumstances of each of the two accidents and their consequences, in order to identify any areas in which there may have been errors, oversights, deficiencies or inadequacy in relation principally to matters which impinge on issues of spectator safety. Where specific issues are identified they will be examined further and in detail in order to advise whether any identified defect in the system of organisation, preparation, stage setup, marshalling, or management and control of either rally has contributed to the deaths, and to identify any precautions which may be suggested or recommendations which may be made in order to avoid the repetition or re-occurrence of such accidents.

[79] As has been said earlier, rallies are complex and dynamic events and it is not the function of this Inquiry to investigate every aspect of the process, particularly where in the course of the Inquiry no evidence has emerged to suggest that there has been any difficulty whatsoever in that particular area. Concentration will therefore be on areas of patent potential difficulty and any area which does not receive close attention or specific mention should be assumed to be an area in which no issue or difficulty has arisen and therefore an area which does not merit detailed examination in this Determination.

## **10. ANALYSIS OF THE FATAL ACCIDENT AT SNOWMAN 2013**

[80] I move now to examine the two fatal accidents in turn, including in each case the geography of the accident locus, the mechanisms leading up to the loss of control of the vehicles, and the sequelae in each case. Within these sections I make certain factual findings in respect of each accident which frees me to move on to detailed examination, and assessment of the evidence in other more contentious areas later in this Determination, without the need to revert back to what is contained in these chapters.

### **A - Background**

[81] This rally took place on 16 February 2013 and was organised and run by the Highland Car Club Ltd. This club is registered with the MSA and each year it applies for and is issued with a valid MSA organising permit covering the running of the rally, which is an event of considerable standing and is the first round of the Scottish Rally Championships each year. Apart from its prominence in the rally calendar it is also an event which takes place at a time when there are few other outdoor events in the immediate area, and so is popular, attracting around 10,000 spectators who can at no charge and without the trouble of advance ticket purchase, attend any of the stages of the rally, which essentially fills the whole of the event day and takes place in different locations over a wide area around Inverness. There are a number of potential viewing venues for motorsport enthusiasts since the rally is run in a number of stages, both non-competitive road stages but more significantly in the current context, five special stages in five different forest locations within a 30 mile radius of Inverness. The rally covers in all over 100 road miles and 44 stage miles.

[82] The forest stage with which this Inquiry is concerned was special stage 1 of the rally, and was centred on gravel forest tracks in the area of Glenurquhart. This stage was scheduled to start at 9.53am with the cars leaving Inverness at 9.00am travelling to the stage by public roads and observing the normal road traffic laws during that road stage. Spectators were able to travel to the area of the special stage of their choice by their own means, and in respect of Glenurquhart, the event programme informed them that there was car parking on the A831 road at either Balnain or Shenval, at which point there was a walk to the stage by a directed route.



[83] Spectators arriving at the stage from Inverness or from Drumnadrochit, which would be the vast majority, would arrive at Balnain before Shenval. This route took them uphill through the forest on a defined but rough track, and there was no public vehicular access to the stage. The walk from Shenval took spectators to an area of the stage near to the finish, and the walk from Balnain took spectators to a hairpin bend at post 16 of the stage. That post was around 6.3 miles into the stage which was a total of 8.99 miles long. The accident occurred around 100 yards before the hairpin bend referred to above.

[84] As indicated above this special stage is run on forest tracks belonging to the Forestry Commission Scotland (hereinafter FCS), and as its name suggests this rally is deliberately held in the winter months to test drivers' ability in difficult conditions. It is very much part of rallying to have competition on gravel tracks in all conditions, including snow and ice. In fact in 2013 the weather on the day of the rally was dry and mild but there had been a fair amount of snow in the forest earlier in that week and the track surface was described variously as slippery, damp, and greasy following on a fairly rapid thaw. There was however nothing unusual in the conditions and there was never any need for the organisers to consider any changes to normal rally procedures in terms of the road signage or other guidance and instruction given to the competitors. In effect it was considered that road conditions were precisely what would be expected at a rally in these circumstances.

#### **B - Geography of accident locus**

[85] The track at the point leading up to the area of hairpin itself was relatively straight, with some fairly gentle turns, and was generally flat or slightly downhill, and so it was a section of road upon which cars would be travelling at high speed as they positioned and prepared themselves for braking on the approach to the hairpin which was a downhill and left turning full hairpin. The track itself was narrow and generally tree lined the surface was standard F.C.S. track, familiar to competitors, and it was typical of forest tracks in that it permitted little space on either side as the car traversed sections of the forest route. The average speed expected of the competitors over the whole of the stage was around 65 miles per hour and the speed on the section leading up to the accident location would generally be well in excess of that.

[86] At the accident location the road is generally level; the direction of travel is west to east and beginning to be more downhill as the hairpin gets closer, but the profile of the land there is a steep south to north slope, with the ground falling away sharply on the north or nearside of the road. The road turns slightly to the left and then at the approach to the accident location and at a point roughly 100 yards from the hairpin the road turns fairly gently to the right and holds that gentle right turn until the hairpin itself when it turns sharply left.

[87] It is clear from the physical evidence detailed in a full and careful collision investigation report by Northern Constabulary, that rally car number 28 crewed by Graham Schoneville (driver) and Mike Hendry struck a stone or stones in the nearside verge and was flipped upwards causing it to pitch and roll four or five times down the roadway, eventually deviating sharply to the left (north) after collision with some roadside trees, before coming to rest on its wheels in the area between the two legs of the hairpin. Towards the end of that uncontrolled movement the vehicle struck a number of trees near to where the deceased Joy Robson was located. She saw the start of the car's loss of control from the trackside and attempted to get out of the way of the vehicle by moving backwards downslope into the trees, and away from the track. In being struck either by the vehicle or by trees felled by it or by both, she sustained severe injuries which quickly resulted in her death at that spot. In fact, my view is that the physical and post mortem evidence suggests that she was struck by the car and by falling trees. In a subsequent chapter I deal with the reasons for her being at the trackside just west of the hairpin.

### **C - Analysis of the crash**

[88] In order to assist in the understanding of this and the preceding paragraphs, I annexe to this Determination:

- (a) the organisers rally route map (Annexe 2);
- (b) an extracted ordinance survey map of The Glenurquhart stage showing Post 16, which lies at the extreme east end of the stage (Annexe 3);

(c) a photograph of the approach to the accident locus from the west – the direction of travel of the competition cars – showing the general condition of the stage (Annexe 4).

[89] Car 28 was a Honda Civic motor car registration number T414 KRD and it was a right-hand drive vehicle which had been converted for the use of Mr Schoneville in rallies and more particularly for competition in the Scottish Rally Championships. The modifications which he wished were carried out by a professional company in Perth, and Mr Schoneville himself has close connections with the motor trade. The car passed the scrutineering procedures at the rally and was driven in the shakedown stage which is used by drivers to test their car ahead of the event proper. He and his co-driver Mr Hendry found no difficulty with the vehicle, had complete confidence in it as the stage began on 16 February, and after the crash a full and detailed examination of the vehicle resulted in a professional opinion that it had been well maintained and was in perfect mechanical order prior to the accident. I accept that opinion.

[90] That examination did however reveal that it had sustained a great deal of accident damage and in terms of assessment of causation of the loss of control, it appears to me that the most significant damage to the vehicle was in the area of the front nearside wheel where there was damage that coincided with the physical evidence found on the nearside of the road at the point where the car first lost control. That significant damage was the breaking of the front nearside wheel with the tyre being deflated and off the rim, broken front nearside suspension, and bent and damaged rear nearside suspension.

[91] I have reached a view that this damage is entirely consistent with the opinion of the Northern Constabulary Road Policing Unit whose detailed examination of the car and of the locus, indicated that the car was travelling along the relatively soft grass verge on the north side of the track itself when it came in contact with two large buried stones, and one or other (or both) of these stones burst the front nearside tyre, broke the wheel and damaged the front and rear suspension. Because of the domed shape of the stones, they flipped the rear of the car upwards and caused it to become effectively airborne and at the same time turned it to its right.

[92] The beginning of this tumbling and rolling manoeuvre was captured on two separate pieces of video footage which I saw. Thereafter the vehicle rolled out of control down the track at high speed, and as indicated earlier it impacted trees at a height of around six feet off ground level, causing it to deviate sharply to the north and also slowing its forward momentum. It left the track and dropped into the tree filled area between the legs of the hairpin and in the vicinity of spectators whose precise position is dealt with separately and who were located around 45-50 yards east of the point where car 28 lost control. The photograph at Annexe 4 shows the stone locations towards the end of the line of yellow marker cones, and the tree with the lighter mark midway up the trunk, is where the car was projected left into the forest. That mark was caused by the car upon contact with the trunk. The hairpin is about 40 yards ahead of that spot.

[93] I am also satisfied from evidence which I heard, and also saw on video footage that a blue Ford Escort Mk II (car 23) encountered a similar problem in the same general area of these stones and suffered a rear nearside puncture which brought it to a halt at the hairpin before it moved off. Whilst it is not possible to be certain, it seems clear to me that this vehicle also struck one or other of these stones and sustained the puncture in that way. It is also clear from the evidence of a number of sources that the track was becoming more difficult as cars went through it and that it was greasy and slippery particularly on the soft verges.

[94] Mr Schoneville, in driving car 28, was intent on achieving the best line that he could for the slight corners which he was negotiating and in readiness for the hairpin, and it appears that in so doing he was further into the north verge than proved to be sustainable. Furrow marks on that left verge indicate that he was traversing relatively soft and insecure terrain for around 11 yards prior to contact with the first stone. The nature of that ground was such that a car travelling at that speed and attempting to turn slightly to the right would have difficulty in making that manoeuvre particularly because contact with the left side of the first stone caused the car to move further into the verge. That difficulty was of course compounded and movement of the car to the right made completely impossible

when the second stone was contacted and the vehicle was projected upwards. The stones were large, well buried and totally solid.

[95] The nature and shape of the stones was consistent with the theory of the police expert that a vehicle travelling at speed would be projected upwards, by either or both, and from the point when the vehicle struck the stones and had its front nearside wheel and suspension broken it was absolutely impossible for the driver to have any level of control whatsoever over its movement. It is not entirely clear whether the front and rear suspension damage occurred at the same time or was caused by the same stone, but marks on them show that both stones were clearly hit by the car, and since they were only 10 feet apart contact would have been virtually simultaneous. In any event that does not appear to be a material issue, since the cause of the upwards movement and the consequent rolling is clear.

[96] It has to be understood that this was a crash which happened during a competitive rally event and that the purpose of the event was for the drivers to cover the stage as fast as they could in order to complete the stage in the shortest possible time. Mr Schoneville was an experienced driver and he had driven many rallies before. He and his co-driver were in their third year as a team and were close competitors who had previously achieved good results in rallies of precisely this type. He was driving at the edge of his very considerable driving ability and in all the evidence that I heard in this Inquiry it is clear to me that when that happens it is inevitable that on occasion drivers will encounter a situation where control of the vehicle is lost.

[97] That is an entirely different type of situation from those where one may have to consider issues of driving either carelessly or recklessly, and no question of such error or judgement or fault at any level arises in this competitive situation. Mr Schoneville did not take any undue, unusual or improper risk in the driving of the vehicle, he was simply performing at the peak of his abilities in a well prepared rally car when he encountered a piece of ground where unknown to him there was a hazard which he could not see buried in the soft verge. From the moment he hit the stones he was helpless to do anything about regaining control.

[98] The impact with the stones was an unexpected and unforeseeable event for him and he cannot be considered responsible to any extent for the loss of control which he encountered on that occasion. The scale and extent of the loss of control heaped further misfortune onto the accidental contact, since the upward launching of the vehicle into the air and its consequent movement was undoubtedly a freak occurrence as confirmed by John Clayton the highly experienced marshal at the locus and by the MSA technical director John Symes. That launching was caused by the unfortunate way that the car suspension was loaded as it was being steered to the right, and by the shape and solidity of the stones and Mr Clayton said he had never seen a rally car react in that way on contact with a verge. Speed was of course another factor in the vehicle's movement, but the speed of the car on impact with the stones, probably around 60 mph, was entirely appropriate for that part of the stage.

[99] Mr Schoneville was hugely upset and affected by the tragic consequences of this accident and was seen to be very upset when he was able to exit the crashed vehicle. That upset has endured and he no longer competes in rallies. Similar considerations apply to the co-driver Michael Hendry who was communicating fully and properly with Mr Schoneville and had no cause or opportunity to give any guidance which could have prevented the contact with the stones.

[100] Both men had prepared themselves fully for the rally with proper and responsible examination of the route notes which were available to them. This was a gravel road rally of a type which they are both used to competing in, and there was nothing in the road surface prior to the contact with the stones which gave either of them any concerns about the state of the road or the verges. They were aware that there had been snow on the course earlier that week, and they did not consider that the track was to any extent unsuitable.

[101] The issue of spectator positioning around the final position of the car and generally in the area of the hairpin is a matter which I deal with in a subsequent section. Their choice of position from which to view the rally had no bearing on the accident itself, but is of relevance in overall consideration of safety, since the death of Joy Robson came about as a direct consequence of the crashing of the rally car further up the track.

## **11. ANALYSIS OF THE FATAL ACCIDENT AT JCR 2014**

### **A - Background**

[102] This event was in its 44<sup>th</sup> year of running when it took place in the Scottish Borders on 30 May 2014. It is effectively a three day event with special stages on Friday evening and Saturday and with the separate Reivers Rally run over some of the same course on Sunday. The Reivers Rally is a self-contained event and, like Snowman, is a round of the Scottish Rally Championship, but JCR 2014 held on Friday evening and Saturday was the third round of the British Rally Championships for that year. JCR was therefore one level above Snowman in competitive terms and it also differed from Snowman in that it was a rally in which the special stages were not on private forestry ground and gravel tracks, but were on public tarmac roads which by lawful authority were closed for the exclusive purpose of running the rally. That is an important and unusual feature of JCR, since the only other closed road rally events are on the island of Mull, the Isle of Man and in Northern Ireland. JCR is the only closed road rally on mainland UK and in its programme advertised itself as “the largest rally in the UK by far”.

[103] In common with other motor rallies there is no charge for spectators, competitors have to pay substantial entry fees and the rally is non-profit making. JCR however did receive subsidy from Scottish Borders Council and is heavily supported and sponsored by local businesses. It is on any view an important part of Border life and of the economy of that area. It is run by volunteers who are not exclusively Border people and who are drawn from other parts of Scotland and quite significantly from motor clubs in the north-east and north-west of England. It is a very large event and without the support and assistance of the volunteers from the various motor clubs out-with the Borders it would not run.

[104] JCR 2014 was organised by a limited company now known as the Jim Clark Memorial Club Ltd after a change of name in March 2015. That company was specifically set up for the purpose of organising the annual JCR events but it is not a recognised motor club and so it cannot hold an MSA permit for the running of a rally. Accordingly, Berwick and District Motor Club Limited and the Border Ecosse Car Club Limited who are both registered with the MSA, have historically taken turns to make the formal application to hold the permit to run the rally. Each of

these clubs have officials who are on the list of registered directors of the Jim Clark Memorial Motor Club Ltd but in 2014 it was the Berwick and District Motor Club who were the permit holders for JCR and who along with the Jim Clark Memorial Motor Club Ltd were responsible for the organisation and operation of the rally.

[105] JCR is a multi-venue rally which in 2014 was run over 18 stages, all of which were used twice in the course of both the Friday and Saturday running. The rally stage, which features principally in this Inquiry, is the Swinton stage, and it was run as stages 9 (am) and 16 (pm) on Saturday 3 May 2014. It was during the second running of the Swinton stage that the fatal accident occurred and the accident location was a stretch of road running generally northwards from the Leet Bridge, described in the rally documents as post 18(a). Post 18 is the junction south of the bridge at B6461 road, and Post 18(b), is to the north, at East Lodge. The Leet Bridge is 8.7 miles into the stage, which is a total of 10.9 miles in length. For ease of description here and in subsequent sections I have annexed a number of documents and images.

- (a) The map of the entire stage, showing the Post numbers (Annexe 5);
- (b) A copy of the JCR 2014 set up plan as it appears in the JCR documents, and showing the bridge area; with a prohibited area for spectators shown in white, running north of Post 18(a) for around 300 yards (Annexe 6)
- (c) A Google Earth map of the area approximately 300 yards north and south of the Leet Bridge and eastwards to Swinton Village (Annexe 7);
- (d) A screenshot of the dash-cam footage from car 25, taken less than one minute before the fatal accident, and showing the accident locus (Annexe 8);

## **B - Geography of accident locus**

[106] The road during this section including the Leet Bridge is of tarmac construction, it is a narrow traditionally rural unclassified road, and in the area of the accident the rally cars were travelling from south to north passing initially through a sharp turn past a hay bale on the B6461 Kelso to Swinton road at Swinton Bridge End farm cottages, over the Leet Bridge, and northwards between two fields which will here be referred to as the east field and the west field. The area of



concern in this Inquiry ends at the point referred to on the Google Earth map as “East Lodge”.

[107] The Leet Bridge is a slightly humpbacked bridge with stone parapets on each side and with a roadway width of approximately 8ft. This “jump”, as it is referred to in the rally community, is one of four jumps on this stage and it is accepted that a car travelling over that bridge at rally speed would inevitably leave the roadway for a distance which is variable depending on the speed and type of vehicle. The roadway on the north side of the bridge where vehicles land after the jump is of generally sound construction although it is clearly marked with multiple gouges and scrape marks caused mainly by vehicles making contact with the road after jumping the bridge, although some of these scrape marks may also be attributed to non-rally vehicles.

[108] This accident occurred when rally car 7 crewed by David Carney (driver) and co-driver Rae Fitzpatrick, came over the Leet Bridge at rally speed, became airborne, and on contact with the road on the north side of the bridge went out of control in a manner more precisely described later. This car travelled in an uncontrollable spinning skid northwards until it left the roadway at a point around 100 yards from the top of the bridge and around 80 or 90 yards after it landed back on the roadway. The car left the road at a point where spectators were standing at the entrance to the east field and although around 12 spectators were able to escape, the car hit four of the spectators killing three of them and seriously injuring a fourth. As in the preceding chapter on Snowman, I will look at the mechanism of the accident and the consequences, with some comment and conclusion on the matter of causation. The selected viewing position of the spectators at the east field entrance will be an area of detailed scrutiny in subsequent sections.

### **C - Analysis of the crash**

[109] The driver of the vehicle involved in the crash on this occasion was David Carney (aged 29) a citizen of the Republic of Ireland, and he has been a rally driver since 2008. He has worked his way up through the various grades to the extent that in May 2014 he was experienced and skilled with a good record of success in top grade competition. He was an amateur driver but supported by sponsorship and by

family funding. Rally drivers are graded at events such as British Championship rallies to the extent that they go into the stage in what is effectively a seeded order, in that the drivers who are doing best in the championship that year drive off first. There were some 80 cars competing in JCR 2014 and David Carney was car number 7 indicating that he was a successful driver and one who was in effect ranked seventh in that event. Like Mr Schoneville, Mr Carney was deeply upset by the accident, still evident when he gave evidence, and he also ceased to compete thereafter.

[110] He was driving a Citroen DS3 a popular rally choice, which was Polish registered (KR 900PC) and in common with many high performance cars used in rallies, it was a left-hand drive vehicle. This was Mr Carney's fifth or sixth event in that car but he was no stranger to left-hand drive and he had had no difficulties with the car in the previous events, indeed he had what he described as two or three "good results" in it. He had competed in the previous year's JCR and in that morning's run, and had therefore driven the Swinton stage previously. His co-driver was also experienced and had full road notes to assist him. There is no issue of them not being ready for the rally or for the jump.

[111] The car was fully prepared for the rally by an experienced and specialist rally crew who are professional and who prepare these particular Citroen vehicles for use in rally events Europe wide. Two members of that crew are with Mr Carney at all rallies. A detailed examination of this vehicle after the crash revealed that it had no mechanical defects of any sort and nothing was found which could have contributed to the accident. I accept that examination result.

[112] In fact, Mr Carney had some problems during the early part of the rally in that he had a spin on a bend on Friday night, collided with a tree, and damaged the rear axle of the car. That is accepted by all to be part and parcel of rallying although he said that spinning was not a frequent occurrence for him and the last time he had had such an incident was some months earlier. The professional service crew worked on the vehicle overnight, a new back axle was put on it, and it was ready for the Swinton stages in the morning. Mr Carney thought that when he was driving it it felt a little light, or as he described "floaty", and he did not drive it to its maximum

during the morning. He also had other issues such as a puncture in the morning, and lost further placing points. The repairs were relatively simple matters for the crew to sort, and when the opportunity arose at the end of the morning session the team made adjustments. When the afternoon stages came, Mr Carney felt that the car was excellent and had absolutely no issues with it. Accordingly, when he drove the car through the Swinton stage in the afternoon he was happy, the issues had been rectified, the car felt good and ready for competition.

[113] He had however lost points as a result of his earlier difficulties, and therefore could not win a high placing in the rally, with the result that he felt he was not driving at 100% speed in the afternoon and described that he was driving perhaps "90 plus percent". It was also a consequence of his earlier difficulties that by the time he came to the afternoon stage he had lost his position at number 7 in the running and he started the Swinton stage much further down the running order at car 27 position, and therefore was behind cars which were slower than his on the stage. By the time he reached the Leet Bridge he had made up around 23 or 24 seconds of the 30 second starting gap which exists between competition cars at JCR, and so was only around 120 yards behind car 23 at that point. There was no suggestion that this was a factor in the accident.

[114] I have studied full, clear, and graphic footage of this accident and also of seven or eight earlier vehicles traversing exactly the same part of the course which includes the Leet Bridge jump. Almost all of the vehicles leave the road surface for several feet after they cross the top of the bridge and at least half of them do not land squarely on the road, and struggle to get the car straight thereafter. Most of the cars which I saw also hit the underside on the road, and with the volume as well as the visual on the videos, the crash of the underside of the vehicles can be clearly heard and sparks can be seen. Two vehicles land very badly prior to car 7, and one of those (car 10) lands with its nearside wheels on the centre of the road and its offside wheels off the track on the verge at the offside. The driver of that vehicle clearly struggles to achieve control, but he does, and when it passes the point where this crash took place it is so far over on its "wrong" side that the spectators who are standing at the crash locus in the east field entrance are enveloped in dust and debris from the verge as the car flashes past them.

[115] Cars generally are going through that part of the course at relatively high speed, with most entering the bridge at around 85 mph and then accelerating on the downhill stretch thereafter, until the point where they pass the eventual crash site, when most of these vehicles would have been travelling between 90 and 100 miles an hour. There is nothing abnormal or unusual in any of that, since the highest speeds on the stage will be well in excess of that, and since the expected average speed for the whole of the 11 miles of the Swinton stage was 75 mph. The stage included many right angle corners and constructed chicanes designed to slow the cars down and lower the average speed for the stage to keep it within MSA rules.

[116] The subsequent examination of this piece of road by highly trained and experienced police accident reconstruction experts indicates that it is in generally good condition although there is in addition to the scrapes and gouges referred to above, one small piece of damaged road surface around halfway into the nearside half of the road and at a point close to where the front wheels of vehicles may first contact the road after negotiating the jump. It is not a major defect, simply a small pothole or enlarged gouge mark which looks to be less than one inch deep and perhaps a foot long. I considered carefully whether that small piece of damaged road surface played any part in what happened to car 7, but careful examination of the video footage suggests that the car landed well beyond that damaged piece of roadway and I am therefore satisfied that it played no part in what followed. The police investigators seem to share that view since it does not feature in their report, although they did photograph it.

[117] Once the road crosses the centre of the Leet Bridge it runs downhill relatively gently but obviously, until it reaches a point where there is an entrance gateway or vehicular access into the fields both east and west of the road. The gateways, better described as openings since there are no gates, are of course used for access to the fields by farm vehicles, and the east field entrance is the spot where car 7 eventually contacted the spectators and came to rest. The field entrance is 22 feet wide on that side and 26 feet wide on the west field. Otherwise, the roadside has narrow verges and substantial hedges with occasional trees on both sides. The annexed photographs and screenshot will supplement this description.

[118] Police measurements indicate that the downward slope, which I referred to above, to the north of the humpback bridge, measured 1.7 degrees and also that in addition to that slope, the road at that point deviates slightly to the right. This deviation was measured at an angle of 1.4 degrees, which of course I accept entirely, although to the eye it appears to be rather more pronounced than that. It is however on any view a relatively slight bend as the road moves gently downhill from the bridge toward the accident location. The distance from the crest of bridge to the entrance to the east field is around 100 yards, and the east field entrance (taken as a straight line between two strainer posts) is just six or seven feet from the east side of the road. The approximate time which it took for the average rally car on that day to cover the distance between where it first came into view at the top of the bridge and the crash site was less than four seconds, and just over two seconds if one were to wait to see it land and align itself after the jump.

[119] Mr Carney's car entered the bridge at 85 mph and became airborne at that speed covering several feet in the air before it landed on the road surface around 80 yards south of the field entrance. The car landed relatively straight, but almost immediately veered slightly to the west or nearside, a movement apparently caused by the car bouncing noticeably after landing on its front wheels and then dropping heavily onto the road at the rear. The driver attempted to correct the westwards movement but the car was still travelling in excess of 80 mph on landing, and his correction attempt did not succeed in bringing the car back into line. The car then immediately veered sharply to the offside and contacted the east verge with the offside front wheel. This contact took place in the course of a clockwise spinning movement and at the point when the car first contacted the east verge it was already almost at 90 degrees to the verge, and thus covering the whole width of the road, and moving towards a position a split second later when half of the car was off the road on to the east verge. It continued that clockwise spinning movement, by then obviously out of any possible driver control, and by then more than halfway towards the spectators who were standing in (and in one case outside) the east field entrance. It left the road at the field entrance almost at 90 degrees to the road but still rotating and slightly facing back southwards, and it immediately contacted the four spectators, first of all with the front nearside, but as it continued to spin at high

speed, latterly with the rear of the car and it came to rest embedded in the north part of the hedge at that field entrance. Impact speed would have been in the region of 70 mph and all of the deceased died instantly as a consequence. I deal with the medical and rescue aspects of this in a separate section.

[120] I need not repeat what I have earlier said about the purpose of the event and the intent of rally drivers. They have no wish to be careless or reckless, their one objective is to finish the course, and because it is a competition, to do so as quickly as is consistent with completing it. It is part of rallying that they drive at the limits of their ability and the risk of losing control is ever-present in that situation. The movement of this car was initially very little different from the movement of other cars at the same spot, and when the driver was unable to regain control of the car at the first opportunity, it was then too late, he would not have any further chance to regain control and the car was inevitably going to crash somewhere in the area of the fields. A car had in fact crashed there in the morning although it left the road on the opposite side from car 7, and entered the west field, and as indicated above one of the cars which I saw a few minutes before Mr Carney was in my view very lucky not to crash also. This is a place in which cars have crashed in the past; indeed I saw footage of two different cars in previous year's crash in exactly the location of the current event, and heard accounts of other ones.

[121] In all the circumstances I am comfortable in concluding that the fatal crash cannot be attributed to any fault on the part of the driver. It is the nature of rallying that incidents like this occur and the fact that there were spectators at the point where it occurred is a tragic circumstance which I deal with at some length later.

## **12. MEDICAL AND SAFETY ARRANGEMENTS**

[122] Stage rallies in the UK frequently take place in relatively remote locations and this is an inevitable consequence of the fact that such rallies often take place in difficult forest terrain. It is also very much part of the sport for stages to take place at night, and some rallies are deliberately held in winter conditions, and so access to an accident location may be logistically difficult for emergency services. It is therefore of paramount importance for this Inquiry to be clear that the deaths of the four individuals with whom I am concerned, could not have been avoided in strict medical terms by speedier, more efficient, or more competent rescue and medical services. While the same provisions apply to both events they are different in character and in circumstance and so I deal with them separately, but in doing so I keep in mind the general observations on inaccessibility made above.

### **A. Snowman**

[123] This event took place in winter months in Glenurquart Forest and the accident which caused the death and also the injury to a child, took place in daylight and at a point on the special stage more than six miles from the start point where the doctor for that stage was based. It should be confirmed that the organisers, Highland Car Club, had fully and properly complied with the existing MSA requirements and had a chief medical officer (Dr Harrington) for the whole event and a doctor for each stage. The length of the stage meant that a doctor did not require to be located at a mid-point in terms of the existing MSA regulations.

[124] Dr James McHugh, an experienced general practitioner in Pitlochry, was the stage 1 doctor and I was satisfied from his evidence that he is an exceptionally well qualified individual to hold this position. Not only is he ideally suited in terms of his excellent medical experience, but he has a particular interest in rallying and has been involved with the Snowman Rally for around 15 years. He understands how the organisation of rallies works, he is a dedicated volunteer and in professional terms he has ensured that he is fully up to date and trained to deal with the types of situation which he may encounter at rallies. He was professionally prepared, and he carries his own extensive first aid and medical kit to a greater extent than is specified or recommended. He ensured also that the rescue vehicle which was with him at the rally start point was also fully equipped in medical terms, quite apart from the other

safety equipment which that vehicle carries. He bought his own radio, he was on the safety network as he made his way to the locus of the accident and he was having reports relayed to him by those at the scene via one of the marshals present. Co-incidentally, one of those at the scene was a trained paramedic, and he was therefore receiving good quality information to put himself in the best state of preparedness for arrival at the accident location.

[125] As would often be the case the stage was live when he was called into action, and there would therefore be six or so competition cars ahead of him on the stage, meaning that he had to follow the normal requirement for safety purposes and had to drive to the scene of the accident in the direction of travel of the rally vehicles. He could not do otherwise and there was no available shortcut. That is not unusual in forest stages. He drove the rally course as quickly as he could; followed by the rescue vehicles in convoy and a Scottish Ambulance Service ambulance was on the public road as near as it could be to the stage.

[126] The communication and the travel to the locus worked well, there were no delays or difficulties and he arrived at the scene of the accident at 10.48am having taken 14 or 15 minutes to traverse the 6 miles of the stage, driving as quickly as he could standing the fact that he is not a rally driver and was travelling in a normal road vehicle. He was joined one minute later by the rescue vehicle. I accepted the timings which were put to him showing that the report of the accident from the crash site to the stage commander at the start point was recorded as being 10.32.32. Ten seconds later medical assistance was called for and the doctor entered the stage in his vehicle at 10.34 arriving at the locus by his reckoning at about 10.48. There is a formal recording of the rescue vehicle being at the locus at 10.49.57.

[127] Some of the witnesses at the locus including the son of the deceased Joy Robson, were of course in a very anxious and fraught situation because the condition of the deceased was obviously deteriorating quickly. They were in a situation in which time appeared then to be passing slowly, causing them to feel that there was a delay in the provision of medical services and particularly in the arrival of the doctor at the locus. I fully understand their position in that respect, and it would of course have seemed like an eternity to them because the deceased Mrs



Robson had initially been able to speak a little, was breathing, not bleeding and with no visible external injury. She had obviously suffered a major trauma however having regard to the circumstances of the accident, and there was a young child aged about 10, who was also injured and who had a cut to his head. They were in slippery, steeply sloping, difficult ground, well below the track, all of which would have been increasing the tension levels for those present at that very anxious stage. Mrs Robson's condition began to visibly deteriorate after a few minutes and although she was greatly assisted by a qualified paramedic who happened to be a spectator in the vicinity (Sandie Mackay) with some assistance from other qualified first aiders, her condition was obviously deteriorating fast, and her son and others would understand that the outlook was very serious, and would have felt helpless to stop the deterioration. They could not know then that the internal injuries which she sustained were so extensive that she was beyond recovery from the outset.

[128] In fact I am absolutely satisfied on the evidence that the medical services and rescue arrangements at this rally were exceptionally good. Little more could have been expected standing the location and the nature of the event, and had the accident happened on the main A82 road from Inverness on the way to the rally it is unlikely that medical intervention would have been so swift. I was advised that the response time for Dr McHugh and the others who followed him would beat that achieved in many major cities, and within a few minutes after the arrival of Dr McHugh and the ambulance, Dr Harrington and his wife (who is also a doctor) and a trainee motorsport doctor also arrived, making a total of four doctors at the scene in addition to the trained crew of the rescue vehicle, all inside 20 minutes.

[129] A witness indicated that he considered that the crew of the rescue vehicle were unfamiliar with some of the equipment and that this caused him concern. I understand that the witness spoke of his concern in the right spirit and did not wish to appear to be critical, however, I think that he was in error and from all of the other sources I was satisfied that Mrs Robson received the best medical attention possible and that the passage of time between the accident and the arrival of the doctor and the rescue vehicle with its emergency equipment was as short as could be expected.

[130] So far as resuscitation attempts are concerned, I think it need only be said that resuscitation was persisted in for a significant time even after it appeared that it could not in reality be successful, and life was pronounced extinct in the ambulance at the road immediately adjacent to the spot where Mrs Robson was struck by the vehicle and/or the tree. It is now, following post-mortem examination, abundantly clear that the injuries which she suffered were massive, and on any view not survivable in any circumstances, and by the time the doctor arrived at the locus she had no blood pressure.

[131] I was impressed with the competence and professionalism of Dr McHugh who not only assists at Snowman but also at other different types of motor event in Scotland, and has done so over many years. He is always prepared for traumatic injuries to drivers and for injuries to spectators such as falls or flying stones, and although he has never been involved in a spectator death or serious injury previously, he was fully prepared for it and had the appropriate equipment, as did the rescue vehicle which followed him.

[132] The eight year old boy mentioned above was found partially under the car and so was incredibly lucky to emerge from this with what proved to be a minor injury, but all the evidence I heard discloses that he also had swift, sound and appropriate assessment of that potentially serious head injury, which initially was a suspected skull fracture. Accordingly, the medical care provided by the organisers worked well in his case also.

[133] Dr McHugh pointed out in his evidence that doctors in his position treating an injured person at an accident locus and then passing them on to NHS care at hospital, do not receive feedback from hospital as to aftercare results, extent of the injuries upon full assessment, and the like. He thinks that in the case of both living and deceased accident victims, sharing of important information gained at hospital on condition and treatment, would be of great value in advising event doctors of the medical detail and would thus assist in education and preparation for future involvement in like accidents.

[134] I agree entirely with his sentiments in that connection and would encourage him and the rally organisers to advance such an exchange of information at local level with hospitals. I cannot make such a formal recommendation in this Determination because it is outwith my proper remit, and because NHS Scotland were never invited to be a party at the Inquiry, and to make submissions in that matter.

## **B. JCR**

[135] This accident took place near to the village of Swinton and the deceased and injured were in a field close to a road where they could be relatively easily reached by emergency services, unlike the situation in Snowman where the deceased and injured party were in an inaccessible forest area with a steep slope below the track. There were several people in the immediate area of the field entrance, one or two of whom had first aid experience but perhaps more significantly the next rally car on the scene which arrived within a minute or so had as its co-driver, (Melanie Holmes) a qualified nurse who was also a very calm and competent individual. She took control of the situation, assessed the four victims and gave directions to others - particularly in relation to the attempted resuscitation of Mrs Allan and Mr Stern immediately and then a few moments later, of Mr Provan, who was some yards further north than the other victims. Mr Martin was severely injured and she and others dealt with him also. I was very impressed by the way that she and others under her guidance dealt so calmly and efficiently with such a scene of devastating and sudden medical emergency.

[136] A call for medical services went out immediately, in fact the court could hear from the evidence of mobile phone footage which was produced at the Inquiry, that the accident was so severe and so obviously life threatening that calls for medical assistance were being made by witnesses within two or three seconds of the impact. One of the doctors for this stage of the rally was Dr Robin Kerr, a general practitioner of experience and one who has had a lifelong interest in rallying and involvement with JCR since around 2010. Because of the length of that stage there was a need for a "mid-point medic" and that was Dr Kerr's role, - another doctor was at the stage start, and there was also a chief medical officer, Dr Pawson.

[137] Dr Kerr has regularly provided medical support at rallies prior to 2014 and because of his interest and professional approach, he has gone out of his way to attend courses which train him in emergency care including pre-hospital trauma life support. These qualifications and his personal commitment make him an especially well qualified individual, and on this particular day he was at the appropriate point of the Swinton stage for rescue and medical services, which I understand was around Post 12, three miles or so from the accident location, and midway round the stage.

[138] The radio call indicating potential spectator injuries at the crash site came in to him at 16.09 hours and he and the other emergency personnel made their way to the locus immediately. The rally cars which had been live on the course until that point were under yellow flags which meant that they were prepared to shut down and stop, and so the rescue convoy was able to make its way to the accident location with sirens on and travelling at as high a speed as they were able to achieve with safety. There was absolutely no delay either in calling for them, or in them getting to the accident location, and they immediately assessed the situation as a major incident and called it in asking for ambulances and emergency backup crews to attend immediately.

[139] Dr Kerr immediately began to start mass casualty triage in order to ascertain which of the four casualties were saveable and he very quickly ascertained that the three now deceased were beyond any intervention. CPR had been started on these victims before his arrival and continued until he asked it to stop, having found no vital signs on the victims as he moved from one to another. The injured party Donald Martin who was a witness at the Inquiry, was conscious, he became the focus of attention thereafter and he was immobilised to ensure that he did not move his neck. He was in a serious condition and Dr Kerr ensured that he was looked after while he satisfied himself that there were no other persons who required treatment including the driver and co-driver of the crashed vehicle. From that point on all of his efforts were put into helping Mr Martin and it was decided that since he had a possible spinal fracture and an obviously badly broken leg it would be advisable for him to be removed to hospital by helicopter. This was organised and arranged in excellent time.

[140] It appears from the timings available to me that Dr Kerr arrived at the scene at around 16.12 and had Mr Martin prepared and ready for his helicopter transfer by 16.42, having also dealt with the other potential casualties, given Mr Martin oxygen and fluids, placed him on a spinal board in an immobilised position, and given him intravenous morphine to assist with pain. Mr Martin made no complaint when he gave evidence at the Inquiry about his treatment at the locus.

[141] I should formally record that I am entirely satisfied on the evidence which I heard and read in post mortem reports, that in the case of the three deceased the impact with the car was so severe that death was in each case instantaneous, and no level of medical intervention would have made any difference to the outcome.

[142] In all the circumstances I am absolutely clear that the response was excellent, that the JCR organisation had everything that they were required to have in place for the treatment of casualties in the event of an accident and that the execution of their plans and arrangements in that connection was exemplary.

[143] Accordingly, in both of these events I am satisfied to the fullest extent that the medical and rescue services provided by the organisers of each of the two rallies is beyond criticism, - indeed in each case it is praiseworthy.

[144] As a footnote to this topic I note that the Review Group have recommended that rally car crews should be trained in emergency first aid procedures. Miss Holmes is an example of the potential benefit in that, and I approve that recommendation.

### **13. RALLY PREPARATION AND ORGANISATION**

[145] A huge amount of preparation work goes into the organisation of a rally of the type with which this Inquiry is involved. Typically, that work will begin many months before the event is due and important matters may have to be decided at a very early stage with matters of lesser urgency and detail being dealt with as the event gets closer. Where it is an annual event of national standing as was the case in each of the two rallies involved here, it will often be the case that certain of the key organisational roles will be decided at the conclusion of the previous year's rally. At that early stage the key individuals are the clerk of the course and the rally coordinator, and a huge amount of administrative work requires to be done from that point on, involving important matters such as preparation of application forms, consents, consultations with bodies such as police, FCS, local councils, car clubs, various individuals and of course the MSA.

[146] It is not necessary for present purposes for me to deal with any of that in detail, but it is important to record that at the Inquiry I heard the evidence of the rally manager or coordinator in each case and was greatly impressed by the personal qualities and organisational ability of the two women involved. In the case of Snowman, Fiona Moir has been rally coordinator since 2009 and continues to perform that role as a volunteer. Preparation work takes up virtually all of her spare time and she is highly skilled in that role. Her husband, Neil Moir, was the clerk of the course for 2013 and he had been clerk of the course for some years prior to that. Accordingly, they were a very settled administrative unit with Mrs Moir chairing the organisational team meetings at which important early decisions were being made, and these meetings increase in frequency as the event gets closer.

[147] The JCR organisational position was slightly different in that there had been a rally manager (Colin Fagan) who was a paid official, but when he left in 2013 and the work became voluntary, Lara Holman took responsibility for the administrative work. She had been involved with rallies for years, particularly in the organisational aspect, including work in the Lombard RAC Rally. She again, was an extremely impressive individual who had a full grasp of all of the administrative requirements of that large event, and being a closed roads event, the administrative workload at JCR was even greater than at Snowman. Again, in this rally there was also

continuity in respect of the position of clerk of the course, in that the 2014 clerk of the course (Russell Blood) had held that position also in 2013, and so he and Miss Holman were the administrative leads in the preparatory work which began at the end of the 2013 JCR event. They appear to have performed these duties for the 2014 event with distinction.

[148] An early requirement for the organising committees in each case was to set the course for the following year's rally and in each of these cases there were some changes from the previous year's course, something that is seen as important, so that drivers are challenged and do not always run over precisely the same stages. Once the course is set work begins on the preparation of the many manuals and road books which require to be produced under MSA regulations and the blue book, including safety manuals, and stage operating procedure manuals which are essentially for officials, but also a rally programme and website which are the means by which the organising team communicate with the public who are the potential spectators. It is the responsibility of the organising teams under the direction of the clerk of the course and with the invaluable assistance of the rally coordinators, to ensure that the various administrative matters are efficiently dealt with and that the various manuals are properly and carefully produced and distributed in good time for their purpose to be served.

[149] As the rally gets closer it is essential for the clerk of the course to ensure that the key officials are in place in good time for them to be able to perform their functions and to the context of this Inquiry, I pleased to record that no difficulties have arisen which require me to deal with any of the background administration for either rally, including issues of timely appointment of key officials by the clerk of the course and organising committee and the myriad of applications and consents which are required. Both rallies appear to have been very well run and organised and in each case received satisfactory markings from the MSA steward whose duty it was to report on such matters at the conclusion of the rallies. Accordingly, I am content to leave aside now general organisational considerations in each of these rallies.

[150] In the case of Snowman I therefore concentrate on (a) the evidence which surrounded the matter of publication and provision of spectator safety information, (b) related issues which affected the ability of marshals to deal with spectators who arrived at Post 16, (c) the circumstances which led the spectators to take up the viewing positions which they did and (d) some elements of the stage setup for Glenurquhart. I then record my conclusions on these and other connected topics.

[151] In the case of JCR the issues are slightly more complex and widespread, in that it is necessary in the case of that rally to deal in detail with an examination of stage setup and particularly the way that prohibited areas were dealt with at stage setup. A related issue then arises in respect of how spectators came to select their positions to view the rally and that leads to and connects with an examination of the adequacy of marshalling arrangements and the effectiveness of the marshals on the ground. The provision of advice to spectators on maintaining their personal safety is a feature which also requires examination, albeit less so than at Snowman. Again, I record my conclusions on these and other connected topics.

[152] Accordingly, in the sections of this Determination which follow, I deal with the rallies separately since different considerations apply, albeit with some common features, and in individual chapters I concentrate on the matters mentioned above. Throughout it should be understood that there are numerous areas of important spectator control and safety considerations which are not dealt with in any depth because they have not been the focus of the Inquiry, but having said that, I should add that even if a matter involving spectator safety was not in particular focus I would feel it proper to comment adversely if I had any concerns. It may therefore be assumed that if a matter is not commented upon in this Determination it is a matter which has not raised specific concern.



#### **14. SPECTATOR SAFETY INFORMATION FOR SNOWMAN 2013**

[153] As an introduction to issues of spectator arrival, control, and management at special stage 1 of Snowman 2013, it has to be explained that there were two changes of significance from Snowman 2012, which may be of some relevance. The first was that while the many FCS tracks in Glenurquhart Forest were very regularly used as a stage in the rally, the route changed on a regular basis since that forest has a large number of tracks allowing for a variety of different routes. The hairpin bend at Post 16 was not part of the course the previous year although the track which forms the north leg of the hairpin had been used to run straight through into the track which in 2013 formed the spectator access route to the hairpin.

[154] The second change of significance was that because of some pockets of drunken and disorderly behaviour in 2012 when Glenurquhart had been the final stage, and was run at a time when darkness was falling, it was decided that it would be safer to run Glenurquhart in 2013 as the first stage of the rally. Each of these changes was perfectly understandable and was made for sound reason, but each had an effect in 2013, on the number of spectators arriving at Post 16, and on the time at which they arrived there.

[155] These decisions were of course early decisions and both were matters which had been decided as the various rally documents were being prepared by the organising team, specifically by Fiona and Neil Moir in the case of the event programme, by Bruce Adams the spectator safety officer - also in respect of the event programme, and by Charlie Campbell the deputy clerk of the course in the case of the stage operating procedure manual.

[156] The official rally programme was independently produced and printed but it had significant input from the organising committee with messages from "the organising team", and specifically a full page message from the event spectator safety officer Bruce Adams headed "Spectator Safety". The programme is a commercial production with advertisement and sponsorship messages and the £4 charge for it goes to the production team and not to the Highland Car Club. So far as spectators are concerned, they are asked in the opening message to:

“Make use of the maps and spectator information in this programme to guide and inform you of the safest places to watch and help us to ensure that the event is enjoyable for both competitors and spectators alike”.

It goes on to say:

“Please remember to take care of your own personal safety and to obey the marshals’ instructions, they are there to assist you to keep safe and enjoy the event and for the safety of the competing crews. Please don’t spoil a day for everyone else by behaving recklessly. We have included some important safety instructions in this programme which we would request that you read carefully before venturing out into the stages”.

[157] That message comes at the very beginning of the programme (half of page 3) and, clearly states that it comes from the organising committee. Thereafter the message from Bruce Adams referred to above, taking up a full page of the programme, advises the spectators what to expect in terms of the running of the cars, gives advice about the safety car procedures and gives some timings to supplement the times already contained in the programme about the start time of the stage. In particular the safety message from Mr Adams indicates that around 20 minutes before the time of the first rally car, the spectator control vehicle will go through the stage and will advise the spectators where to stand. The message ends with advice in relation to the weather (having regard to the time of year at which this event is run), a request not to take alcohol into the stages and to refrain from smoking in the forest. At an early point in that message Mr Adams stresses that this is a competitive event in the Scottish Championships that the crews of the cars do not wish to have problems with spectators on or near the road, and specifically says:

“So please remember to keep back”.

[158] That spectator safety message is reinforced by a warning on a full page of the programme advising spectators to take care because:

“Rally cars move quickly and may:

Run wide on corners

Cut across corners

Leave the road  
Throw up stones  
Do what you least expect”.

[159] That warning, featuring also a “cartoon” jumping rally car is a sponsored and approved MSA warning sign.

[160] In the after-event MSA appraisal of the rally by the MSA steward Jonathan Lord, there was a single criticism of the organisation on the ground that the triangular “Dangerous Sport” MSA approved sign was not displayed in the programme in addition to the other safety advisories. That was a correct observation by Mr Lord but it was accepted by all, including the expert and professional witnesses, that this criticism may not have been made if Mr Lord had been aware that there was a further spectator safety warning on the Highland Car Club Snowman rally website, where a full list of safety “do’s and don’ts” was produced beside a reference back to the rally programme. That list included instructions such as:

“don’t stand on the track” and  
“always remain alert, leave room for yourself to move quickly and try to stand behind something solid”.

[161] Importantly, it also requested that spectators:

“do as the marshals ask and help the marshals to run a safe stage”.

[162] The full list ran to 25 separate safety instructions, all crisp, clear and easily understood.

[163] I was also satisfied from all the evidence which I have heard that there were an appropriate number of properly designated and approved warning triangle signs which spectators would be bound to see as they made their way on foot from the carparks to the stage. These large red and white signs were in an MSA prescribed form indicating:

“Warning-Motorsport can be dangerous”.

[164] In all these circumstances I am clear that the organisers understood and reacted to the need for a high level of spectator safety information to be publicly provided and visibly displayed. The programme, the website, and the signage and instruction on the day are the proper and accepted means of relaying information to the public – the other documents produced by the organisers are only for officials and competitors.

### **Spectator issues at Post 16**

[165] As indicated above special stage 1 in Glenurquhart is fairly remote, is on a steep hillside some distance from a public highway, and the only way for spectators to get to the stage was by foot. The programme deals with this in indicating to those who had purchased the programme, that the rally start ceremony was at 0900 hours in Inverness and that the first car would enter the stage at Glenurquhart at 0953. It went on to say:

“There is car parking for this stage at Balnain and Shenval. **Do not park on the A831 – vehicles will be towed away if left parked on verges or blocking house entrances!!** Please park as directed by the marshals. There is a short walk from the Shenval Car Park to the stage. At Balnain there is a longer walk to the stage – follow the direction signs to the stage”.

[166] All of that was I believe factually correct and rally goers should certainly have understood very clearly that this was a forest stage, and that they were attending there in mid- February. The walk was around one and a half miles (depending on where they parked), by a rough track and was quite steeply uphill, with the result that many spectators who I heard from found it tiring and had not expected it to be so far from the road to the stage. Whether the length of that walk, which was around 30 or 40 minutes, was a factor in their late arrival at the stage is not clear, but certainly it is clear and I think is beyond dispute, that many spectators who used that car park area and track did in fact arrive at the stage late – not just late in terms of a comfortable arrival time for the rally start, but actually after the stage had gone live.

[167] It is clear that the forest track leads only to the hairpin bend at Post 16, which I referred to earlier and equally clear both from parole evidence and from viewing of photographs that once spectators arrive at that location they find themselves at the outside apex of the hairpin, and if they wish to see the rally they have to go left or right when they reach the boxed-off area at the end of the forest track. From there it is not an easy task to make their way through the forest to the rally track approaching the hairpin and thereafter leaving it. From photographs which I have seen it appears that the majority of arriving spectators went to the right leg (downhill), but I am concerned primarily with those who chose to go uphill, on the left hand leg.

[168] MSA guidance on the taping and signage of this area has in my view been properly followed through, in that the inside of the hairpin bend was taped off with red and white tape to a proper extent and for an acceptable distance on each side of the hairpin. On the outside of the hairpin, that is to say the entry to it where the track from the Balnain car park reaches the hairpin, the set up team and the marshals on the day had between them created a safe and proper runoff or boxed area at that point to avoid any potential injury to spectators caused by a car either failing to brake properly, losing control or having a mechanical defect which may cause it to run straight ahead on the downhill approach to the hairpin. There was also a proper and acceptable level of obvious taping on the outside of the hairpin both on its entry and exit. Accordingly, a safe area was created and marshalled by three marshals, including a radio marshal.

[169] The problem of spectator control which arose at the hairpin was brought about by an influx of spectators from the Balnain car park track which was both heavy and late, was clearly in excess of expectations, and, on the available evidence, appeared also to have been quite sudden, with many arriving in a short timescale. The combination of late arrival and high numbers presented the marshals in that area, (Mr Clayton and Mr Smart), who were both able and highly experienced marshals, with an obvious difficulty, particularly in the case of Mr Clayton who was at the boxed off area, dealing with the arrivals. Mr Smart was at the trackside, about 30 yards to the west of there, dealing with the safety of spectators at that location, and on both legs of the hairpin.

[170] The difficulty of accessing the rally track from the boxed-off area is in some ways best understood by seeing the footage which was shown to the Inquiry, but a general impression can be gained from the photograph which is at annexe 4, and which shows the stretch of track running eastwards towards the hairpin.

[171] When a spectator arrives from the Balnain track at the boxed off area at Post 16, he sees ahead of him on the approach to, and exit from the hairpin, a narrow rally track which is tree lined on both sides, and in places these trees almost overhang the track. There is very little space to walk between the forest and the stage without being very close to the track or even encroaching on it. Walking in the forest is also problematic because it is dense at that point and because of the steeply sloping profile of the land.

[172] In that connection it should be understood that once a rally stage has gone live, the cars are arriving at approximately one minute intervals, but because some cars make up time on others, the fact that they leave the start point one minute apart does not necessarily mean that they maintain that time gap throughout the stage. The locus of the hairpin is around three quarters of the way through the stage, and accordingly it is obvious that some cars may be less than one minute apart. The judgement of the time gap between cars therefore becomes a difficult and risky matter if one is to attempt to move up the stage, or indeed down the stage, from the boxed off area at the hairpin.

[173] Having said that most spectators arriving at the hairpin would not want to remain there and indeed on that day as the spectator numbers increased it would have been pointless for them to remain at the end of the boxed off area if they wanted to see any rally cars at all. Mr Clayton therefore had a distinct and growing problem as the rally progressed, and it was a problem which he could not reasonably have anticipated because his day had begun in a very quiet and straightforward manner and he had no knowledge of what was happening elsewhere. Spectators then arriving at Post 16 in good time were advised quite properly to find themselves good and safe viewing areas away from the hairpin bend and many did so easily and safely by means of the track because the stage was

not live. At the time when the safety cars drove through there was no obvious or dangerous accumulation of spectators at or around the hairpin and so there was no reason for anyone to raise concerns or to decline to allow the rally to start.

[174] It is very clear from assessment of the evidence here, that there was a real issue of late arrival of spectators, and indeed there was also an issue of late arrival of the competitors who arrived at the start following the road stage from Inverness to the start of special stage 1. Because they were arriving late the organisers started the rally eight minutes behind schedule with the first car going off at 10.01am.

[175] The course cars went round the course between 9.30am and 9.45am and Mr Adams in the safety car recalls that he remarked to the driver at around the Post 9 and 10 area "where are all the spectators today?" He said that when they reached Post 16, spectator concentration was again lighter than expected and he made the same remark. He spoke to Mr Clayton there and got confirmation from him that all was well at that point, - as indeed it was - and so he finished his drive through the stage and proceeded to drive away from it by public road to carry out the same function on special stage 2. As he did so, he met a line of cars on the A831 coming towards special stage 1 from Drumnadrochit and described them as "coming in droves", mentioning both rally cars and private cars. It was more than he expected to see at around 9.45am and he passed a message to rally control to keep an eye on that situation. He had no special concerns but was simply noting that there appeared to be a late arrival which he put down to the fact that the weather was particularly pleasant after a poorish spell.

[176] Andrew Jardine was co-driver of the zero car, which went round about five minutes later and that car is the final check before the rally cars enter the stage. Mr Jardine drives the zero car at close to rally speed, and ideally would not stop but his responsibility is to ensure that the course is safe and he recalls that he did stop two or three miles into the stage to speak to some spectators who were walking on the track. There were no further problems until he reached Post 16 where he saw a concentration of spectators behind the safety tape at the boxed off junction at the hairpin and he stopped and spoke to Mr Clayton in order to satisfy himself that these people would remain behind the tape and would be ushered away from that

point to safer and better viewing places nearer to Post 15. He recalled the marshals at Post 16 attempting to do that and he was satisfied that the issue of spectator congregation at Post 16 was being dealt with. He finished his drive through the course without further incident.

[177] Both he and Mr Adams were shown the 'dash cam' footage from car 25 which entered the stage around 40 minutes after the zero car, and they both seemed quite shocked and surprised at the obvious increase in the volume of spectators in the area around Post 16 and on both legs of the track at the hairpin. Both were clear that if that concentration had been present when they drove through earlier, they would have taken steps to have that dealt with before moving on.

[178] The second competition car that day was driven by witness Euan Thorburn and he would have passed Post 16 at around 10.08am. He remembers there being "a lot of people at the hairpin", although he had no difficulty traversing that point and did not consider there to be any safety implications. More especially, he remembers that the number of people at or around the finish was high (his word was "crazy") and he described people "walking all over the place" at the finish. That issue of spectator numbers in the finish area was raised with the organisers, and clearly it was dealt with properly because it was not an issue for subsequent competitors.

[179] The finish area was also accessible from the Balnain car park area and it seems to be clear that at around 10.10am when the early competitors were finishing the stage, the spectator congregation in the area of the finish line, was being reflected in the access track to Post 16, as the spectator volume was gradually transferring itself upwards on the track towards the hairpin over that period just before and after 10.00 am - the official start time of the rally.

[180] Accordingly, during that period when spectators should have been safely in their viewing positions settling down to watch the arrival of the first cars, they were in fact still walking in considerable numbers towards Post 16, and the congregation of people at that point continued to increase from 10.00am onwards until a point when Mr Clayton became so concerned that he did something that marshals are always entitled to do, but rarely do, in that he called the stage commander at his



position at the start of the stage and asked for the stage to be held, meaning that no more cars would enter the stage. The stage commander immediately complied, as is proper procedure.

[181] This proper and sensible call by Mr Clayton was made purely because of his anxiety about the number of spectators at the entry to the stage at the box junction, and his concern that they could not safely disperse from that area to safe viewing areas while the stage was live. He was clear that his decision was not made because of the standing positions of the spectators in the accident location. It is officially recorded that the stage was stopped for around three minutes at 10.29am, and Mr Clayton used that period of time to attempt to clear the area at the box junction where spectator numbers were growing.

[182] Of course, it has to be understood that at that time and for six or so minutes thereafter, cars would be coming through that hairpin at normal rally speed since they were live on the course when the stage was suspended, and there had not been a decision to use the yellow flag system to stop them, because there was no obstruction on the stage itself.

[183] The decision not to stop the 'live' cars on the course is not of relevance to this accident, because after two or three cars had gone through Mr Clayton was satisfied that a start could resume and so advised the stage commander. It was just a minute or so after he had made that indication that the fatal crash took place, and at that point the stage was open again, although in fact all the drivers who went through the hairpin up to and including Mr Schoneville, did not know that the stage had been suspended and so were unaffected by that. The stopping of the stage and the crashing of car 28 were two separate and unconnected circumstances. No new cars entered the stage after the stop, because immediately after the crash there were swift calls for medical and rescue assistance and the stage commander obviously did not release any further vehicles. I look at the question of the non-use of yellow flags in a separate section.

### **Spectator positioning**

[184] Turning directly to the position of the deceased, Joy Robson, this lady attended the rally from Skye along with her son, Christopher. They had a shared interest in rallying and Christopher Robson is in employment in the motor trade. They had both attended the Snowman Rally previously, Mrs Robson was a keen follower of rallying, and both would understand fully the potential dangers presented by speeding rally cars. They parked at Balnain and although he was not clear about timings, Mr Robson was clear that when they arrived at the hairpin, cars had already gone through and described the area as “very busy with lots of spectators around”. On that basis and with some assistance from photographic evidence, I consider that they must have arrived at the hairpin at around 10.15am.

[185] In common with other spectators they were asked by the marshals to move away from the boxed area at the end of the hairpin and he did so, making his way up the track along with his mother, between the competing cars and during the intervening time intervals. They reached a position on the north side of the north leg, around 40 yards west of the hairpin, where they decided to stand, and they remained there watching the cars as they came through. Initially, they were happy with their position, were enjoying the rally and thought it was safe. Their position is clearly recorded in photographs and videos shot by another spectator on the day, and the deceased in particular can be clearly identified from her clothing standing on the north side of the approach to the hairpin along with several others in a rough irregular line of perhaps 15 or 20 spectators standing side by side in that part of the track verge. The spot where she was standing was around 40 yards west of the hairpin, and at that point the drivers of the competing cars are positioning themselves close to the side of the road at which they were standing and beginning to swing the car to the right, in order to be on the best line for approach to the hairpin bend. The cars are of course also braking at that point and so the speed of the cars is reducing considerably since the hairpin itself can only be taken at a speed of around 20 miles per hour.

[186] The car which crashed was running as car number 28 and I saw evidence from the dash cam of car 25, giving contemporaneous video footage of the precise location of the accident three or four minutes before the accident and showing the

position of the spectators as car 25 approached the braking area before the hairpin. Mr Schoneville and his co-driver Mr Hendry agreed that the 'dash cam' from car 25 gave a good impression of what they remembered of the track, and they were clear, as was the driver of car 25, that the track was slippery at earlier points and particularly so in the softer verges.

[187] Other footage shows that many of the cars prior to Mr Schoneville's car came very close to the spectators around the Robsons, including three cars in particular which skidded sideways downhill in a line which brought their rear near-sides so close to the spectators standing in that area of the track side verge occupied also by the deceased, that all had to jump backwards into the trees. Exclamations were heard over the mobile phone footage indicating "that was close". The proximity of the cars seemed to enhance the enjoyment of many of those who I saw captured on the phone and camera footage.

[188] On the evidence of Mr Robson these cars caused him to think that they should move away from that point and he had a feeling of insecurity then. He and his mother were still considering moving away from that area altogether when the accident happened, but of course as earlier described in detail, that accident did not happen because of their location or proximity to the track at that spot, but because of the intervening event 50 yards west of their position when car 28 was launched into the air and came tumbling down the road out of control. Mr Robson and his mother were, in common with others, attempting to get out of the way of that rolling and rumbling car when it hit a tree on the north side of the road, and was diverted into the area where they were running thus causing fatal injury to Mrs Robson and injury to a small boy who was there with his father. It goes without saying that the car narrowly missed a number of other escaping spectators standing in the same general area, and that this tragedy could easily have been considerably greater.

[189] Mrs Robson and the several others standing in her immediate vicinity were not the only people who were standing at the edge of the track in that general vicinity, indeed the footage shows that there were many people at the track side, some dotting in and out of the foliage as cars approached and passed. Considerably larger knots of spectators can be seen in the exit from the hairpin, also standing on

the very edge of the stage and some are inside the tape at the very inside corner of the hairpin itself.

[190] While the position of the deceased and others cannot on any view be described as safe, it was not an obviously dangerous spot nor was it one which was considered by the organisers to be worthy of classification as a prohibited area with signage and red taping. It is I think best described, and it was by virtually all the witnesses, as a place where it was unwise to stand because of the proximity of the passing cars, and because of the fact that rally cars under braking on a slippery road can leave that road at any time, and even at a decreasing speed were going fast enough there to cause potentially fatal injury if they came in contact with spectators at that point. That section of track was on the outside of a very slight bend and was therefore the side of the road at which a car was more likely to come off, if control of the skid was lost.

[191] Normally because of the driving skills of rally drivers, such passing cars would be under control and braking at the point where the deceased was standing, but of course car 28 was out of control, and at the point when it was launched into the air it was going much more quickly than it would have been if it had continued down the stage under braking towards the hairpin.

[192] There were no designated spectator viewing areas at Snowman, but various of the witnesses, including Mr Clayton indicated that there was good viewing a few hundred yards west of post 16, and while none of the witnesses condoned walking up the stage between live cars, there was an acceptance that it was done very regularly at forest stages, that it was otherwise very difficult to move away from the hairpin because of the nature of the land there, and that it was a very difficult matter to police. I was advised that whistles and shouts in addition to engine noise gave good warning of an approaching vehicle and that while it was "not ideal" moving on a live track was something that marshals have to deal with by experience, training and firm advice, and something that spectators have to deal with by common sense and by understanding the folly of being in the path of a speeding car.

[193] It was accepted that one of the recognised danger point at rallies is the outside of a bend, and that the spot at which the deceased and others were viewing the rally was the outside of a bend, albeit a very slight one, and a bend which the cars were entering at a slowing speed. None of those rally officials or professional witnesses who viewed the footage of the locus prior to the crash were happy with what they saw in terms of spectator position and closeness to the passing cars, but it appeared to me that it was not something that they were unfamiliar with. They were not critical of the marshals for attempting to move spectators up track from the hairpin, albeit that such instruction at that particular point on the stage of the rally, necessarily involved spectators walking on the track between competing vehicles, because travel through the forest was so difficult.

#### **Stage setup at Glenurquhart**

[194] The setup of a forest stage is inevitably a matter of high importance and I heard evidence at this Inquiry about the setup of special stage 1 in Glenurquhart and was also able to see the entire course for myself from the in car video of car number 25, and was thus able to observe the signage and taping on the stage as erected by the setup team. This team comprised of a number of different individuals, and I gather from the evidence that effectively the control of the setup of that stage fell essentially to the deputy clerk of the course Charlie Campbell. In fact the stage was first visited in terms of setup on Wednesday 13 February when certain of the signage was put in position, but as indicated earlier it had been a week of generally poor weather at the outset and there were still sections of the course which were under thawing snow. That team appear to have done a very good job, and they involved FCS who confirmed that the track was ready and suitable, and who undertook, at the organisers' request, some lopping of overhanging branches which could have presented a danger to the competing cars and drivers. The two stones referred to earlier were buried in the road verge and were not visible to the setup team, even after the thaw.

[195] Charlie Campbell visited the course on the following day when he and an assistant went round the whole course with extra signage, checked everything, moved some signage to what he considered to be the best and safest position, and at that time he also made some observation which he was later to raise with others

about the amount of tree growth on the stage. It should be said that Charlie Campbell was familiar with the general area both as a competitor and as a stage commander. The stage is not always run in the same direction and not every forest track in that area is used every year, and Mr Campbell noted that in a number of areas including the area on approach to the hairpin bend at post 16 there had been considerable foliage growth since he had last been there, and that branches were at times close to encroaching on the road. Mr Campbell visited the course again on Friday 15 February and with particular reference to the post 16 area he put up approved "Motorsport is Dangerous" signs for spectators, and taped up the box junction at post 16 before completing his final checks and returning to Rally HQ to attend the pre-race meeting chaired by the clerk of the course Mr Moir. When taping the base junction, there was no feeling that the taping should be extended further west than the apex of the hairpin.

[196] Mr Campbell is not only an official of great experience but in respect of Snowman 2013 he was also the author of the stage operating procedure document for the event which includes detailed operational notes in respect of start, finish, timing, scrutineering, safety, accidents, yellow flag procedure and many other important aspects of the rally operation, some of which is also copied into the event safety plan. Importantly, that document also includes the course diagrams showing the route in detail with full information for the rally car crews on the nature of the coming hazard - whether it be a junction, bridge, a jump or a bend, and also giving precise distances between each of these features of the course. That "tulip" map was used by Mr Campbell to assist him to put the signage and taping up on the days when he visited and by the time he left the course on Friday evening he had ensured that all of the necessary signage for spectators and directional signs for drivers were in place. He therefore had a close and detailed knowledge of the physical characteristics of that entire stage, from the perspective of both driver and spectator safety.

[197] At the pre rally meeting he raised the issue of the foliage, although by that time it would in reality have been very difficult to have dealt with it in any practical way had the meeting found that there was a significant problem. There was some minor dispute in the evidence as to whether the issue of the foliage growth and

spread between posts 15 and 17 was raised formally round the table at the meeting, or informally in conversation, but in any event I am satisfied that Mr [198]Campbell had some concerns about it and dealt with these concerns responsibly by discussing the matter with others. I am also satisfied that it was not considered that evening that there was a particular problem which required to be dealt with in that area, because it is known that nothing was done to further cut back foliage prior to the start of the stage at 10.00am the next day. From a viewing of the car 25 video footage, I think that it is fair to observe that the area around post 16 was by no means unusual, in that there appears to have been considerable growth over the whole of the stage and there were a number of places where the tree growth and level of encroachment on the margins of the track was very similar to that around the posts 15/17 area. It is also fair to observe that Mr Campbell's observations were factually accurate – it would be difficult for people to move up either side of the stage leading down to the hairpin on account of tree encroachment, as can be seen in the photograph at Annexe 4.

[199] Mr Campbell also remembered discussing the issue of spectator access with others at the meeting but he acknowledged that the programme had already been printed by then and that everybody agreed that it couldn't be changed. The issue that he thought might ideally be dealt with was that it may be preferable to have some spectators directed nearer the flying finish than to the hairpin bend, in order to spread the load of spectator traffic. No action was taken on that matter.

[200] No-one was absolutely clear about the numbers of spectators who may arrive at special stage 1. The weather was improving but it was a very early start and the change had been made because of problems on previous years when Glenurquhart had been the last stage of the rally and there had been some issues of spectators affected by drink and being somewhat boisterous late in the day, potentially spoiling or delaying the finish of the event. A further issue was that it is often the case that by the end of the five special stages, especially if there have been delays of any sort during the day, the rally may finish in darkness. While that is planned for, it would nonetheless have presented risks for spectators in more remote parts of a forest at that time of year – and Glenurquhart is a remote location.

[201] I heard evidence from Mr Moir on that matter and on the general reasoning which lay behind the decision to make Glenurquhart special stage 1 in 2013, and of the issues in previous years which influenced that decision. As part of that decision to change, consideration was given to issues of arrival of spectators and car parking for them although there was no anticipation that large numbers of spectators would arrive late. The change to an early start was mainly dictated by what Mr Moir described as “a fair number” of spectators being abusive and drunk in 2012 and having arrived at the final stage with “crates of lager on their shoulders”. He and the organising committee were understandably anxious to avoid any repetition of that, and in the programme they specifically indicated that the walk from Balnain Car Park was the longer one. It was hoped that such a comment would be enough to put sizeable numbers of spectators off making the walk uphill to the hairpin and encourage them to use Shenval parking instead. Clearly that proved to be a misjudgement.

#### **Marshal numbers**

[202] Marshalling of the hairpin area was fully considered at an appropriately early stage and Mr Moir, and the organising committee invited Neil McHaffie from Mull Car Club to be stage commander and Andrew Straube from Highland Car Club to be chief marshal. Between them they were responsible for the availability, supply, and deployment of marshals for the stage and there was agreement that there should be a total of 11 marshals on the stage including three at post 16. These three were to be John Clayton, his wife Sandra as a radio marshal remaining in the radio car, and David Smart. It was understood and anticipated that post 16 would be an area at which spectators would arrive and Mr Straub knew the area having worked there in previous years as a marshal. He was aware that both Mr Clayton and Mr Smart were experienced marshals and there was never any consideration at the pre-rally planning stage of putting more than these three marshals at post 16. Of course unforeseen issues did arise in relation to spectator numbers at post 16 and these have been discussed above.

[203] With the benefit of hindsight it is easy to observe that Mr Clayton and Mr Smart were struggling to cope by 10.30 am and that in the circumstances which



arose unexpectedly on the day that post needed more than just these two men to deal with that spectator volume.

### **Yellow flags**

[204] When Snowman stage one was stopped because of the crash involving car 28, the rally was live and although it had been suspended because of Mr Clayton's decision three or four minutes earlier, there were live cars on the track behind car 28. Mr Clayton required to take immediate action to stop car 29 because yellow flags were not used during either stoppage.

[205] The reason for yellow flags not being used during the first stoppage, the suspension of the stage, was that the nature of that stage suspension did not meet the blue book requirements for a yellow flag to be employed since there was no obstruction to the track itself. The yellow flag could not be used for the second stoppage because the matter was so urgent, and because there was no shortcut available for the medical and rescue vehicles to take to get to Post 16, and the yellow flag would only have been used to allow them access to a live stage at an intermediate point. There were therefore issues surrounding the use of yellow flags which involved not just Snowman but also JCR and accordingly there is a section on this matter in my recommendations, although it must be stressed at this point that the non-use at Snowman was not a matter which had any adverse effect or played any part in the death of Mrs Robson.

### **Tabards**

[206] It was a feature of the evidence at Snowman that various shades and types of yellow, red and orange 'hi vis' jackets, tabards or vests could be seen among the crowd in the area of Post 16, and there was therefore considerable confusion in the minds of many people who viewed the footage or who were there on the day, as to who was and who was not an authorised marshal. At least two such individuals, who I now know were not there in any official capacity, had orange tabards with writing on them which could easily give an impression that they were there in some authorised capacity, and it cannot have helped that these two people were at key locations - one at the hairpin close to Mr Clayton, and the other near to Mr Smart in the area where the car left the track.

[207] The two 'official' marshals were properly tabarded, but it should be understood by rally organisers, particularly in forest rallies and in inclement conditions, that many people are issued with or purchase such 'hi vis' garments, and are likely to wear them at outdoor events. It is therefore important that rally marshals wear tabards which are distinctive and properly marked so that there is no dubiety about their position, and uninformed spectators do not seek or obtain advice from unqualified individuals who happen to be present, and who may provide very bad advice.

## **15. CONCLUSIONS ON THE ORGANISATION AND MANAGEMENT OF SNOWMAN 2013**

[208] One of the tasks for me at this Inquiry is the identification, from my examination of the evidence, of areas of the Snowman planning and execution which may give rise to issues of potential prejudice to spectator safety. Where any such issues are identified I require then to consider whether, in the light of subsequent events, I require to make any recommendations for the future in any of these areas.

[209] Having narrated the relevant evidence, I indicate within that narration the facts which I found to be established, and I also make certain observations on the evidence. I now identify the specific areas in respect of which the Crown led evidence in order to bring to the attention of the Inquiry particular factors which may impinge on spectator safety. In reaching the conclusions which I now set out, I take into account all of the evidence led and the submissions made in that connection by the MSA and by Highland Car Club, and I divide and separate the areas of concern so far as that is possible, in order to look at the specific areas in which it was suggested that there may be identification of a defect within the preparation and management system for the rally, and hence a possible need for a recommendation to be made.

### **A. The provision of safety information**

[210] I am satisfied in all that I have read and heard that the Snowman organisers provided a good level of safety information in the programme, the website and in the signage which the spectators saw as they arrived.

[211] There was discussion at the Inquiry of one particular approved sign which shows a number of track configurations with shaded areas indicating locations at which spectators should not stand, and it was accepted by everyone who gave evidence that such a sign could be useful. I suspect that it is not commonly used because it contains too much information for spectators to assimilate as they walk onto a stage but it may be useful to have such a sign in a rally programme. Although I doubt if it substantially adds to the knowledge that regular spectators already have, it may be a very useful learning tool for newcomers to rallying. Every spectator who was a witness at the Inquiry and who was asked about positioning at

a rally indicated that the obvious “no go” area was the outside of a bend. What is and what is not a bend can be a matter of degree, and while it is a fact that the spectators at the accident location at Snowman were undoubtedly at the outside of a bend, they probably didn’t view it as such because the bend was so slight. Apart from further repetition of well established guidelines and regular reminders of the speed of the cars, the unpredictability of their movement, and the danger of standing close to a live track, all of which was already said in clear terms, I do not consider that there is any further safety information that could have been provided to spectators by the Snowman rally organisers.

[212] There was however a situation which the organisers failed to anticipate and it was accepted by Mr Moir that they had not expected, and therefore not planned for, the late and large influx of spectators who arrived at Balnain and made their way to Post 16.

[213] There were I think two main reasons for that influx, the first being that Glenurquhart was the first stage of the day, and since the majority of spectators arrived by the busy A82 from Inverness, a queue then formed on the minor road to Balnain and Shenval. They were from the outset late, and that lateness was of course accentuated by the fact that there was then a considerable walk – longer than many expected - from Balnain to the only part of the stage that could be accessed from that car park and the surrounding area. A secondary issue was mentioned by a number of spectators, namely that they made a late decision to spectate at the rally on account of very mild weather, and this further swelled the spectator interest in what was already a popular attraction.

[214] The change of Glenurquhart from the final stage to the first stage was made for the very understandable reasons mentioned above, and it is difficult to address any criticism on the organisers for doing that – indeed it was done in the interests of spectator safety. The knock-on effect was however not anticipated although there was an attempt in the programme to divert spectators to Shenval rather than Balnain by making reference to the long walk from Balnain. They cannot be criticised for failure to provide other car parks because the geography of the area and the absence of paths through the forest simply does not allow that, but the accumulation of these

features has clearly caused something of a crush at the box junction at Post 16, as people arrived in considerable numbers and faced difficulty in accessing a view of the event from their arrival point.

[215] Clearly, it is a matter that requires more careful consideration, not just at Snowman but at all forest stages in other rallies, and accordingly I see fit to mention it in my recommendations. I do not however consider that it can be said that the organiser's failure (referred to in paragraph 212) can be seen as anything more than one of a number of possible contributory factors in the late congregation of spectators at Post 16. It would not in my view be appropriate to find that it was a cause of that congregation.

[216] Accordingly, while I am happy that the Snowman organisers gave a good level of information to the public there are lessons to be learned in the area of planning for spectator access to a remote stage and for their movement thereafter to be safely controlled, and that is important because of its close connection to the thorny issue of spectators walking on the track once the stage is live.

**B. Should the accident location have been a prohibited area?**

[217] As indicated earlier virtually everybody who viewed the footage and indeed most of the people who were actually there on the day, agreed that the spectators in the area where Mrs Robson had been standing were not in a safe spectator viewing spot. There were two reasons for that, the first was that it was on a gentle bend and several cars did in fact skid to the extreme left of the track as they approached the hairpin and positioned themselves for the optimum turning angle, albeit that their speed was decreasing quite considerably at that point. The second issue was the physical proximity of the spectators to the track itself, due to the narrowness of the verge.

[218] The point which I had to consider was whether the taping around the inside of the hairpin should in fact have been continued for many yards up the track to the west, and of course if it had been continued for 40 yards or thereby, the location of car 28 leaving the road would have been a prohibited area for spectators. The prohibited area would have to be continued west for another 50 yards or so for the

spot where the car first began to roll to be within it, and on that basis one begins to enter a scenario where virtually the whole of a forest stage which is not dead straight and open requires to be considered for taping and prohibition.

[219] I have reached the view that that is not a reasonable approach, and that the taping undertaken by the Snowman setup team was perfectly adequate and appropriate. The simple and unavoidable fact is that there were a multitude of places on this nine mile stage where ill chance, loss of control, or mechanical failure could have led to a car leaving the track, and organisers and setup teams could not reasonably be expected to predict where that might happen and thus prohibit spectators. There were many hairpins on the course and perhaps more significantly many bends taken at much higher speed than apply at hairpins, and the signage that I saw as I viewed the in car footage of the entire stage makes it very clear that it would not be reasonable for a forest stage of that type to be taped more extensively than this one was. It is not practicable to legislate for remote possibilities or attempt to guard against an inherently unlikely event.

[220] Organisers of this and other rallies simply need to use their experience to understand where the likely danger spots are and deal with them appropriately. Spectator safety information must be trusted to take care of other parts of the stage where a car leaving the track is unlikely but always a possibility. Accordingly, I make no recommendation or further observation in relation to the measures taken to identify and mark prohibited areas at Snowman, and further I indicate that I was also content with other issues of setup of this stage including general signage, road condition and tree growth. Following on the requested lopping, the foliage encroachment mentioned earlier was not an issue for the cars; it was more of a problem for spectators and so is dealt with in what I say in relation to spectator movement.

### **C. Marshalling arrangements**

[221] With hindsight it is easy to understand as indicated earlier, that one or two extra marshals at Post 16 would have been extremely useful, but on the basis of the information available to the organisers at the time when marshal numbers were being considered, I cannot fault the decision to have one radio marshal and two

marshals (Mr Clayton and Mr Smart) at that point. Even when the last course car went through the stage, there was nothing to indicate a need to augment the complement, and thereafter the supply of additional marshals would have been a slow and difficult process, even had it been requested.

[222] In normal circumstances two experienced marshals was an appropriate manning for the post and both showed their experience on that day in the careful and proper way in which they carried out their duties. Part of their duty (as at 2013) was to ensure that spectators made their way safely up the stage to a better viewing area than the immediate vicinity of the hairpin and the box junction, and both Mr Smart and Mr Clayton can be seen on video footage moving quickly after cars have passed and ensuring that spectators move before the next car arrives. Mr Smart can be seen on video footage encouraging spectators at the point where Mrs Robson and others were standing, to move further up the stage, westwards. The marshals would be alerted to the arrival of the next car either by engine noise or whistle and so they were not acting irresponsibly in encouraging spectators to get away from more problematic spots and move up or down the stage to better and safer viewing areas.

[223] Mr Clayton did the correct and responsible thing when he held the stage at one point so that he could clear some spectators from the crowded box junction and he did that successfully because after around three minutes he was able to lift that closure and get back to the type of marshalling which he had been doing previously. It was a very difficult day for these two men and of course it got much worse when car 28 crashed. It is worth mentioning specifically that a marshal's duty continues when there has been an accident and they both performed with distinction thereafter; both in terms of assisting the deceased and the injured child, and also relaying vital information very quickly back to the stage commander and the medical and rescue personnel. Mr Clayton also had to pull out his emergency boards and stop the next car coming through which again he did successfully thus preventing potential injury to other spectators. It was an extremely fraught situation, but they dealt with it well and nothing arises from that which requires me to make any further comment.

[224] The decision to place a radio marshal at Post 16 was a very sound one and paid dividends in swift relay of important information to the stage commander and thus to emergency services.

[225] On the marshalling provision generally I need say no more than I have said and I am unable to find any defect in the rally organiser's plan in relation to the marshalling provision which was originally made for Post 16.

#### **D. Why did this death happen?**

[226] I consider that this was a genuine car racing accident, and one which was in the circumstances here, probably entirely unpredictable and unforeseeable. Of course it has to be accepted that rally cars can go off the track almost anywhere for a variety of reasons, but the physical reaction of this car was, for the reasons given earlier, extreme and highly unusual, meaning that it travelled a long distance before contacting people who had been almost out of its vision when it first hit the stones. I am unable to point to any errors or omissions on the part of the rally organisers which can be said to have materially contributed to this occurrence, where the element of misfortune was so high that it would not be reasonably anticipated that the crash would take place there or have the consequence which it did further down the track.

[227] In many ways this event exemplifies the reason why motor sport is dangerous, and why spectators must be constantly reminded of that fact. That does not mean that no lessons can be learned - indeed it is a sharp reminder to both organisers and spectators that the element of danger must always be at the forefront of their planning for the day.



## 16. GENERAL BACKGROUND OF JCR 2014 EVENT

[228] This event had its 44<sup>th</sup> running in May 2014, 15 months after the fatality at Snowman, but importantly there had been a very successful and accident - free running of the rally in 2013, just three months after Snowman - and a further running of Snowman in February 2014. Standing that time gap, the successful intervening rallies and the generally excellent history of safety in rallies over many years, there was no special consideration of the Snowman 2013 events as preparation moved towards JCR 2014. That is not to suggest that there was oversight, complacency, or negligence, it is simply an observation indicating that the events at Snowman 2013 were not considered to be particularly significant in terms of the planning of the 2014 rally for a variety of reasons, including the nature of the accident in 2013 and the fact that it occurred during a forest stage.

[229] JCR is of course a closed road event, the only one run on the UK mainland, and an event with no history of previous serious spectator injury issues. There had never been a fatal accident at the rally previously and none at any Scottish rally since the death of a driver in a forest stage in 2010.

[230] The Jim Clark Memorial Motor Club Ltd (in 2014 known as JCR Ltd) were the organisers of the 2014 event and the board of that company was made up of individuals who were members and directors of other clubs, in particular the Berwick and District Motor Club who were the MSA permit holders for the 2014 event. For simplicity I will from this point refer to those responsible for various aspects of the event organisation and management either by reference to specific individuals or simply by reference to "the organisers". The individuals who were officials and office holders for the event were in some cases brought in from other clubs in other parts of Scotland and from the north of England and they are all fully listed in the programme including particularly the clerk of the course, Russell Blood, his deputies Colin Smith and Graham Provest, spectator safety officer Charles Tynan, the chief marshal, Dave Brodie and, in the context of the accident occurring on the Swinton stage, the stage commander for that stage, Lock Horsburgh.

[231] The rally started on Friday 30 May and was a three day event, with the Jim Clark Rally itself taking place on Friday night and Saturday, and the Reivers Rally, a

separate event which was part of the Scottish Championships, taking place on Sunday 1 June. JCR 2014 was an 18 stage event with eight stages being run on Friday afternoon and evening and 10 stages on Saturday. The stages were normally run more than once and the stage at which the accident occurred, Swinton, was run as stage 9 (the first stage on Saturday morning) and as stage 16 (the third stage on Saturday afternoon). JCR is a rally run on public roads which by statute are lawfully closed, first of all during the Friday stages, then during the running of the Saturday morning stages, and then, after a brief period of being open to the public, are closed again for the second runs.

[232] That speciality of course brings with it particular problems, not just in terms of ensuring that the roads are properly closed and thereafter opened, but also because the rally runs through towns, villages and smaller settlements and passes immediately past houses, gates, farm tracks and the like. This rally is a massive organisational challenge and a huge amount of work requires to be done to ensure driver and spectator safety and to make sure that pedestrians, children, domestic and farm animals and vehicles do not inadvertently encroach on the stage while cars are running at speeds in excess of 120 mph in competition.

### **Spectator safety information**

[233] Specific arrangements for spectators at particular places of concern for this Inquiry are dealt with subsequently in this Determination but on the more general topic of spectator safety information, the opening to the programme for the event carries the following important message.

“Part of the attraction of motorsport is its inherent risk. Please abide by the Safety Code particularly when selecting the viewpoints and follow marshals’ instruction. Their job is to provide a safe, enjoyable and professional rally”.

[234] The programme also contains a prominent half page warning “Motorsport Can Be Dangerous” red triangle sign in the form prescribed by MSA, and also a quarter page “cartoon car” warning, again in the MSA form, advising potential spectators of the unpredictability of movement of rally cars. This was, unlike Snowman, a rally at which there were some designated spectator areas at various of

the stages, and five pages of the programme deal with spectator facilities generally, including parking, merchandise, toilet facilities, catering and the like at the various stages. Where there is no official spectator point on a particular stage it says so clearly, and in the case of some of the stages there is a great deal of information for spectators generally. The Swinton stages carry only the following spectator information:

Road closes at 0750 and again at 1500 for the second run;

First car 0831 and 1539;

An old favourite with competitors for its long straights and big jumps;

DIRECTIONS. No official spectator point. FACILITIES. No facilities.

[235] Swinton is not the only stage to be dealt with in that way since that form of information is used generally where the stage is relatively remote from larger settlements, and does not contain any spectator gathering points, facilities or official viewing areas. Since the Eccles stage is mentioned below it is perhaps of interest to note that exactly the same form of public information is used for the Eccles stage which again is one with no official spectator viewing points and no facilities. That stage is said to be characterised by its “long straights and square 90 corners”.

[236] Again for general information, since one of the jumps at Swinton is a matter dealt with in great detail in this Determination, it should be noted that Swinton is not the only stage in respect of which programme readers and potential spectators are specifically directed to challenging issues within the stage and so for other stages remarks are made directing spectators to ‘long fast straights’, ‘hidden dips and crests’ and the ‘infamous concrete road’.

[237] That section of the programme ends as follows:

Spectator areas are provided to give you the best view of the action in as safe an environment as possible, but PLEASE REMEMBER MOTORSPORT IS DANGEROUS AND YOU ARE PRESENT AT YOUR OWN RISK.

At all times -

Please comply with instructions from officials and marshals, they are there to ensure the rally runs safely for everybody concerned, if you ignore instructions then the rally will be stopped.

Keep children under close supervision.

Dogs must be kept on a short fixed lead at all times. Stay inside the marked spectator area. Stay alert and expect the unexpected.

Keep yourself and those with you safe and enjoy the rally weekend.

[238] As the spectators arrived at car parks, viewing areas, and other accesses to the stages there was a proliferation of physical signage of a type approved by the MSA which clearly alerted spectators to the obvious fact that they were approaching the rally stages, and that such an activity carried inherent danger. Where there were prohibited areas for spectators, these were also signed and taped with red and white striped plastic tape of a type which would be familiar to anyone arriving at it as being a visual barrier indicating that the point should not be crossed. The signage was backed up by the presence of marshals who wore high viz jackets or tabards usually red in colour, but underlining for the arriving spectator the need for caution at these particular points.

[239] There were around 600 marshals in total at the rally and so this whole event was a major undertaking with an obvious need for clarity on the issue of spectator safety, both by the dissemination of information before the event and by physical and visual messages and barriers once the spectators arrived there. There are particular issues of signage and marshalling which are dealt with later, but I considered that the organisers had done an excellent job in pre-event safety messages, and in advising spectators of the potential danger of motorsport.

### **Spectator safety arrangements**

[240] As spectators arrive at an event such as a rally it is of course essential that they be guided and controlled in a way which allows them to enjoy the event and to do that in a way that is consistent with their personal safety. After the organisers of JCR had dealt with spectator information and the provision of proper direction, spectators required to be marshalled into areas where it was safe for them to stand. Since no designated spectator viewing areas were available at the Swinton stage it

was incumbent on the spectators to follow the general guidance and to use common sense in locating a suitable space for them to view the rally safely. That of course does not excuse the organisers from their continuing responsibility through their marshals to ensure that when spectators placed themselves in positions of potential danger that would be observed and dealt with by the marshals.

[241] In a moment I will deal with the specific issue of a particular prohibited area, but of course the creation of such an area of prohibition for spectators is a vitally important part of a safety plan. Creation of such areas is not going to eliminate the risk, and is not the only consideration for organisers, since motor racing of any type is inherently dangerous as has been said so often, and an element of risk is present with every vehicle that passes. It is therefore the case that even if a spectator is standing in an otherwise relatively safe location, something can go wrong and injury or death can result. If that was not already obvious, the crash at the Eccles stage of JCR 2014 gives a good illustration of the almost insoluble problem which faces rally organisers, when it comes to the selection of areas of such risk to spectators that special measures such as prohibition must be contemplated.

[242] The Eccles special stage is around the same length as Swinton and is also run twice - as stage 12 in the morning and stage 14 in the afternoon. Like Swinton that stage did not include any official spectator points, and about 2.00pm on 31 May a competing rally car failed to negotiate a very slight right-hand bend because of a sudden and unexpected steering defect which left the driver with no control over the direction of travel of his vehicle. The vehicle consequently failed to negotiate that slight bend, continued ahead at speed and struck six spectators who were standing in a non-prohibited area - an area of field thought not to be one of any particular risk or danger. All six spectators were behind a field gate but the car broke through it and they were injured, one very seriously so, requiring lengthy hospitalisation.

[243] Accordingly, what was essentially an entirely unavoidable and unforeseeable mechanical defect resulted in a car leaving the track in a place where it would not have been expected to leave the track, and the spectators who were in a relatively safe area were thus exposed to a risk which was not realistically foreseeable. That is not an uncommon situation at rally events because not only are drivers placed under

the pressure of driving at the limits of their capability, but vehicles are also being driven in a manner which necessarily places high stress on components which can fail at any time – and did in that case.

[244] Accordingly, organisers understand that they cannot realistically seal off large parts of stages, which at JCR each measured between 6 and 12 miles, and they therefore require to do their best to identify areas of particular risk in order to be able to prohibit spectators from these identified areas and thus eliminate spectator injury as far as is reasonably foreseeable. That is the thinking which lay behind the creation of defined areas of risk at the time of JCR planning and the identification of areas of specific risk which were then marked as “prohibited areas” on the stage set up diagrams which they prepared and which are then used to mark out the stage accordingly. When these set up diagrams are on the day of the event distributed to marshals, they have the duty of ensuring that nobody stands in these prohibited areas and that people are directed away from them to safer areas or to a spectator viewing area, if one is provided.

[245] Again, because of the length of a full rally route, it has to be accepted that there cannot realistically be marshals over the entire course, and so spectators who move outwith marshalled prohibited areas may also move outwith the direct view and supervision of any marshals. To allow for that and to deal with a range of other duties, JCR in common with all rallies follows the guidance of the MSA and has a system of course or safety cars who traverse the stage in a set order and who have *inter alia* the responsibility of making sure that each stage in turn is clear for the competition cars to begin to run over it, and at the same time that it is safe for the spectators who are congregating to view it.

[246] There is an inevitable problem that has to be viewed alongside that system and one which is difficult to legislate for, in that spectators move and arrive in irregular patterns and their positions may change between the passage of one safety car and another. Added to that, spectators tend to try to find better vantage points after they arrive at the stage and thus continue to move as the time of the first rally car approaches. At the Inquiry I was told by many officials that it is very common for spectators to move at the request of marshals and safety car crews, only to return

to the area when the marshals or car move on, because they are determined to stand in that spot.

[247] It is therefore easy to understand how a problem may arise in terms of spectator position after a safety car has passed, and may even arise after the last safety car has passed through the stage. The final safety car is always the zero car, but it traverses the course at around 80% of rally pace and thus it cannot be regarded as being likely to pick up safety issues which are less than patently obvious, like an individual standing in the roadway, or a physical obstruction which has been moved into a dangerous position. The other primary purpose of the zero car is to alert the spectators to the fact that the rally is now about to begin and to place them in a state of readiness in terms of taking care and looking after themselves as the rally cars go through.

[248] The zero car may therefore pick up an individual who is standing in an obviously marked prohibited area but would not necessarily have any regard to persons who were standing in a non-prohibited part of the stage unless they had prominently put themselves in a position of danger. In terms of the locus of this fatal accident at Leet Bridge it has to be understood that the zero car would pass the field entrance where the crash was later to take place at a speed of around 60 miles per hour, and it goes without saying that the driver's primary focus would be on ensuring that he was negotiating the course as quickly as was consistent with his function as a zero car driver.

[249] Accordingly, the cars that pass through the stage before the zero car have much more time to deal with issues which are less easy to spot from the road level, such as setup deficiency, although these cars, increasingly so, in the order in which they travel, cannot delay their progress unduly since there is a rally schedule adherence to which is an important part of the organisation. Delays to the schedule could impact on safety also and so it is important for the rally to keep to programme so far as possible. Because JCR is a closed roads event there are some very specific and important checks which have to be done in the limited timeframe after the roads are closed, and it has to be understood that not all setup matters can be dealt with before the roads are closed. Forest rallies do not have quite the same problem and

any issues that they have about late setup arrangements are not of the same scale as at JCR.

[250] There is a degree of overlap in the consideration of matters of overview of spectator safety arrangements by course cars and the checks which these cars also make of the stage setup, particularly the proper marking-out of prohibited areas. Accordingly, what I say later about the observations of the course cars in relation to setup, has considerable relevance to the matter of spectator positioning being discussed in this section.

### **Swinton Stage Setup**

[251] The physical preparation or 'setup' of a rally stage involves placing of signage, arrangement of barriers, hay bales or other road furniture and the use of red and white tape for spectator control in certain areas, and it is a matter which under current MSA regulation is the responsibility of the stage commander. JCR 2014 was no different from other rallies in that respect.

[252] Lock Horsburgh who is an extremely experienced trusted and knowledgeable member of Glenrothes Car Club was the stage commander at Swinton in 2013 and was asked to carry out this function again in 2014. His record as an official in rallies is a long and distinguished one and he has previously acted on more than one occasion as a stage commander or clerk of the course on other rallies within Scotland.

[253] The clerk of the course has overall responsibility *inter alia*, for the setup of all of the stages of a rally but the individual responsibility for the management of particular stages is delegated to the stage commander, and there has to be a close relationship between the two because of that shared responsibility. The clerk of the course for JCR 2013 and 2014, Russell Blood, again a hugely experienced and respected rally official who has over years performed a full range of duties. He confirmed in his evidence that the understanding at JCR was that while the stage commander was in fact responsible for the setup of a stage, it would often be the case that the stage commander for an individual stage did not come from the immediate Borders area, and since JCR is a closed roads event it is relatively



pointless to prepare some of the final elements of the stage setup in advance of the race as could be done in certain forest events, because the roads are open until an hour or two before the stage starts.

[254] It was therefore the arrangement at JCR that the organising committee, under the control of the clerk of the course, would arrange for the advance preparation of certain elements of the setup for stages, typically pre-staking work, in order to make the completion of the setup easier and quicker for the stage commander on the day or days immediately before the rally.

[255] JCR have very detailed setup plans for each stage, some of which have been in use for several years (where the stage is used year after year) and it is accepted by all that these setup plans must be followed when setting up a stage and must be regarded as an essential indication of the minimum requirement. Certain stage commanders will build on and extend the safety margins at their discretion, but very good reason would be required to depart from the requirement to form and enforce a prohibited area shown on the organising team's setup plan.

[256] A prohibited area will normally be clearly delineated for spectators by MSA prescribed signage on posts and by red and white tape running between stakes hammered into the ground, and the object of that is to make it absolutely clear to someone approaching the area that entry into it is prohibited. It should also be clear from that signage exactly what is the extent of the prohibited area. Normally signage facing outwards from the stage at each access to the prohibited area would be sufficient when accompanied by red and white tape in a line forming the limit, and the absence of front facing prohibitive signage and any taping would be a properly and easily understood indication that the area was not one to which entry was prohibited. In the context of rallying a non-prohibited area means just that. It does not mean that it is necessarily a safe place to stand and spectators always have to exercise common sense and judgement when looking after their personal safety. Annexe 10 is a photograph of the standard MSA presented 'prohibited area' sign, and this was the one in use at the Swinton stage.

[257] In JCR historically, the preparatory staking of prohibited areas was done for the organising team by two volunteers, Keith Brown and Alan Connolly who had every year since around 1998 taken a week off work in advance of the rally to perform that duty. They retired from that duty in 2013 and were not specifically replaced for JCR 2014. However, this was a situation that Russell Blood was aware about and Messrs Brown and Connolly gave the full year's notice of their decision to retire. They were of course fully familiar with all of the stages and accordingly the staking work for later signage and taping was consistent year after year. It could not however be complete because certain aspects of the staking and signage had to be left until closer to the event and that generally fell to the stage commander to complete. Additionally, the stage commander had the overall responsibility of being satisfied that all of the setup for his stage was in place and was in accordance with the organisers' setup diagrams for each location on the stage. The Swinton stage was a regular feature of JCR and had been used in the same direction for several years before 2014.

[258] Russell Blood was aware that Lock Horsburgh lived in Fife and thus would not be available locally to deal with the considerable work involved in that preparatory phase. Mr Blood therefore asked Brian Kinghorn, a volunteer with a history of cooperative assistance at JCR and a man of great experience in rally organisation generally, to do as much as he could to assist Mr Horsburgh. This was something of an ad hoc arrangement and was not as complete as what had been in place previously, but Russell Blood was alert to the situation and was aware that Lock Horsburgh would arrive well before the start of the rally because he knew him and because he trusted his abilities. He was confident that he would pick up on all staking issues, the general setup and the necessary signage since he was the stage commander and would be aware of his responsibility in that respect. He had, at a pre rally meeting for JCR 2013, specifically advised Mr Horsburgh that the Leet Bridge jump was an accident black spot and Mr Horsburgh made a note of that on his setup plan. It was the only part of the stage identified by Mr Blood in such stark terms and Mr Horsburgh accepted in evidence that he was aware of the heightened

risk at that location. His 2013 note said “accident black spot – cars go off both sides – vicious bridge jump – anyone between the cottage and the bridge – move them”.

[259] That was what happened in the week before the 2014 event, and on Wednesday and Thursday 28 and 29 May Brian Kinghorn, assisted by Thomas Herd, worked on the staking out of a number of the rally stages including the Swinton Stage. These two men began their work on that stage on Thursday morning and worked on it all day carrying out Mr Blood’s instruction in the manner described below.

[260] Before returning to deal with what they actually did by way of staking in the Leet Bridge prohibited area, it should be explained that there are four jumps on the Swinton stage, three of which are marked identically to the Leet Bridge jump on the stage setup plans. The fourth one does not require the formation of a formal prohibited area because the area of spectator risk after the jump is so densely forested that access is regarded as impractical or impossible, and no problems have ever arisen with that. A further explanation is of potential relevance, in that while Mr Kinghorn and Mr Herd that team were doing their pre-staking work on the Thursday before the rally, they did encounter a prohibited area which had a crop on the left-hand side of the road which was so high that there was no need to create a prohibited area and they simply taped the outside of it to stop anybody entering the area. There had been a request from the farmer also not to enter that field, but in any event viewing would not have been possible, so taping the outside only was a pragmatic and non-problematic decision. Accordingly, that prohibited area was not staked in advance of taping. That was an understandable decision and an appropriate departure from the setup plan for the prohibited area.

[261] The final prohibited area following upon a jump was Post 18(a), the Leet Bridge, and the setup plan required staking for later taping, a minimum of 3m into the field on each side of the road for a length of around 300 yards after the Leet Bridge jump. The sketch also makes it clear that the bridge itself and an area of two or three yards on the south side of the bridge should also be part of the prohibited area. The setup diagram is attached at Annexe 6 and in addition to the very clear

photographic depiction of the white area of prohibition, the accompanying legend says:

“The area prior to and after this jump is highly dangerous and should be kept clear at all times. Do not allow standing within 3m of the hedge particularly from the bridge to the cottage. DEFINITELY NO PHOTOGRAPHERS”

[262] As a footnote to this setup diagram I should add that when Mr Connolly and Mr Brown staked these fields, they built in a much greater safety margin than that required by the plan. Evidence which I heard satisfied me that they usually had it taped off around 10 or 20 yards further into the fields than the stated minimum requirement, meaning that visibility was such that no one would stand there. Accordingly, these fields and entrance were empty of spectators in these years.

[263] Mr Kinghorn and Mr Herd used these setup documents carefully and it is clear from the position of the stakes which they put into the west field after the Swinton Bridge that they were fully and carefully following the requirements, because these stakes were exactly 3 metres from the inside face of the hedge. The staking began at East Lodge and they worked southwards, staking the west field in the appropriate place until they reached a point around 120 yards north of the Leet Bridge and around 20 yards north of the field entrance from the road, where they ran out of stakes and had to stop at that point.

[264] It was not their fault that they ran out of stakes nor was there any shortage of stakes - they had simply reached a point where the pickup truck which they had filled up earlier in the day at the supply depot at Charterhall was now empty. They had reached a point where no more could be done that day, so Mr Kinghorn told Mr Blood that they had stopped at that point and told him also about the earlier field which was not staked because of the high crop. He rightly assumed that he had done what was required of him up to that point. Mr Blood, said that he would pass that information on to Lock Horsburgh, but he was, of course extremely busy with a huge range of other duties, and he left the matter there at that time, on the assumption that Lock Horsburgh would pick up on the staking deficiency since he was the stage commander, knew of the danger at that spot, and was responsible for

the entire setup of the stage. He would also be entitled to consider that there would be others, who would also be checking, in particular that a variety of course cars would be going through before the rally, and that any deficiency in the staking of such an obvious prohibited area would be picked up and dealt with. He did not tell Lock Horsburgh that Mr Kinghorn had run out of stakes in the west field or that the east field was still un-staked. Accordingly, on Thursday evening only part of the west field was staked in preparation for taping, and none of the east field was staked.

For complete clarity and precision as to Mr Blood's position in relation to how he dealt with the information given to him by Mr Kinghorn, I incorporate here a complete extract from the transcript of his examination at the Inquiry. At this point of his evidence I intervened and asked questions to clarify an earlier reply when he said, "I don't think I spoke to Lock about it that's for sure".

The transcript is as follows:

**“Question (Sheriff):** Just to take you back, Mr Blood, to the stage where Brian Kinghorn has agreed to do some of this staking and ... because he volunteered for that because that wasn't his, his function at, at the rally; he was there for a different purpose?

**Answer:** He was there for a different purpose, yes.

**Question (Sheriff):** And he kindly agreed to do that and he ... we've heard from him that he got a vehicle and he went to the store and he loaded up with stakes and he went round the course staking. I think his brother was with him if I remember rightly. We have heard that they reached a point where they ran out of stakes. Were you aware of that?

**Answer:** Yes, yeah.

**Question (Sheriff):** How did you become aware of that?

**Answer:** It was when Brian came back.

**Question (Sheriff):** So he came back and he told you, "we've run out of stakes"?

**Answer:** And told me that they'd run out of stakes.

**Question (Sheriff):** And what was your reaction to that?

**Answer:** Erm, it was, erm ... as I said, I, I vaguely remember the conversation but the further ... you know, it's ... there's so much going on at that, er ...

**Question (Sheriff):** No, no I understand that. Just as best you can?

**Answer:** Erm, as I say, I can't remember but my gut feeling would be that I would have sort of said, "Well, you know, it should be picked up by the stage commander".

**Question (Sheriff):** Right?

**Answer:** Yeah, and, and finished off that way.

**Question (Sheriff):** So it would be fair to say that it was kind of left in the air between the two of you, neither of you did anything positive from that point on?

**Answer:** Yes, yeah, yeah.

**Question (Sheriff):** Like saying, "Well, we'll get more stakes or we'll tell somebody". Do you remember anything about telling, for example...?

**Answer:** No.

**Question (Sheriff):** ... specifically telling Lock Horsburgh?

**Answer:** No.

**Question (Sheriff):** No?

**Answer:** Not at all, no.

[265] Meantime, around 4.00 pm on that same day Lock Horsburgh arrived at Kelso, and immediately got a van and picked up material from the stores at Charterhall. He began to work on his own on the setup of the Swinton stage observing as he did so that some pre-staking work had been done and accepting that Russell Blood had arranged it. Mr Horsburgh accepted fully that the setup was his ultimate responsibility as stage commander but he knew that he needed help and he asked around on Thursday and spoke to the chief marshal Mr Brodie who agreed to send a small group of volunteers to help him on Friday with the Swinton stage setup. Mr Horsburgh was not concerned about the timescales and was happy at that point that he had enough time and that he would have enough help to stake the

whole of the stage and thereafter to put the necessary road furniture, taping and signage up. He was probably correct in that assumption. The roads were still open on Friday and part of Saturday but he had been stage commander at Swinton before and he knew how to deal with these problems. At that stage there was no obvious problem in relation to the stage setup.

[266] On Friday Mr Brodie came good with his promise, and provided 4 marshals who had arrived early and were keen to help, and so in addition to the arrival of his wife, Mr Horsburgh had four other individuals to help him. They began at the beginning of the stage and worked their way through it following the plan meticulously and eventually arrived at post 18(a) the Leet Bridge. He had noted prior to that that the cropped field mentioned earlier around Post 12 was un-staked, but he came to the same conclusion as Mr Kinghorn because of the height of the crop in that field. He was also aware that a farmer had been complaining and that there was a field in the stage which the organising team had agreed would not be entered and would be taped so that no one could enter it. That meant that stakes could not be put in to that field at three metres into the field as required by the plan. These areas did not cause him concern and he was happy that safety was not compromised by the departure from the stage setup plan.

[267] When Mr Horsburgh arrived at the Leet Bridge and began to consider the taping in that area, he noticed that the stakes were in the field on the left (the west field) and that there were no stakes in the field on the right. He did not observe that the west field was not fully staked down to the Leet River as required by the setup plan, and instead, stopped at around the field entrance, but he did observe that the east field was not staked at all. At that point Mr Horsburgh thought about why that was the situation, but decided that there must be good reason for that and that he would not stake the east field as a prohibited area. That was a mistake.

[268] In his evidence he accepted that this was an error on his part which was caused by confusion about the situation with the field at that earlier prohibited area, the high crop, and the farmer's wishes, but in fact it was obvious that there was not a high crop in the east field and that it could have easily been staked at 3m from the hedge in compliance with the setup plan. He therefore assumed that the absence of

staking was deliberate and that only taping of the field entry would be required. He and his team therefore taped the staked area on the west field in a southwards direction to the last stake just north of the field entrance, and taped across the field entrance on that side, as shown in the photograph at Annexe 11. They also put a prohibited area sign facing northwards at the south end of that field entrance, as shown in Annexe 12. [In fact the tape shown in Annexe 11 may have extended further, because it was broken by the car that crashed there in the morning and was replaced. It is however not markedly different from how it was left on Friday by Mr Horsburgh and his helpers].

[269] On the east side, since there was no staking in the field, no taping was applied anywhere other than the field entrance around two yards or so from the road. There were no signs indicating a prohibited area placed on the east side of the road and so any person walking from north to south on the stage, (i.e. from East Lodge to Leet Bridge), would reach that point where the fields on each side of the road have entrances with red and white tape and would see only one sign namely the sign in the entrance to the west field, indicating that a prohibited area lay ahead. They would therefore be entitled to assume that until they passed these entrances they were not in a prohibited area, but that they should not stand on the road side of the taping.

[270] The decision not to put taping in the east field is of such significance in the overall picture that it is important for the purposes of this Determination to be absolutely clear about the position of Mr Horsburgh in that connection and so I incorporate here a complete extract from the transcript of his examination at the Inquiry covering that particular area:

“Q: When you came to 18 and 18A what did you find?

A: I found stakes in the field on the left and nothing on the right.

Q: Is this after the bridge you are talking about?

A: Yes I guess so and this is where I made the big mistake. I said “well this is the fourth in a row, here we go again. I don’t know what the reason for it not being staked on the right is, but I guess there will be a good reason. So we’ll set up what we’ve got and not go into that field on the right”. In my mind at that point almost the only difference on the setup diagrams that I could find that year from the previous year was at Post



12. There was a new label on one field that says “keep spectators out of this field at the request of the farmer” and I thought “maybe that’s the issue”.

Q: Has anyone spoken to you about the area on the right-hand side?

A: No and what I should have done was taken Russell’s advice, “don’t be a hero call in the problem” and I keep asking why I didn’t but I didn’t. I thought “these guys are good. This is a well organised event, I have faith in what’s.... everything that’s happened so far. This is obviously not meant to be done on the right-hand side, although I don’t know why”. I speculated but I didn’t know.

Q: So are you saying in short that you assumed there was a reason?

A: I assumed there was a reason and I thought it’s a farmer issue. Either the farmer doesn’t want us in that field at all or well the other things are to do with crops. What is this crop? I didn’t even know what it was but it wasn’t a tall crop, it wasn’t a visibility issue.

[There then followed a short discussion about what Mr Horsburgh said in his police statement, but since I do not consider that to be of any relevance to the current matter, I proceed to record his evidence as follows]:

Q: Whatever the position you accept that there was not taping in the right-hand field?

A: That’s correct yes.

Q: Because you assumed from what you have just said?

A: Because there was no staking there and I – as I say the fourth in the space of a couple of hours the fourth part that was not set up or could not be apparently could not be set up according to the plan.

Q: Alright so what did you do on the right-hand side?

A: We taped up all the holes in the hedge and put prohibited area signs in gates.

Q: Are you sure about prohibited area signs?

A: Yes.

Q: Where did you put prohibited area signs?

A: I put up two and Steve and Co did four. We used six and what I asked Steve and his guys to do was – we were – I was parked up at 18B on the gravel road to keep the van from blocking the road because it’s a very narrow road and I said “put up prohibited area signs, two before the bridge, two in the gates and I am putting the other two at the north end”.

Q: Alright is it possible that your recollection is wrong after three and half years?

A: No I don’t think so.

Q: Now we know from the setup plan we looked at earlier there were six prohibited area signs allocated for that area. Is it possible just as with the previous year you ran out of these signs and didn’t have six because of the additional signing you had been doing as you told us earlier?

- A: I have this recollection of standing up there next to the van and looking down over that area and thinking “that’s another bit done” having put up these signs.
- Q: Alright might that be a recollection confused from 2013 perhaps?
- A: I did wonder that at one point but I thought – I thought “no I remember doing this I remember standing there” and I think I remember they were still working down at the other end of this area putting tape in the fields”.

[271] For convenience I have included in the above extract the chapter of questioning relating also to the signage placed in the fields and I now move on to what I have found established on the evidence in that connection.

[272] On the south side of the Leet Bridge and around 80yards from it, Mr Horsburgh’s team put ‘prohibited area’ signs on each side of the road facing southwards, so that they would be seen by people walking north on the stage from the Swinton Bridge Cottages road end and moving on north towards the Leet Bridge. These signs extended the prohibited area shown on the setup plan southwards by around 80 yards. Thereafter, there was no prohibited area signage at the south end of the bridge itself (as there had been in previous years), but in the field to the southeast side of the bridge and around three or four yards from the road, there was a ‘prohibited area’ sign facing people approaching the Leet Bridge from the field to the south and east of it, and tape was drawn across a field entrance there which should have made it obvious to anybody walking from the field that should they cross the tape and access the bridge they would enter a prohibited area. That sign was however facing east and it would not necessarily have been seen by people approaching the Leet Bridge from Swinton Bridge Cottages. This location is shown in the photograph at Annexe 9 with the sign being at the bridge (north) end of the line of tape. The prohibited area signs referred to around this location are all identical and are of the type shown in the photograph at Annexe 10, which is the actual sign at that location. The Annexe 9 photograph is also an excellent view of the bridge itself and shows it in the direction of travel for the rally cars. The area from the field entrances to East Lodge contained no prohibited area signs, and I am forced by all the evidence, physical and parole, to conclude that Mr Horsburgh’s recollection of putting two such signs at the East Lodge track area is flawed.

[273] It is therefore absolutely clear that the signage and taping position at the point when the stage was ready to run and the safety cars were about to drive through it on Saturday morning, was not set up in accordance with the setup plan in that the prohibited area to the north of the Leet Bridge was not staked and marked as required – in fact on the east side it was not staked and marked at all. The prohibited area was in fact extended to the south of the Leet Bridge as described above, and although this is an extension to the setup plan and therefore not mandatory, it is in my view a sound and safe precautionary extension, largely because these verges were heavily overgrown and relatively narrow and most of the people who viewed the footage of cars passing through that section between the signs and the bridge, picking up speed on approach to the bridge, took the view that although they could not classify it as dangerous to stand on the verges, thought that it was unwise to do so.

[274] This assessment was made on the basis that apart from the risk from unexpected mechanical failure, the real risk to spectators came after the car became airborne on the centre of the hump backed bridge rather than before it, but nonetheless these cars were accelerating on approaching that jump point up to a speed of around 85 miles per hour, and so the issue of proximity to the passing cars was an issue of concern, standing the speed of the cars and the narrowness of the verges.

[275] Mr Horsburgh and his team worked hard all day and after finishing the area around the Leet Bridge to his satisfaction and in the manner described above, they proceeded to set up the rest of the stage until the end, including all taping and such signage and road furniture as could be done when the roads were still open. When he finished he began to deal with some of the other responsibilities that he had, in particular the important issue of checking the adequacy of anticipated marshalling arrangements for the whole of the stage.

[276] For completeness, I add that I heard no evidence to suggest any other deficiency in any other aspect of the stage setup for Swinton on that day.

### **Equipment supply**

[277] The logistics officer for JCR 2014 and for several years previously was Darren Smith who was represented at this Inquiry. Mr Smith was a volunteer and at that time a director of both Jim Clark Rally Limited and the Berwick & District Motor Club. In his normal employment he was a garage storeman and the skills which he brought from that employment were of great value in the context of this rally, which he had served in the same capacity for 14 years. The role of logistics officer is not defined in the blue book and it is I think a term used only by JCR, but effectively his role was that of equipment officer in that he controlled the rally organisation's store of materials. These materials included warning notices of various types, signage, tape, stakes, and posts, and all of these items were kept securely in two large shipping containers which were kept at Charterhall Airfield near Greenlaw.

[278] I am satisfied that I can deal with this entire area in short compass since all of the evidence which I have heard satisfied me that Mr Smith was totally organised in terms of how he kept his equipment and I saw the equipment spreadsheet which satisfied me that he knew exactly how much he had in storage not simply for the entire event but for each stage. He kept the material required for each stage in separate bundles so that they could be collected in that form by those who were going into the stage for the purpose of setting it up for the rally, and he knew how many or how much of such type of material would be needed.

[279] The store at Charterhall was always available. It was never inaccessible and I heard evidence both from Mr Kinghorn and Mr Horsburgh that they had no difficulty in accessing the store on the occasions when they required additional material to set up the Swinton Stage. There was no question of there being a shortage of material nor of any of the required items being unavailable.

[280] I therefore end this issue here because there is simply no need to say anything other than that the provision of an adequate supply of the correct materials

was readily available and a lack of such materials simply was not an issue in any of the events with which this Inquiry is concerned.

### **Marshalling for Swinton Stage**

[281] Adequate and competent marshalling at rallies is self-evidently a matter of the highest importance, and in 2014 the MSA Guidance in that respect was that there should be appointed a chief marshal so that there was an individual who had the full picture for the whole rally and thus someone who would have overall responsibility for recruitment and deployment of all the marshals. The JCR was a major event on any view with nine special stages each run twice and averaging around eight miles in length meaning that many miles of road had to be covered and many different types of situation catered for, especially so since this was a closed road rally running through inhabited areas. The chief marshal for the event, Dave Brodie had two assistant chief marshals.

[282] It is worthy of note in the passing that the issue of marshalling and specifically marshal numbers, must have been a concern for the rally organising team from the outset, since the MSA review of JCR 2013 had highlighted a concern about that year's rally based specifically on the cancellation of the Eccles Special Stage on account of a shortage of marshals for that stage. Cancellation of stages is something which rally organisers work very hard to avoid since it downgrades the value of the event by reducing its length and its challenge to drivers. That is a particularly pertinent aspect when the event is one of the British Rally Championship events, and the JCR organisers were keen not only to retain that status, but also to have the rally upgraded to a European Championship event. Accordingly, recruitment of sufficient volunteer marshals for JCR 2014 had to be considered an area of priority for the organisers.

[283] Dave Brodie, like so many of the witnesses at this Inquiry was an impressive individual with excellent credentials and with a long history of involvement in motorsport. He was a stage commander at JCR 2013 (Tweeddale Stage) and largely because of the difficulty at the Eccles Stage on that rally he was asked by Russell Blood on the last day of JCR 2013 if he would take on the role of chief marshal for 2014. He gave it thought, understanding the full implications of the responsibility

and the level of work and he agreed to accept the position. He was aware of the need to have a full complement of marshals for 2014.

[284] He explained in his evidence that practices vary and that often stage commanders will bring in substantial numbers of marshals from their own local motor clubs, but that occasionally that will not be the position and stage commanders will require to turn to the chief marshal to provide sufficient numbers for the stage. He understands that the responsibility was his, and with reference to the Swinton stage he knew that he would need to supply most of the marshals.

[285] At that time there was no MSA requirement for a particular number of marshals for the manning of stages, and there was no requirement for a fixed plan as to where marshals would be placed on the stage. Both of these issues were left to the chief marshal and in terms of the Swinton stage Mr Brodie began to think about the required marshal numbers and the recruitment of sufficient marshals, and in respect of other stages, the appointment of stage commanders, around the end of 2013. Certain of the stage commanders from 2013 could not manage to repeat the duty the next year, but Mr Horsburgh who had been Swinton stage commander in 2013, had at a very early stage in the planning agreed to do it again in 2014, at the request of Mr Blood, and Mr Brodie was aware of that. Mr Brodie attended a number of meetings of the organising committee at which the issue of marshalling was fully discussed, and by the meeting in April 2014 Mr Brodie had a list of expected marshals, most of whom had been recruited by himself and sufficient in number for him to be confident that there would be enough marshals on the day to allow the stage commanders of the various stages to man all of the necessary marshal points which were marked "M" on the setup plans. Mr Brodie of course had overall responsibility for all of the rally stages, but to a large extent the decision on the optimum number of marshals and their deployment was left to Lock Horsburgh in respect of the Swinton stage. That seemed to be an agreed and acceptable division of responsibility and workload between these two men in respect of the Swinton stage, and it seems to me that no problems arose in that connection in the run-up to the rally.

[286] Mr Horsburgh was, as indicated earlier, a rally official of high pedigree and had acted as stage commander at previous rallies and also as marshal and chief marshal on many previous occasions. He worked well with Mr Brodie with no communication difficulties, and he also had a deputy stage commander, Peter Stanhope, again a highly experienced and qualified official with a long history in the sport. Between them these three individuals were responsible for ensuring that the Swinton stage was fully manned in terms of marshals and based on his experience from the previous year, Mr Horsburgh had 40 marshals in mind as the minimum number that he needed for the whole stage. That number was somewhat lower than the stage commander in 2012 and in the previous years had considered as an acceptable minimum, but Mr Brodie provided him with a list of marshals which included individuals recruited by Mr Brodie, but who were unknown to Mr Horsburgh. Mr Horsburgh accepted that they would be experienced marshals because he was aware of Mr Brodie's qualities and experience, and he also spoke to Peter Stanhope who agreed that he would bring along with him on the day a team of seven marshals.

[287] Accordingly, in the period leading up to the rally Mr Horsburgh had what he considered to be an adequate sufficiency of marshals, and in the week before the rally he sent out e-mails to all of those on the list provided by Mr Brodie giving them full information and, enclosing in his e-mail an attachment which included a copy of the rally road book and various other relevant documents with identification of the marshal posts on the stage. I found it difficult from the documentation presented, but it seemed to me that 46 marshals were expected to present for duty at the start of the Swinton stage. I do not know if the cancellations which Mr Horsburgh later refers to were included in that number. The quality of information sent out by Mr Horsburgh was excellent with full detail of when the marshals should arrive, some route directions for them and information about the campsite which was available, and in most cases necessary, because of the very early start time for the Swinton stage. Mr Horsburgh made it clear by specific reference that Swinton was the first stage on Saturday, saying - "which means a very early start" - and he asked his marshals to sign on at 0600 hours in order to be at their allocated posts at 0630.

[288] Among those who were e-mailed by Mr Horsburgh in the week of the rally was Peter Stanhope, but it appears that he did not open that e-mail, although he did reluctantly acknowledge that he received it. Mr Stanhope, unlike the vast majority of the other witnesses at this Inquiry was not a forthcoming witness and claimed a very poor recollection of details. The transcript of his evidence on the matter of Mr Horsburgh's e-mail of 25 May was as follows:

“Lock probably sent me a copy of these electronically prior to the event but because I was doing the same role as I had the previous year I didn't bother printing them off. I am sure we all get lots of paperwork that we don't look at every day”.

[289] Mr Stanhope was important to Mr Horsburgh's plans, not only because he was his deputy stage commander, but also he was bringing seven marshals and that was critical to Mr Horsburgh's plan. Mr Horsburgh had in fact e-mailed Mr Stanhope to say:

“Glad to hear you are mob handed, had a few cancellations. Can't really say due to the ridiculously early start, but it can't be helping”.

[290] That e-mail informed Mr Stanhope of two things, first of all that the marshalling complement was something of an anxiety to Mr Horsburgh at that late stage, and also that the sign on was early. Mr Horsburgh at that late stage had also asked Mr Stanhope for some help in setup if that was possible, but had received no response to that.

[291] In the event Mr Stanhope was over an hour late in arriving at the stage start with two marshals, and the car with his four recruit marshals (his son Ewan, Tom Rodgers, Jonathan Welsh and Steven Aitken) which left Mr Stanhope's home in Central Scotland at the same time, was also late and because of that went directly to the finish area which was their original marshalling assignment. Because they went



to the finish area they did not receive any briefing from Mr Horsburgh, which would have taken place if they had signed on at 0600 hours at the start as was requested in the e-mail.

[292] At that time and up until the point when Mr Horsburgh and Mr Stanhope met at the start of the stage on the morning of the rally, Mr Stanhope believed that he would be assigned to duties connected with the finish (as is normal for deputy stage commanders) and that his team of four marshals mentioned above, would be in that same area. Unfortunately that position changed on the morning of the rally because the two marshals recruited by Mr Brodie and allocated by him to the Post 18(b) - East Lodge and Leet Bridge area - did not turn up, and Mr Horsburgh was forced into a late reallocation of marshal duties. That reallocation followed on a somewhat rushed discussion between him and Mr Stanhope at the start point on the morning of the rally, when it was decided that Mr Stanhope would select two of his four recruited marshals to go to the Leet Bridge area to replace the two missing ones. It was Mr Stanhope's decision that the two who were to go to Leet Bridge in the morning would exchange duties with the other two who were to remain with him in the finish area, and thus the two who were at the finish area in the morning would go to Leet Bridge in the afternoon. That was a perfectly understandable decision in principle.

[293] Mr Horsburgh therefore gave Mr Stanhope the setup plan for the Post 18(a) prohibited area, so that he could pass it on with appropriate instruction to whichever of his group of four he allocated to that post. The circumstances of the arrival of Mr Stanhope's group gave him no other option and so he was unable to brief the marshals - indeed he did not know which ones would be covering that location. Had they reported to the start as requested, Mr Horsburgh would have briefed them all personally.

[294] On the matter of marshal numbers generally, Mr Horsburgh was anxious for each of the required marshal posts was manned by at least two marshals, and was satisfied by the time that the Swinton stage got under way that he had achieved that position. Accordingly, there was never any question in Mr Horsburgh's mind as the rally got underway on the morning of Saturday 31 May that he had a sufficient

number of marshals to deal with the running of the rally at that time. His confidence in that area appears to have been well placed at that time because no marshalling issues were reported by the safety cars as they ran through the course before the morning Swinton stage commenced – and indeed all went smoothly and to plan for the morning run as far as marshalling was concerned.

[295] As often happens however things changed somewhat during the day and particularly, so far as the Swinton stage is concerned things changed as the afternoon running of the stage was about to get underway. There were probably a number of factors involved in what developed into something of a spectator issue at Swinton Crossroads, a few posts before Leet Bridge, but among those factors were the accident referred to above at the Eccles stage, and the particularly fine weather. The accident at Eccles led to that stage being cancelled and as that became known a fair number of spectators began to leave that stage and consider moving to another stage so that they could see the rally rather than having a wasted trip. The Eccles stage was the first stage in the afternoon, Swinton was the third stage in the afternoon, and they are close in distance and event timings. An easy and popular exit from Eccles would very quickly lead spectators to the area of Swinton Crossroads, and it appears that this happened since spectators began to arrive in large numbers at Swinton Crossroads, and also at other parts of the stage, as the stage was about to get underway.

[296] Separately, the JCR is an extremely popular weekend in the social calendar of the Borders community and the weather was particularly fine that weekend, leading to a very high number of people arriving to enjoy the afternoon action. The combination of these circumstances, and the fact that the Swinton stage is in any event a highly popular stage of the rally, led to such an influx of spectators in the area of Swinton Crossroads that the assistance of the local police was called for in order to disperse spectators safely before the stage could safely begin. That congregation of spectators was a symptom of what was happening in smaller scale at the area of Swinton Bridge End Farm Cottages (Post 18) and also at East Lodge Post 18b. The Farm Cottages end of the stretch of road leading up to East Lodge was invariably busy in any event because the main road from Swinton Village brings spectators onto the stage at Post 18 and it is apparent from the photographs and

video clips which were seen at the Inquiry that stretches of that part of the stage from 18 to 18(b) were virtually empty in the morning but were very busy in the afternoon.

[297] Having said that there were no specific spectator issues brought to the attention of the stage commander in the afternoon relating to post 18, 18a or 18b, and so Mr Horsburgh was completely unaware of what was happening there and had to rely on the marshals who he described as his “eyes and ears” for the parts of the stage which he could not possibly oversee once the rally was about to start. As stage commander he had a principal duty of ensuring that the stage got underway and was properly run, and this being a competition it has to be understood that the MSA Guidelines for stage commander duties make him primarily responsible for ensuring that cars start the rally properly so that issues of timing and the like are competently and fully dealt with as the rally gets underway. This specific duty continues until the last car enters the stage and includes the responsibility of stopping the stage if particular circumstances are brought to his attention. No problematic issues were brought to his attention.

[298] The morning marshals at the Leet Bridge area were Ewan Stanhope and Steven Aitken and at lunchtime they exchanged duties with Tom Rodgers and Jonathan Welsh who had earlier been at the finish area. The marshal post was actually 18b, East Lodge, but it appears to be clear and accepted that it was they, and not the two marshals at Post 18, who were responsible for 18a, the Leet Bridge itself. Mr Stanhope and Mr Aitken had no difficult issues to deal with at Leet Bridge in the morning and likewise Mr Rodgers and Mr Welsh had no difficult spectator issues to deal with at the finish area in the morning.

[299] Mr Rodgers had previously acted as a marshal on two or three occasions while Mr Welsh had never previously even attended a motorsport event. He was a friend of the other three young men who came along with Mr Stanhope (Senior) and they were all aware that Ewan Stanhope had an interest in rallying and a reasonable level of recent experience of marshalling. That interest had carried through to some extent to Ewan Stanhope’s friend Tom Rodgers, but his experience was limited, especially in terms of crowd control. He had marshalled only at one flat race event at Crail where crowd numbers were very low and control very straightforward, and

during other marshalling duties in Mull and elsewhere he had largely been involved with time keeping while learning the duty of being a marshal. Having said that he was a very intelligent, interested and genuine young man and he did not attend JCR purely to watch the rally. He was conscious of the importance of his marshalling duties and took them seriously, as did his friend Jonathan Welsh.

[300] Unfortunately, when the four young men met up in Duns at lunchtime, Ewan Stanhope did not hand over the copy setup plan showing the prohibited area at Leet Bridge which his father had given him in the morning, and it appears that he left it in his car. As a consequence Mr Rodgers did not have a copy of the stage setup plan when he marshalled at Swinton in the afternoon. and importantly, this meant that he was not aware of the prohibited area which ran on each side of the road from Leet Bridge to East Lodge. He and Mr Welsh had no other information to guide them as to where spectators should or should not stand other than their general safety knowledge and the existence of any visible prohibited area signs, and red and white taping. They were aware that there had been an accident at the stage in the morning although they did not know exactly where. Additionally, it appears that they took a little longer than intended in Duns at lunchtime, and were later than they should have been in arriving at East Lodge to begin their marshalling duties in that location and southwards for 300 yards or so to Leet Bridge.

[301] Accordingly, as these two young men made their way from East Lodge southwards they were very quickly presented with a situation which they could not have expected standing the information which they had about the quiet and virtually spectator free area which their friends had marshalled in the morning. It was already busy and an immediate problem attracted their attention and required action in that two men were sitting on the road just north of the Leet Bridge and were difficult and reluctant to move. These individuals were clearly in a position of danger and were likely to cause a delay in the rally start unless they could be moved, but they were uncooperative and argumentative and so that problem took their time and attention. They dealt with it properly and enlisted the assistance of other spectators in order to do that.

[302] They had however by then walked past the entrance to the fields on the east and west side of the road and had not noticed that there was a congregation of people at that area. It was probably a small group of perhaps half a dozen at that time but I am able to tell from photographs taken from these entrances that there were some people there when the marshals were speaking to the men on the road, and that number was quite quickly to grow as people came northwards over the bridge from the direction of the farm cottages at post 18 south of the bridge. As the marshals spoke to these two men on the roadway, people continued to arrive in the area and passed them, moving northwards and so a small knot of spectators began to develop in the general area of what was to be the crash location, namely the entrance to the east field. The two men were moved away – they went north also, and the marshals continued south to a spot just south of the bridge itself, where a considerable number of spectators were beginning to gather, having accessed that area by means of a track which ran through the field from the area controlled by the Post 18 marshals and round the back (east side) of the Swinton Bridge End farm cottages.

[303] The signage in the area of the east and west field entrances which they had passed did not advise the marshals that the east field contained a prohibited area for at least three metres from the inside the hedge and so they did not instruct the people in either of these field entrances to move, nor did they consider calling the stage commander to advise that the stage could not run because people were standing in a dangerous location. Mr Rodgers experience was enough for him to understand that the area just over the bridge was potentially dangerous, and the remaining time between his arrival on the scene and the arrival of the first of the safety cars, was taken up moving people who were attempting to stand in the area between the north end of the bridge and the field entrances because, not only were they at risk, but the sign on the west side of the road advised that it was a prohibited area to the south of that sign. These marshals never considered moving the spectators at the east and west field entrances.

[304] The two marshals then moved onto the Leet Bridge itself where they could see that spectators were arriving via the field to the south-east of the bridge and they were aware of a congregation of spectators on the side of the road adjacent to that

field entrance. These spectators included Alistair and Ewan Thorburn a father and son well known in rallying circles and recognised by Mr Rodgers. There was a discussion between them about people who were close to the bridge on the north side, east and west, and in discussion with Mr Thorburn they agreed that it was not a good place to stand and between them they moved these people. They noticed particularly that a photographer whose green tabard could be seen from the bridge (Paulo Baptista) was in a clearly dangerous location because he was standing right at the roadside at the entrance to the west field. At that point they could not see that the deceased Iain Provan who was also wearing a green tabard was in a similarly dangerous position on the east side the road. They noticed that the spectator car stopped there and they were content with that. They could not in fact see much of the east side of the road from their low position on the east side of the bridge approach because of overhanging and intruding trees and the elevation difference.

[305] Mr Rodger and Mr Welsh remained in the area of the bridge dealing with people who approached that spot from the field, and who were trying to take up various positions around the bridge itself, and they properly advised them not to do so and to move on northwards towards East Lodge. They gave no specific advice about how far north to go, and did not appreciate that the first areas of open ground - and indeed the only ones until East Lodge - which these people would reach, were the entrances to the fields.

[306] Photographic evidence shows that they were only partly successful in moving people around the bridge area, because as the rally was progressing several people can be seen in the area between the centre of the Leet Bridge and the gate entrances into the east and west fields. These people pop in and out of the hedge and trees as cars approach and pass, but it is clear from the footage that there are several immediately north of the bridge and at least two standing in the area of the west verge around halfway between the bridge and the field entrance. These sightings on video are confirmation of something commented upon earlier, namely that spectators wilfully disregard the instruction of marshals on occasions, and move back to their preferred viewing locations when the marshal has left.

[307] Bearing in mind that these two young marshals did not, and in the circumstances could not, know that the accident locus was in a prohibited area, they did a fine job, worked diligently and responsibly and they dealt with a busy area around the bridge in an efficient way. Their late arrival got them off to a bad start since spectators were already at the accident location, but standing their state of knowledge I doubt if an earlier arrival would have changed anything, since they did not move spectators from either the west or east field entrance when they must have known that they were there, demonstrating that they did not realise the danger that these people were in. They were not the only ones to fail to realise that, others more senior than them did the same.

### **The safety cars**

[308] These marshals were continuing to do their job controlling the spectators who were arriving at the bridge area as the first course cars arrived and they were present on the bridge when the spectator control car arrived. This car had already had issues with spectators at the Swinton Crossroads area and had been delayed there for some time because of that. Charles Tynan, the event's spectator safety officer, was in the passenger seat and when the car stopped at that point just prior to the jump on the Leet Bridge where spectators were joining the stage from the field to the southeast of the bridge and where the marshals were trying to control these spectators, his instruction to these people was to stand well back from the road on the right, and he told some people who were on the left of the bridge to move to the right side. He was surprised that there were so many people there but did not consider it to be a prohibited area and so he simply asked them to stand well back. Effectively, he was doing the same as the marshals there, and reinforcing their instructions.

[309] Being an official of some experience he understood that the area over the bridge was dangerous and they drove on to check it, but he did not recall seeing anyone after the bridge and in particular not at the entrances to the fields. At the Inquiry he was shown the in-car video footage taken one minute before the fatal crash and on viewing that and seeing the spectators at the entrances, he was clearly shocked, emotional, and upset, saying instinctively under his breath - "bloody hell, where did they come from?"

[310] He immediately appreciated on seeing them in the footage that they were in a highly dangerous location and was obviously anxious that they may have been there when they drove past, and that he failed to notice them. A still from this footage is at Annexe 8.

[311] He had no recollection of stopping to speak to spectators in that location and his passage through the stage would have been followed by the double zero car a few minutes later, and the zero car about 10 minutes after that. He did remember speaking to two photographers with camera kits and green tabards, and although he wasn't sure exactly where that conversation took place, he remembers telling them to go back over the bridge, (i.e. southwards), and he was content that they were doing that as they drove on. He was not aware that the east field was a prohibited area but indicated that if he had seen spectators in the area of the crash he would have moved them behind the tape rather than moving them out of the area altogether.

[312] He was accompanied in the safety car by Andrew Whittaker whose car it was and who was driving, but Mr Whittaker also was somewhat distracted by a considerable delay caused by moving spectators at Swinton Crossroads, and also remembers only the two media people in the area north of the bridge. His recollection was that they were in the vicinity of the field entrances and his recollection was that they asked them to move behind the tape and behind the trees and that they seemed to be doing that. He also spoke about moving spectators on the bridge itself and he did not recall a congregation of spectators at the entrance to the east field although he did remember a group of spectators at East Lodge who were well back from the road and causing no safety issues by their presence.

[313] I am satisfied that these two photographers must have been Mr Baptista and the deceased Mr Provan, and the video evidence and the testimony of multiple witnesses makes it clear that the exchange must have taken place at the accident location. It is equally clear that they disregarded the safety car instruction and did not move away, although Mr Provan may have moved behind the tape until the safety cars passed through, and then returned to his original position.



[314] The double zero and zero cars are both rally prepared vehicles and the driver and crew in each case are experienced rally drivers or former drivers. The zero car as indicated earlier had little chance to spot anything other than the extremely obvious but the double zero car which at JCR 14 was crewed by Brian and Stephen Kinghorn had a better opportunity to take observations as they drove round the stage. Again, for this car there were memorable issues of spectator congregation at post 12 (Swinton Crossroads area) and they recall a delay there. They also had the setup plans in the car as they drove through and they agreed that the duty of the double zero car as per the MSA Manual is to look for and sort difficulties. They are of course not the first car to be in that position, indeed effectively they are the last car to be in that position, and there was in my view, something of an assumption that most of the obvious difficulties would have been dealt with by the time they drove through. They did not specifically check for prohibited area signage and taping, they were more using their considerable rally experience as they drove through to take cognisance of everything that they saw and consider whether there appeared to be something which caught their attention as being clearly wrong. They remember catching up with the spectator control car and that crew having words with a group including Ewan Thorburn (who they recognised) before moving on. That conversation must have been on the bridge itself or just south of it.

[315] Stephen Kinghorn thought that the spectator control car stopped again in the area around 50 yards north of the bridge (in my view) probably the area of the gate entry to the east field) and he remembers seeing people in the field, but he said that if they were behind the tape it would not have concerned him since he did not know that they were in an area prohibited in terms of the setup plan.

[316] His brother Brian Kinghorn was adamant in his recollection that their car did not stop in the area of the entrance to the east field and more specifically he said that there were "most certainly not" people in the field. He indicated that he knew that it was a prohibited area and if he had seen anybody in it he would have been concerned. His recollection about an absence of people in that area included photographers, and he had no recollection of persons in green tabards standing in that vicinity. He confirmed the evidence of his brother about the stopping of the

spectator car on the bridge and the moving of individuals who were standing there, and he was content to move on when these people moved away from the road. It was his recollection that these people were standing behind the tape when they left them and drove on northwards. He was unaware that the stretch of about 80 yards of roadway south of the Leet Bridge was designated by the signage as being a prohibited area although he must have passed signs stating that clearly twice that day. That area is not of course designated as a prohibited area in the setup plans with which he was familiar, the prohibition was extended by the signage placed in the verge south of the bridge by Mr Horsburgh at setup.

[317] I have considerable sympathy for the position of the drivers of the various course cars which go through the stage before the competition vehicles. They are not concerned with only one stage, they go through the whole of the course and from their position on the road it is very difficult for them to see any taping or signage which is not immediately apparent from the road. This part of the stage is tree and hedge lined and although there is some elevation at the bridge itself and thus a better view, they had very little chance at the locus of this crash of seeing anything other than the field entrances themselves.

[318] The photographic evidence and the testimony of many spectators makes it very clear that they were close behind the spectator car and that the spectator car stopped on the Leet Bridge and again at the field entrance telling spectators in both locations to move back. Brian Kinghorn's recollection that there was no one in the entrance to the east field at that time is not borne out by the evidence, including photographic evidence, and although he was an impressive and genuine individual, I am quite clear that his recollection is flawed in that particular matter.

[319] There is no doubt in my mind that at the time when the safety cars went through, the spectator congregation in the area of the field entrances was almost precisely the same as it was when the rally cars went through and therefore was very similar to what is seen in the screenshot which is Annex 8. There is however some evidence that may in fact explain the discrepancy, in that several of the

witnesses said that they did move back from the tape when the spectator safety car told them to do that, but they certainly did not leave the area and simply stepped back, perhaps a pace or two into the field. They returned to stand against the tape immediately the spectator car and the double zero car went through.

[320] In the above paragraphs I have been concentrating on the observation by the course cars of the spectator situation, but of course they also have a responsibility for checking the full range of safety issues, including the stage setup and the maintenance and delineation of prohibited areas. These later course cars would however be conscious of the fact that setup issues had already been the subject of close attention before they ran through the stage.

[321] I have earlier mentioned briefly that there is a road closure car which goes through the course and that after that road closure car there are four setup cars whose duties are earlier described. Andrew Fleming was the driver of setup car C on the day of this event and he was the only one of the setup car crews who gave evidence. He had done that job before and was accompanied by Mark Clough. Being in car C meant that he entered the stage at around Post 12 as the third setup car and drove through the stage from that point until the end. Cars A and B would follow him through the stage and begin to catch up with him, which meant that he was the first of three cars to check setup on that second half of the Swinton Stage which of course includes the Leet Bridge area. Car D would enter the stage at a point after Leet Bridge.

[322] Andrew Fleming was well supplied with the appropriate documentation at a briefing at Kelso Racecourse prior to the event and this meant that as he drove through the stage he had the setup plans in addition to safety manual and road book, as did the other setup cars. I was satisfied from his evidence and the remainder of the evidence that the briefing was full and responsible and that the crews were properly advised as to what they should look for as they traversed their section of the stage. These cars all had the plan shown at Annexe 6.

[323] Mr Fleming was a good witness, a very genuine individual, and he took his responsibilities with a proper degree of responsibility and spoke about the various matters which they check as they drive through. They require to be alert to a wide range of issues considering not purely spectator safety but also driver safety, marshalling, road furniture, signage, taping and resident concerns. He was well aware of the issue of prohibited areas but he did not recall having any concerns as he drove over Leet Bridge and northwards towards East Lodge. I infer from that, that as he drove that section nothing came to his attention which caused him concern and I am therefore content to conclude that although he was a careful and responsible man he and his companion simply did not notice that the area behind the hedges on the east and west fields were not taped off as the setup diagram requires, - in the case of the east field not taped off at all.

[324] Having said that, it has to be observed, that he was by no means the only person who failed to notice that - the two cars behind him also failed as did at least three cars which were to follow them. I should observe that it is difficult to gain visibility of the entire east and west fields from the road, that there were a number of prohibited areas in each stage of the rally, and that these setup cars traverse all of the stages in turn and are not simply concentrating on the prohibited areas in the Swinton Stage. These cars carry spare signage and taping and Mr Fleming confirmed that he and the other crews of these cars would stop and reinstate or put in place any missing signage if that was observed. In respect of the Swinton Stage it is also his position that he did not consider that there was any missing, defective, or confusing signage around the Leet Bridge area. He was clear that if he had done so he would have considered it his responsibility to stop and remedy any such difficulty or deficiency.

[325] Of course the setup cars all go through the stage in the morning as well as the afternoon and since the morning was quiet and Mr Fleming went through in the earlier part of the afternoon I consider it unlikely that his view into the east field would have been masked by spectators standing at the tape at the field entrance on either run. He would therefore have passed 'prohibited area' signs on each side of the road 80 or so yards south of the Leet Bridge, crossed the bridge, and then 100

yards further north at the field entrances, would have seen the red and white tape on each side of the road at these field entrances.

[326] If they had looked backwards and to their left, they would have seen a further prohibited area sign facing north at the west field entrance, potentially suggesting that they had left the prohibited area, but in fact they appear not to have seen that and so had no indication of the end of the prohibited area. Unless they and others after them who saw the same as them realised that it was a prohibited area the existence of the taping may have reassured them that the entrances were properly identified for spectators as places where they should not stand on the wrong side of the tape. There appears not to have been any realisation that the signage was either, missing, wrong or confusing.

[327] I should be understood that what I say here about the observations of Mr Fleming and Mr Clough applies equally to the crew of the other two setup cars coming along behind them.

### **Spectator positioning**

[328] Accordingly, as the first rally car came through the spectator positioning around Leet Bridge is relatively clear and shown in the many different photographs and pieces of film which were available to the Inquiry. Put briefly the position is that there were around 25 spectators in a group between 5 and 20 yards south of the Leet Bridge on the east side of the road, there were half a dozen spectators on the other side of the road also south of the bridge, and there were two or three spectators on each side of the road immediately north of the bridge. As earlier described there were also at least two spectators midway between the bridge and the field entrances on the west side, there were three spectators at the west field entrance and there were around 14 spectators at the east field entrance. Around half way between the east field entrance and East Lodge there were 3 or 4 spectators in the verge area on the east side of the road and there was a large group of spectators on the west side of the road at the lower of two entrances into East Lodge, around 300 yards north of the bridge.

[329] Significantly, it is absolutely clear from the footage that all three of the spectators (including Paulo Baptista an authorised and registered photographer) standing at the west field entrance are on the “wrong” side of the taping i.e. the road side. At the east field entrance one person – Iain John Provan (deceased) - also an authorised and registered photographer at the event - can be clearly seen in the verge at the north end of the field entrance and also clearly on the wrong side of the red and white tape. He moves back and forth as cars pass, but in general terms he is around one pace from the tarmac most of the time. The other spectators on that side – the east field entrance - including the two deceased, Mr Stern and Elizabeth Allan and the injured man, Donald Martin, are all standing in the field on the field side of the red tape.

[330] That group were in an area which was not designated as a prohibited area in terms of the physical signage on the day, although they were within an area which was designated as a prohibited area in terms of the setup plans. If they arrived there from either north or south by means of the road between the Leet Bridge and East Lodge they would not have any reason to believe that they were positioning themselves in an area prohibited for spectator standing by the race organisers since there was no sign to indicate that to them, and since they were standing on the correct side of the red and white tape.

[331] Their selected position however put them around five or six feet from the edge of the road and on the same level as it. On at least one occasion it is clear that a car passed so close to them that its wheels were kicking up dust and stones from the edge of the road to such an extent that the group jumped backwards and was to an extent enveloped in dust. That car must have passed them at a range of around 6 feet while travelling at a speed of around 90 miles an hour and that should have advised them, if they did not already realise it, that they were in danger since that car was obviously at the limit of being under control at that stage. They would also have seen most of the cars twitching or snaking on landing back on the road after the jump and it should have been clear to them that the drivers were at risk of losing control.

[332] Before moving on, it is important to deal with some of the evidence which pertained to the position selected by the three deceased and the injured spectator Mr Martin in addition to those others who were standing in approximately the same location and escaped injury. There were in all around 14 people behind the tape at the crash locus and the majority of them gave evidence at the enquiry. They all indicated that they had initially felt safe at that spot and did not realise that it was a potentially dangerous spot, although somewhat bizarrely some of them said that, while acknowledging at the same time that it was to their knowledge a spot where cars had crashed in the past. However the subjective view of these individuals was that they felt safe until the particular car which I referred to above deviated considerably after the jump and passed very close by. Some moved back and prepared themselves for a swift escape if something like that happened again, but I saw no evidence of anybody actually leaving the area after the first car had driven through. Essentially, they typified the tension between excitement and safety which is evident in rally- goers, and they were there because it was close to a place where the cars took off and became airborne.

[333] That group of spectators were generally clear in their evidence that one of the safety cars told them to get behind the tape, and that the photographer Iain Provan was individually and specifically asked to do that. He appears to have done so in response to that request but after the car had passed through, he moved back on the other side of the tape again to resume his roadside position. None of the spectators behind the red and white tape at the outset moved outside it after they were told to keep behind it, and they remained in that position until the crash. They all noticed that as the cars came over the bridge they “twitched a bit” and they all appeared to have thoughts about the position that they had chosen. One or two of the group had noticed marks on the roadway and verge indicating that a car had left the road on the west side recently and because of that picked the east field entrance to stand in, but none of them appeared to have truly appreciated the danger of the position that they had selected.

[334] All of the witnesses who were shown footage of the position of this group and asked to comment on it in the light of their own experience of rally competition either as the drivers or organisers, were unanimous in their view that the spot

chosen by these spectators was not only potentially dangerous but was sheer folly. Some were able to say this not only by assessment of what they saw, but by adding into that their expert knowledge of how rally cars move and react after a jump and the fact that they knew that there had been previous accidents at the same location. Indeed some who knew the location said it was the most dangerous part of the whole JCR route.

[335] Spectators who had little experience of rallying were not necessarily in such a good position to make a judgement but it has to be said that two of the deceased and Mr Martin were experienced rally goers and should have known that the area after a jump is well recognised as a danger spot in a rally stage. That is particularly relevant in the case of Mr Provan, who positioned himself deliberately in a spot where he knew cars would be taking off at high speed at the hump back bridge, and would thus provide him with the best action shots. He was a professional media photographer to the extent that he was the director of Motorsports Scotland Ltd, a company which had a website aimed at bringing together car and motorsport enthusiasts from across Scotland and which contained a number of photographs of rally cars which he took at events.

[336] He was in attendance at the JCR as an accredited member of the media having signed on at the event as a photographer and by a sad coincidence I notice that he had placed a full page advertisement of his company in the JCR 2014 event programme including in that advertisement a photograph of Euan Thorburn's rally car. Euan Thorburn was a witness in the enquiry and he had coincidentally met and spoken to Mr Provan in the area of the bridge before the first rally cars went through, and had told him and his partner Mrs Allan not to stand anywhere over the bridge and go on up to East Lodge. With his knowledge and experience, and with such advice from a top driver, Mr Provan could not have been in any doubt about the danger he was placing himself in, but he was stubborn and was determined to get his photographs. Indeed Mr Thorburn was not the only person to give him such a warning, and he responded to these other people by saying that he would be okay, and that he couldn't get his photographs from behind the tape. He also said to a witness whose evidence I accepted - in response to a comment to Mr Provan that he was in a bad place - "you won't know until it hits you". In that sadly prophetic



response, he very clearly disregarded sound advice about his selected standing position.

[337] He elected not only to stand in an area which he was told several times was dangerous, but actually to stand outside the tape and near to the edge of the road, placing himself in the most obvious danger imaginable, and in a position where he was very visible because of his 'high vis' green tabard and was also a potential distraction to drivers passing closely by at high speed. His position can be seen on the right-hand side of the screenshot at Annexe 8, holding a camera to his face, and in other shots he was even closer to the road.

[338] Mrs Allan was with Mr Provan at the event and she was signed on as an accredited member of the media also, although I heard no evidence suggesting that she was a journalist. It appears that she signed on as a journalist attached to Mr Provan's website at Motorsport Scotland Ltd, and it may be that she did some of the work on that site for him. Her brother-in-law, Mr Martin was surprised to learn that she was so authorised at JCR since his view was that she didn't have a close interest in the sport, and usually stayed in the car when Mr Provan was photographing cars at rallies.

[339] Mr Stern and the injured man Donald Martin were close friends of long standing, both very interested in motor cars and regular attenders at rallies together over years. Mrs Allan was Mr Martin's sister in-law, but they met at JCR 2014 only coincidentally and did not attend rallies together. She was with her partner Iain Provan who Mr Martin did not know well, but he knew that Mr Provan was heavily into motorsport and was trying to follow up his website with a motorsport newsletter. However because they saw each other at the field entrance he stayed there and chatted to her and Mr Provan, along with Mr Stern who was beside him, as was his son Andrew Martin, who like his father was a regular attender at motorsport events.

[340] All of these four men would be well aware of the potential for a car going off the road after a jump and should have been aware that they were very much in the danger zone in their selected viewing position. Mr Martin and Mr Stern even had a

conversation about where to stand and Mr Stern wanted to stand on the opposite side of the road in spite of noticing that a car had gone off there in the morning, but after discussion they thought that it was safe to stand where they did, as long as they stayed behind the tape. After a car or two had passed through they had a further discussion involving his son Andrew also and they decided to stand further back “for greater safety” and were one or two feet behind the tape when what Mr Martin described as “the inevitable” happened. Although they started to run he remembers being hit on his right side and being flung further into the field. He suffered severe internal injuries from which he has not fully recovered, and had the emotional upset of realising that his sister-in-law and his longstanding friend both died beside him in the field.

[341] Mr Martin attended JCR regularly, visiting various stages, and I saw footage of him spectating in a previous event from the area of East Lodge. That year, as in all years previous to 2014, the east and west fields were prohibited to spectators – which is why he was at the East Lodge entrance on that occasion, but he did not recognise the location when he approached it from the south in 2014, and so was unaware that the spot he stood in was normally within a prohibited area for spectators.

## **17. CONCLUSIONS ON THE ORGANISATION AND MANAGEMENT OF JCR 2014**

[342] In the preceding paragraphs I have reviewed and summarised the evidence which was led at the Inquiry in relation to the organisation and management of the 2014 JCR event, and on occasion I have reached stated conclusions and made observations. In many instances I have dealt with matters which I consider are of lesser significance in the overall scenario and so I do not return to them in this section.

[343] I now require to deal with matters which were specifically raised at the Inquiry in relation to JCR 2014, and in respect of which it is necessary for me to make individual conclusions arrived at by a fuller assessment of the evidence. I have to say at the outset that there can be no doubt that three people were killed in a location which had been designated by the rally organisers as a prohibited area for spectators, but which was not marked out and identified as such on the day of the rally. They were therefore permitted to stand in an area which had been specifically deemed and highlighted by the organisers on their own plans, as being one of “high danger”. On the face of it, that suggests a defect of the most clear and palpable type in planning and organisation in that area, and I therefore require to examine all of the surrounding circumstances in order to arrive at a conclusion which will inform on the reasons for this situation having arisen. The full examination of these surrounding facts involves also investigation of ancillary matters in order to be clear as to whether or not any, some or all, of these peripheral circumstances had any impact on the final outcome.

[344] In reaching the conclusions which I now set out I take into account all of the evidence led and the submissions made in that connection by the various parties to this Inquiry and I look particularly at three general areas namely, spectator safety information, marshalling, and course setup arrangements at the accident location.

### **A. Provision of safety information**

[345] In the preceding sections I have dealt in some detail with some of the information given in the programme and there was also information provided by website and event signage. As in the case of Snowman, I considered it all very carefully, read what I can from the productions which were provided and looked at photographs and footage of various parts of the course, including in-car video of the entire stage. I also heard evidence in this specific area and I feel that I can shortcut this matter considerably by indicating that I am perfectly satisfied that the organisers of this event did everything which they reasonably could to provide safety information for potential spectators by way of advance publication, and further that as the spectators arrived at the event they were well informed, controlled and guided by signage which was both clear and adequate.

[346] There was a specific issue which arose at Swinton Crossroads during the afternoon running of the event and the reasons for that are dealt with above. That was a real problem and at one stage it threatened to delay the running of the Swinton stage, largely because of a sudden and substantial influx from the cancelled Eccles stage, but it was well handled and the organisers did not attempt to hide the problem or deal with it without calling for assistance. They called the local police who were on hand in any event because of the scale of the event, and the police were happy and willing to assist. Between the marshals, course cars, and the police, the spectator problem at that particular location was well handled, no issues arose for drivers when the rally got underway and no one was placed in any danger. Accordingly, I do not consider that I need to say more about that and in my view it had no real impact at all on what was later to happen at Leet Bridge, although increased numbers there, was a consequence of the cancelled stage and engaged very fully the marshals at Post 18(a) and (b) as described earlier.

[347] As at Snowman I was impressed by the quality of the spectators who gave evidence - not only were they good, responsible and respectable individuals but many of them had a very deep knowledge of rallying and some had previously

acted as marshals. The effect of that was that they were individuals who thought about safety, who understood the dangers of being in the close vicinity of speeding cars, and who were not, with the exception of the deceased Mr Provan, people who could be regarded as risk takers. I should perhaps mention a further exception in that the other photographer involved, Mr Baptista, was a stranger to rallying and he simply was ignorant of the danger in which he placed himself.

[348] Accordingly, the spectators at JCR were from my perspective responsible and well informed individuals who did not complain about the level of information which they had. Any complaint that they may have is more related to the two subsequent matters namely, marshalling and the designation of areas of danger.

#### **B. Marshalling arrangements**

[349] If this accident had never happened and if one were to completely disregard the fact that spectators were standing in the gate entrances to the east and west fields, it would be very difficult to point to any deficiency in the marshalling arrangements. Marshals were perhaps, if one were to be hypercritical, a little thin on the ground, but there was a sufficiency to cover reasonably foreseeable requirements, and indeed Mr Horsburgh was able to find two replacement marshals for the two who did not turn up without notice for Posts 18a and b. There was an over provision of marshals at the finish area which allowed him to find Mr Rodgers and Mr Welsh for the afternoon marshalling of the Leet Bridge area and so I consider that while marshal numbers is a highly important matter and one that is dealt with in my recommendations I am unable to find evidence to support any complaint about sufficiency at this event.

[350] As to their training and competence it is unfortunate that one of the two marshals at Leet Bridge in the afternoon had no training at all and had never previously attended a rally, while the other was somewhat light on experience also, but they were responsible individuals and on the basis of the information that Mr Stanhope had at the time when he selected these two marshals for Leet Bridge, he

would not have any reason to think that they could not adequately deal with the anticipated spectator situation there with appropriate advice. I have referred above to the fact that because of an error on the part of their friend, the afternoon marshals did not have the setup plan and therefore did not know that the area where the spectators were standing was a prohibited one, but so many experienced people had already missed that same fact that I doubt if that gap in their knowledge would have made a difference in the particular circumstances.

[351] Marshalling is a matter which I deal with in the recommendations but on the specific issues at JCR 2014, I heard nothing to suggest that there were any systemic failures in the marshalling arrangements for that event. There were specific issues arising on the day, meaning that all did not go to plan and some of these issues are dealt with below.

### **C. Should the accident location have been a prohibited area?**

[352] I ask the question simply to keep my conclusions section for this event in the same shape as for Snowman, because of course in this rally the accident location was marked on the setup plans as a prohibited area and should most certainly have been so marked on the ground with signage, taping, marshalling and exclusion. No-one should have been standing in either field entrance.

[353] The original decision of the rally organisers was absolutely correct when this area was designated as “highly dangerous”, as indeed it had been for several years. There was some discussion as to whether or not it was actually the most dangerous part of the entire course, but that matters not, because no one argued that it was not properly designated in the setup plan. It came shortly after a jump, the jump was well recognised as being a point where cars may struggle to retain control on landing and the distance involved was such that these two gate entrances were almost predictably the places where cars would tend to crash off the road. There was plenty of evidence of that, there had been previous accidents, not only accidents caught on film but accidents known by the organisers because they were reported by

farmers after the event, and accidents, which even if they were not reported, were evident from gaps in the hedge at that location.

[354] If it was not obvious to anyone before the rally started on Saturday morning it should certainly have been evident by the afternoon running of the stage, because a car left the road in the morning and ploughed at high speed through a hedge into the west field almost exactly opposite the location where the spectators were later killed. That morning the crash was not specifically reported to the organisers by the marshals at the Leet Bridge area, but to be fair to them there was no requirement on marshals to do that, and cars leaving the road without injury to anyone is a common occurrence at rallies and so was not at that time a notable event. It was simply further underlining, if it was needed, that this was a part of the rally course where accidents tend to happen, and while many cars passed through without mishap, it was entirely foreseeable that on any given day one or two cars may leave the road at almost that precise point.

### **Why did these deaths happen?**

[355] There can be no doubt that a number of errors were made in direct connection with the accident location and it is always easy after the event to postulate that the deaths may not have taken place in certain altered circumstances or if some things had been done differently. In reality it is rarely as simple as that, and in this particular case it is certainly not appropriate in my view to make generalised statements in that connection, because here there were a large number of interconnecting circumstances and an array of coinciding events that conspired to produce this tragic and unfortunate result. I take the view that this is precisely that type of situation where there has been a rare and unfortunate combination of different unfavourable circumstances which were not individually dangerous but which have unfolded and then combined in sequence to aggravate a pre-existing situation of increasing risk, until eventually that combination of adverse events has been ignited by a final event of mischance to produce the worst possible result. It is

a situation often referred to as “a perfect storm” and I think that that phrase properly reflects what happened at JCR 2014.

[356] Some of these intervening events were themselves errors or omissions, small or large, significant or inconsequential, some were misfortunes, some were avoidable, some were not, but it was the unlikely coincidence of them all on this single occasion which has led to the ultimately disastrous consequence. I propose to look at these various events individually:

### **The ‘perfect storm’ progression**

1. The event organisers did not fully appreciate the value of the setup services that had been provided by the volunteers, Mr Brown and Mr Connolly, who for around 15 years had been setting up the JCR course. They knew it intimately and set it up appropriately and to a high standard year after year. Their replacement for 2014, the first year of their absence was an ad hoc arrangement by the organisers, and although it was well intentioned and performed by diligent volunteers, ultimately they were unable to complete the Swinton stage setup.
2. Mr Kinghorn and Mr Herd, the replacements for Mr Brown and Mr Connolly in the Swinton stage setup, who were experienced and trustworthy individuals, had the misfortune to run out of materials while preparing the stage. That was not their fault, it was due simply to the fact that their pickup was then empty and there was no time that day to replenish and finish.
3. They ran out of materials for staking not only at a prohibited area, but at the prohibited area which was described by the clerk of the course as the most dangerous part of the course. Consequently, at that point in time (Thursday evening) the accident location was not prepared for marking out as a prohibited area. I am confident that Mr Kinghorn would have continued the assiduous staking of the east field had that been possible, but it did not happen.



4. Mr Kinghorn told the clerk of the course that he had reached that point and that the staking in that area required to be completed. Mr Blood who had performed every other aspect of his wide range of duties with distinction, was extremely busy and did not report the lack of staking to the stage commander, Mr Horsburgh, because he was confident that Mr Horsburgh would notice it and complete the task as he set up the complete stage.
5. Mr Horsburgh on that same afternoon was working alone and against time constraints, but was proceeding with the setup from the start of the Swinton stage with his customary degree of care and thought. He required assistance which he received the next day (Friday), but the assistance provided for him, through no fault of anyone, was inexperienced in setup and so he required to oversee and instruct the four individuals who were working with him. As they went through the stage they came upon other prohibited areas, according to the setup plans, which were not staked off as required by these plans, largely because fields were in full crop and taping was not possible – and indeed not necessary because viewing would not have been possible for spectators. Alternative signage was considered and appropriately used at these points. Accordingly, departure from the setup place was appropriate at these locations and safety was appropriately maintained.
6. On arrival at the west field Mr Horsburgh did not notice that the stakes did not continue all the way south from East Lodge to the river, as was required by the plan.
7. On the east field Mr Horsburgh did notice that there was no staking and made an error in speculating on the reasons for that. That error led him to decide that the creation of a prohibited area in that field was not required and that the absence of staking in the field was a deliberate decision by Mr Kinghorn – which of course it was not. If Mr Blood had told Mr Horsburgh the reason for the absence of staking he would not have required to speculate.

8. Having decided not to stake the east field and tape it as a prohibited area, Mr Horsburgh decided to tape across the entrance to both fields. He did not consider that spectators may stand behind that tape because he thought that he had created a prohibited area from the East Lodge to the river by the erection of prohibition signs at East Lodge. These signs would have advised anybody walking southwards from East Lodge that they were entering a prohibited area, but in fact no such signs were ever erected. They would not in any event have been seen by anyone coming from the south to the field entrance, as most did on that day.
9. The only sign put up by Mr Horsburgh and his setup team in the area of the east field entrance was a sign at the south entrance to the west field and facing northwards. This was a sign that could not be seen by people walking northwards from the Leet Bridge to the accident location unless they passed that entrance and looked back and to their left. That sign could be viewed as advising that they were then outside the prohibited area when in the field entrance.
10. No signs were placed in the east field entrance.
11. The consequence of these decisions was that the prohibited area required by the setup plan was not created and that situation was aggravated by the fact that the signage and taping which was in place was confusing and led spectators north of the sign in the west field entrance into believing that they were out of a prohibited area.
12. Added to that is the unfortunate circumstance that the first possible viewing spot which spectators reach after walking northwards over the Leet Bridge is the very spot where a car out of control after the jump is highly likely to leave the road on either the east or west side. These are the only entrances or clearings in the whole of the area from the Leet Bridge to East Lodge, and so the spectators, including the deceased, gathered there.

13. The above circumstances can be seen either as individual failings or as coincidences of misfortune, or they can be seen as a growing sequence of connected events leading to a potentially dangerous situation, but sadly these failings and coincidences continued in a most unfortunate way to build danger and increase risk.
14. Mr Horsburgh was entitled to believe that even if he missed something in his setup and in the two careful car runs which he did through the whole of his stage, others may pick them up either in the morning or the afternoon run.
15. At least six more cars under the title either of setup or safety cars drove past the accident location twice in the course of the day of the rally. Each of these cars had two people in them and not a single person noticed that the prohibited area had not been created although in almost every case they had a setup plan with them and should have known that the area from Leet Bridge to East Lodge – a 300 yard stretch of notorious road, was a prohibited area. The departure from the setup plan was, therefore, missed in more than 20 opportunities to spot it by at least 10 different people.
16. At least one of the safety cars, the spectator safety car, stopped at the entrance to the east field in the afternoon run and very understandably and in fulfilment of their safety remit asked spectators to stand back, but indicated in that instruction that they should stand behind the tape. They had given the same instruction 100 yards south at the Leet Bridge, another area clearly marked as prohibited. That instruction at the field entrances did not advise the spectators that they were in a prohibited area and indeed instructed them to stand in a spot which again was within what should have been marked out as a prohibited area.
17. Meantime at Rally HQ a call was logged from Craig Smith, a spectator/photographer who reported what he regarded as an unsafe situation of spectators standing on the north side of the Leet Bridge, possibly

including the area of the field entrance. That call was properly and responsibly dealt with by Lara Holman and it was logged at 14.58, passed to control and reported to the course cars as a spectator issue at Post 18. It is unknown which car or individual got that message but it came in around the time that they were dealing with issues at Swinton Crossroads and may have been lost in import by that situation. Alternatively, since the report made specific reference to “a media guy” it may have been properly dealt with when the safety car crew spoke to Mr Provan and/or Mr Baptista. In any event that well intentioned complaint about spectators being in a dangerous location did not cause the spectators in the east field to be moved.

18. Coincidentally, most of the spectators who ended up standing in the east field entrance came from the south side of the Leet Bridge and thus did not realise that they were in an area of prohibition – indeed they would have good reason to believe that by standing behind the red tape they were in a place in which spectators were not prohibited. They would not have the setup plans and they would have no way of knowing that the area in which they had positioned themselves was not only a prohibited area but was virtually the most dangerous spot they could stand in.
19. This unfortunate sequence continued because it appears that there was discussion and advice about the dangers of standing there which was either ignored or assimilated as an acceptable risk. Many of them felt a little uncomfortable about their position after a close encounter, referred to earlier, and some prepared themselves to run in the event of an anticipated crash, but the level of risk was not sufficient in their minds to cause any to leave the field entrance – and so they stayed there.
20. The spectators at each of the field entrances would have clearly seen two photographers with green tabards who they would recognise as being authorised in some way by the rally organisers, and would have seen them standing outside the tape and at the edge of the road. This instilled a feeling

of confidence in certain of the spectators about the safety of their position, and this is particularly relevant in the case of Mr Provan who was an experienced motorsport enthusiast.

21. Mr Provan was wilful in his refusal to accept advice and he persisted in standing outside the red tape and near the roadside although he had been told personally on at least two occasions not to do that and had in fact been specifically instructed on one occasion to move. Immediately after he was so instructed and the safety car involved having passed, he crossed back to the wrong side of the tape.
22. His decisions are significant because his partner Mrs Allan was with him, and another of the deceased Mr Stern was at the rally in the company of Mr Martin who was Mrs Allan's brother-in-law and who was chatting to Mr Provan. They knew of Mr Provan's experience in motorsport and in my view would have felt reassured by his positioning and his expressed confidence that he was safe there, and by the fact that other obviously knowledgeable spectators had also positioned themselves in the same location.
23. The last line of defence against unfortunate accidents involving spectators being in the wrong place at the wrong time is the marshal. On the morning of this event the location had an experienced marshal and an assistant, but almost no spectators. In the afternoon there were two marshals, one inexperienced and one with no experience at all, and a large number of spectators. The afternoon marshals could not have expected that situation since they had spent lunchtime with the morning marshals and these marshals would have no reason or expectation to warn their afternoon colleagues about spectator difficulties at the locus.
24. Spectator numbers were greater than anticipated because of an unfortunate crash at the Eccles stage leading to late spectator movement towards Swinton, and also because of fine afternoon weather.

25. Mr Horsburgh was forced into marshal reallocation for Leet Bridge because the allocated and experienced marshals did not turn up on the day. The non-attendance at that location was the only one and it was in respect of a difficult marshal post. Additionally, the late arrival of the replacements did not give him the opportunity to brief them on their duties at Leet Bridge.
26. The morning marshals had the setup plan given to them by Mr Horsburgh via Mr Stanhope, but his son Ewan omitted to give that to the afternoon marshals and so they did not know that the area was prohibited. The morning marshals had witnessed a crash when a car left the road near the west field entrance, but there were no spectators in either field at that time and so there was no injury and no risk of any injury. They would have no reason to warn the afternoon marshals of danger because the absence of spectators in the fields in the morning, and the fact that they had the plan showing that it was a prohibited area, would not make such intimation appear to them necessary.
27. The morning accident was not reported to the organisers, the clerk of the course or the stage commander, and so no alerts were engaged in that connection.
28. Spectators had already arrived in some number by the time the afternoon marshals arrived at their station, since they were late, and their attention was immediately attracted by the ridiculous situation, confirmed by photographs seen at the Inquiry, of two men who were actually sitting on the roadway about 20 yards over the Leet Bridge to the north. These men were truculent and argumentative and it was not easy to move them, indeed the marshals required to engage assistance. As a consequence their attention was diverted from the east field entrance, although in fact they could not know that it was a prohibited area, but they did walk past spectators who were standing in that location as they made their way from the East Lodge southwards and encountered the two men on the roadway.

29. The marshals' attention was further engaged thereafter by a considerable congregation of people around the Leet Bridge itself, at the entrance to the area from a field on the southeast and on both sides of the bridge parapets. They dealt very appropriately with these people and were still doing so as the safety and double zero cars came through. They did not return northwards to the east field entrance and although they could see the photographer at the west field entrance and were concerned about him, they did not return to speak to him and they could not see Mr Provan who was standing in a similarly exposed position, out of their direct line of vision, on the east side of the road.
30. The constant arrival and movement of spectators in the immediate vicinity of the bridge parapets, considered by the marshals to be an unsafe viewing position, kept them fully occupied until the competition cars arrived. They did not return to the field entrances, indeed by then it would have been unsafe to do so.
31. Accordingly, the scene was set, these various actions, failures, decisions, omissions, circumstances and events all coincided to create a tinderbox which by that point simply required a spark. Sadly that spark occurred a few minutes later.
32. The rally began and car after car passed through largely without difficulty, but with at least one coming very close to the edge of the road and causing not only concern but consideration of movement on the part of some spectators. None in fact moved and the occasion was being greatly enjoyed by all, but eventually the inevitable happened when after around 20 cars had gone through, car 7 arrived and lost control in the way described earlier, and through no fault on the part of the driver.
33. That car could have gone off the road in a number of locations along the stretch or hit the verge, the ditch, or the hedge causing no injury, but it did

not, it left the road at the very spot where there was a large congregation of people and it did so at high speed hitting four and killing three of them.

[357] The worst possible outcome had arrived following upon a series of interlocking and coinciding circumstances of act and omission, of misunderstanding and misfortune.

[358] No single person and no single circumstance can in my view be identified as the cause of these deaths, which is why I use the perfect storm analogy. It is however clear that there must be consideration of some of the general circumstances which surround this accident, because although this was a rare, if not unique, event there are obvious issues which require to be carefully examined and altered procedures considered in order to eliminate so far as possible, the chances of something like this happening at a future running of JCR, or at any other rally in the UK.

[359] Accordingly, while Snowman and JCR are different in their circumstances the positioning of spectators has on two occasions in just over a year led to death, and full and careful consideration of that specific issue is clearly warranted.



## **18. SCOTTISH GOVERNMENT REVIEW GROUP ON EVENT SAFETY**

[360] I have referred earlier in this Determination to the Review Group which was set up after the JCR deaths and which produced an interim report in October 2014 and a full report with recommendations at the end of that year. I have already commended the work of this group and I now commend also the MSA and the various car clubs UK-wide who have responded to the recommendations in a positive manner and who quickly began to take on board a range of changes to practice, procedure, and regulation.

[361] That process of change and evolution continues and nothing in this Determination should be seen to detract from the comments, observations or recommendations of the Review Group, nor to suggest that the MSA approach and continuing efforts to improve safety should not be encouraged. It should be clearly understood that the focus of this Inquiry was more sharply directed to a particular set of circumstances which brought about deaths in two individual rallies, and I do not seek to any extent to present an overview of how rallies are to be organised and managed, nor to dictate on safety arrangements. Where I do make recommendations in these areas it is because of a perceived need to do so having regard to the particular circumstances disclosed in the evidence at this Inquiry, and of course it is hoped that these recommendations will be seen in the sport as helpful and practical and thus appropriate for incorporation in future regulation of the sport.

[362] I have decided not to annexe the Review Group's report because to do so would make this Determination unnecessarily cumbersome, but the interim report, the report itself and the detailed consideration on specific issues are all readily available on line. Implementation began immediately and continued thereafter, resulting in the creation and publication by the MSA of documents under their "Rally Future" vision and the edition to which I was referred was the April 2017 Edition 3 – Stage Rally Safety Requirements. Again, that is a bulky document of some 40 printed pages and I do not intend to annexe it, but rather refer to the MSA website where it can be accessed. I make reference to these two documents because

they appear to me to represent the core content of the current position on the regulation of safety at stage rallies. Rally Future represents the MSA vision of the way the sport will be regulated in the future and they see it as an integral part of the management of the sport.

[363] I propose therefore at this stage to detail the Review Group's recommendations in the areas with which I am concerned and thereafter to discuss in each area the sport's reaction to it and the current situation following upon MSA regulation. Where appropriate I will consider whether the circumstances visited by this Inquiry merit additional observation or comment.

[364] I heard evidence at the Inquiry from Rob Jones the MSA chief executive, a very impressive individual who gave clear and comprehensive evidence on the role and functions of the MSA generally, but in particular the sport's reaction to the Review Group report. He specifically wished to highlight the importance of three paragraphs in the introduction to that report and so I repeat them below.

[365] He indicated that paragraph three was "really important, and encapsulates everything that I consider to be central to the issue".

"3. Our role was to review safety in multi venue stage rallies in Scotland and we set out to ensure that all reasonable steps are taken in the future that can be expected to minimise the risk to spectators. However, motor racing is inherently dangerous and rallies can never be completely safe for participants or spectators. Spectators themselves will also therefore continue to have a responsibility to behave in a responsible manner and to comply with the directions of rally marshals, police and other authorities. This report recommends improved communication with spectators to ensure that the risks are clear and indicates that if necessary more robust steps may have to be taken to ensure that spectators comply with sensible safety advice.

7. The rally culture in Scotland is still vibrant among rally enthusiasts – those who spectate and those who choose to marshal or act as officials at rallies. Rallying relies absolutely on the contributions of unpaid volunteers working at the sport they love in their spare time. We recognise that without these volunteers and their commitment to their sport rallying in Scotland could not continue. Volunteers thrive on a culture that is built on “getting close to the action” with marshalling as one of the main routes to getting involved. However, as volunteer driven events, we have also recognised that rallies are run on very tight budgets and in most cases attendance is free.

9. Key aspects of the final recommendations relate to rally marshalling. Whilst recognising the importance of the commitment of unpaid volunteers we also recognise that marshalling is a vital aspect of spectators’ safety that must be better regulated by the sport’s governing body. We believe that this can be improved and that it can be achieved in a proportionate and sustainable manner”.

[366] Mr Jones indicated that the MSA supported and were happy to move forward the spirit of the Review Group’s deliberations and they distilled the various recommendations into a list of 28, and have worked through these, discussing them, and resolving to move them forward into their regulations. While obviously that is an ongoing process there was swift movement as a consequence of which the vast majority of these recommendations were in place by the end of 2015, but they continue to examine and refine. They have built a very good and positive relationship with a major and vital partner, the national Forestry Commissions, and consultations with them have been extremely helpful and fruitful. They are of course vital to future planning, because the vast majority of the rallies take place in forests rather than on closed public roads.

### **Recommendations relating to office holders**

[367] The first area of examination by the Review Group involved the office holders for these events, and recommendations were made in relation to the MSA steward, the clerk of the course, the safety delegate, the spectator safety officer and the event safety officer. Effectively, there is a clear and appropriate restatement of the duties and responsibilities of the MSA steward and clerk of the course and I support these. The creation of the position of a safety delegate is in my view a crucial and welcome addition which the MSA have taken on board in accepting the group's recommendation that the MSA provide such a person for each multistage rally. They immediately put in place the identification and training of such persons and now appoint them to all rallies. Item 2.3 of the Rally Future document referred to above sets out very clearly the duties and responsibilities of this individual and it seems to me appropriate that they have placed that role at the lead position in their listing of the key roles and responsibilities for office holders. The circumstances of this case do not add anything to what is contained there but underline the importance of that office holder, particular since one of his roles is specifically defined as follows:

“Visiting each stage usually on the day prior to the event with the spectator safety officer, event safety officer or other senior official, to confirm the setup plans and overview safety planning proposals, and travelling round the special stages during the event in a safety car to a schedule agreed with the event organisers”.

[368] The importance of the position is underlined by the fact that the MSA indicate that:

“a poor report from the safety delegate would be expected to result in changes to the event or potentially to a permit not being approved for that event the following year”.

[369] I see this office holder as being vital to safety, and although I can add little to the current arrangements, I consider the area important enough to include it in my recommendations.

### **Safety plans**

[370] Running alongside the restatement of the roles of spectator safety officers and event safety officers is the need for each event to have a clear safety plan and that safety plan must be submitted to the MSA on the understanding that if it is not sufficient a rally permit may not be issued or may be withdrawn. The Review Group indicate that the safety plan must include very clear statements on how best to achieve and promote spectator safety in order to ensure that it is at the heart of every event. It must not simply be a template repeated year after year with the same issues identified and the same solutions provided. It must be specific to the event and must set out the roles and responsibilities of every key official at the event with specific reference to the event safety officer and the spectator safety officer. The duties of these two individuals are now very fully covered in the Rally Future document and of course these duties must cover the full range of risk identification and proposed precaution.

[371] In the context of this Inquiry the spectator safety officer has a specific responsibility for issues such as spectator access and there is a recommendation that he or she should travel the stage in one of the course cars in order to deal with any issues present and perhaps more importantly in order to anticipate future issues which may arise before the first competition car enters the stage. It should be recognised by the MSA that in both of these rallies spectator issues arose quite late and in the case of Snowman arose as the stage was live, and that should not in my view be regarded as exceptional or unusual, but rather should be anticipated and guarded against.

### **Course cars**

[372] The Review Group recognised the difficulty about spectator movement and the fact that it continues after course cars go through the stage, and at item 35 of their report the group make a specific recommendation in relation to the position of the spectator safety car and also concerning its badging and equipment.

[373] I support that recommendation entirely and I would add to it that the time gap between it and the double zero and zero car should be as short as is possible in the particular circumstances of that stage. I also agree that the spectator safety car must have good visibility and support the Review Group's comments in that connection. Again, referring to the circumstances of JCR, the existence and positioning of hedges was in my view an issue and the low saloon car body shape which was employed for the course cars did not present the best opportunity for visibility over hedges and the like and may have been a factor in the absence of complete taping in the west field and all taping in the east field being noticed, picked up on and remedied by the occupants of these cars.

[374] On the matter of course cars the Rally Future document supplements the 2006 issue of more detailed safety car duties and when read together I consider that again the current MSA response presents a good template for an area which I recognise is one which alters from one rally to another, and is very subject to late alteration as particular situations emerge. Liaison between rally control, the clerk of the course, the safety delegate, the spectator safety officer and the crews of the course cars, is essential to ensure that developing situations are dealt with before the stage goes live. That can only be done by a sound and efficient radio communications system, and I support the MSA attempts to achieve that by the addition of an exclusive frequency for safety issues. I should highlight here that the duties of course cars feature in my recommendations and observations in the formal part of this Determination.

### **Spectator information**

[375] The Review Group discuss management and communication with spectators and also control and management of the press and in each of these areas I simply observe that the recommendations at items 45 and 48 of the report appear to me entirely proper and I have no comment.

[376] I do however note that in the context of Snowman, pre event communication for spectators was an issue, and at the Inquiry Mr Jones was clear that some of the difficulties which arose at Post 16 there, would have been obviated with better pre event communication for spectators about the specific issues of travel and access which affected that rally. Mr Jones, properly in my view, also connected that general issue of pre event communication and pre event planning with the problem of spectators walking on stages. This is not a matter which was addressed at all by the Review Group but it is a matter which I must address because it was a contributing factor to the viewing position of some of the spectators in the area of the fatal crash at Snowman.

[377] Accordingly, while I agree with the Review Group's recommendations I would like to underline that the one point in their report where they mention spectators walking on a stage, arises at paragraph 39, where they suggest that there are advantages in having a spare car available and designated as an incident control car. I consider that to be a useful suggestion and while I do not consider it appropriate to make it a recommendation in the formal part of this Determination, I do agree with it, as do the MSA. I believe, that where it is possible and practicable there should be a designated incident control car which would probably have to be a rally prepared car with a qualified driver, since it will often be dealing with potentially emergency situations which need to be dealt with either while a stage is being held or immediately prior to the start of a stage or immediately upon cancellation of a stage.

[378] The reason that this has been dealt with only as an aside in paragraph 39 of the Review Group report is because they could not know at that time that there were distinct issues at Snowman 2013, which involved consideration of how to deal with the problem of spectators walking on the stage, usually in the context of a forest stage. I draw attention to a number of related issues in this general area in this Determination.

### **Walking on rally stages**

[379] It is not, I think, necessary to repeat some of the factual issues dealt with during my earlier examination of Snowman 2013, and of course walking on the stage before the rally goes live is entirely non-problematic. I describe the issue earlier as thorny and that is because I recognised that it is not an area which anyone really wants to enter, because it is extremely difficult to legislate in situations like those that arose at Snowman. The various witnesses who were asked about it were ambivalent, recognising that it should not happen in terms of strict safety, but that it does, and that on occasions it has to, because people cannot be confined for unduly long periods without the ability to move. Movement however places them in a situation of danger and so it is a very difficult management issue, and it is one that will essentially fall on the marshal almost invariably.

[380] Mr Jones spoke in his evidence about the difference between aspiration and reality in this issue saying that he has to accept that the sport can never hope to stop spectators walking on the stage because it is so deeply entrenched in the culture. He accepts that it may not be safe and that an assessment has to be made at the time of the danger involved. He agreed that it may be impossible to manage particular individuals and that it is a dynamic situation which is difficult to legislate for. He did indicate that it was his view that stopping a stage because a spectator was walking on it would be a draconian measure, but if it was a track incursion or something similar to that the stage commander may have to do so.



[381] I do not criticise any of those who gave those views and fully understand the difficulty of the situation. The sport's answer to the problem is that it must be avoided in the first place by information and management designed to prevent it, and if that fails, strong and firm marshalling is the last line of defence. I have not criticised the marshals at Snowman and no walking spectators were in fact placed in danger, but the physical difficulty of getting from one part of the stage to another was very obvious in that location, and it may be very similar in other forests.

[382] Accordingly, I think that the furthest that I can properly go in this area is to recommend very strongly to rally organisers that they be aware of the issue and provide spectators with sound and firm advice about the issue giving them acceptable movement routes, which avoid stage incursion. For the MSA I would suggest that they deal with it in very much the same way as they deal with the other insoluble issue of spectators running onto the stage to push rally cars out of ditches and back into the race. These two situations bring spectators very close to speeding cars and the obvious danger presented by that must be managed. I have examined the Rally Future marshals' accreditation training pack and find that that does contain some advice on stuck rally cars and other issues of similar incident handling, but it says nothing to marshals about how to deal with spectators who nip in and out of the trees and use a live track to change their viewing position between the rally cars.

### **Media Issues**

[383] It may be that the Review Group were aware when they considered control and management of the press that a photographer and journalist, both accredited at JCR, had been killed at that event and it may be that situation that led them to make the following remarks:

“Press attendance at rallies should be subject to strict rules and press attendees must be prepared to obey the instructions of rally officials. This is not necessarily the case at present and examples of press attendees standing in

non-permitted areas have been noted by the group. When an area is identified as unsafe it should be regarded as unsafe for everyone without exception – spectators, press and marshals”.

[384] I support and underline the recommendation contained at paragraph 48 of the report regarding accreditation and tabard wearing for the press and simply observe that Mr Provan the photographer who died at JCR and whose attitude towards advice on safe positioning is dealt elsewhere in this Determination, would in my view have been a proper candidate for accreditation because of his interest and involvement in motorsport. Mr Baptista on the other hand had no experience whatsoever of motorsport and had no press credentials and I support the Review Group’s recommendation that valid press credentials should be presented at the request for accreditation. There was the additional problem with Mr Baptista that he was completely ignorant of issues of personal safety at rallies and selected his ridiculous and dangerous viewing position largely because he saw the other photographer Mr Provan doing the same, and assumed that he was selecting a safe position based on experience. I doubt if Mr Baptista would properly qualify for accreditation and the same applies to Mrs Allan, who signed on as a journalist, but as far as I know, had no valid press credentials. Having said that, the decisions on accreditation at JCR, played no part in any of the deaths there.

[385] I note that the MSA have introduced and are enforcing a twin category scheme which affords some relief for media photographers who are effectively on probation, and can have accreditation removed if they break the rules.

### **Marshalling**

[386] This was a topic which took up a considerable amount of time during the Inquiry and of course that was right and proper, since it is universally accepted that competent and adequate marshalling is absolutely key to effective spectator control and therefore to spectator safety. It was recognised by all parties to the Inquiry that volunteer marshals are absolutely central to the proper running of rallies and that

car clubs have to encourage and foster interest in individuals which will hopefully result in them becoming volunteer marshals, trainee marshals and eventually experienced and registered marshals. At the time of the two accidents with which the Inquiry is concerned there were no requirements for any marshals to be trained, accredited or indeed even experienced, although in fact many were, and stage commanders and chief marshals acted responsibly in their choice of volunteer marshals to man particular locations. It is also important to underline that as a matter of fact, many marshals at events pre-JCR 2014 were in fact highly trained and many had MSA accreditation for a range of duties in rallying.

[387] The Review Group however came to a clear and understandable view that the training, education and briefing of marshals at events required specific attention and improvement beyond what they described as “the current established practice”. Accordingly, a new marshals licencing scheme was recommended and the MSA were asked to introduce a scheme which would involve the compulsory registration of marshals and trainee marshals by them. As part of that scheme all marshals would be required to undertake basic training, although they could work with a senior marshal who was registered while they were still undergoing training. Only after training had been undertaken would a licence be issued to a marshal which would carry entitlement to marshal without supervision.

[388] I heard that there was some initial resistance from existing marshals and that the MSA were originally concerned that such a scheme may deter existing marshals from undergoing the training. That did not transpire and the preponderance of evidence indicated that there was an acceptance and recognition that such a scheme was both necessary and desirable and many of the marshals who I heard from were now embarked on and committed to the licencing scheme. Mr Jones from the MSA outlined the running of the scheme which has now accredited a very large number of marshals, and I read the MSA marshals’ accreditation pack in addition to hearing the expert evidence of Mr Jones himself about the management of the scheme. It is clear to me that the MSA have taken on board and have fully implemented almost

all of the Review Group's recommendations in this connection with great success, and with an increase in the number of registered marshals over the 2014 figure.

[389] One of these recommendations (paragraph 56 of the Review Group report) in relation to marshals provoked some discussion at the Inquiry, and that was the recommendation of the Review Group in relation to the number of marshals which should be in place on a stage before it was appropriate for the stage to run. That recommendation was in the following terms:

“We recommend a new requirement in regulations that safety plans must stipulate the minimum number of both radio marshals and marshals per stage based on an assessment of the risk, and that the stage cannot run if that number is not available”.

[390] The MSA have accepted the tenor of that recommendation but the requirement which they operate is not based on the minimum number, but rather on what they term the predicted number. That was a change which the MSA made and it arose because the MSA were reluctant to find themselves in a situation where a stated number of marshals per stage had to be included in the safety plan as a minimum, and if on the day there were call offs which reduced the number below the minimum, they would have an obligation to cancel the stage. They preferred the stipulation of a predicted number, so that in the event that that number was not achieved on the day of the rally the stage may still to be able to run if suitable arrangements could be made to satisfy the safety delegate, that while the expected number had not been achieved, they would not be faced with a situation of mandatory cancellation. The MSA considered that this change to the Review Group's recommendation gave them a degree of flexibility which was desirable and necessary.

[391] I have carefully considered the distinction between these two positions and I do not consider that it is a matter of semantics. There is a difference, with the

“minimum number” requirement being a higher test than the “predicted number” stipulation currently being operated by MSA in their Rally Future document. I take the view however that the predicted number standard creates a sufficient warning for responsible rally management to understand that they have an issue which must be addressed and which could prejudice spectators’ safety. Accordingly, I am content to allow the current situation to continue, rather than make a specific recommendation that the minimum number requirement referred to in the Review Group’s report be adopted.

[392] I do so on the basis that these organisers are, in my experience of seeing them at this Inquiry, responsible individuals who can be trusted. They could if so minded simply place a ridiculously low number in the safety plan to satisfy the original stipulation of the minimum number being put in the safety plan. On the basis that they have never done anything as irresponsible as that to my knowledge, and that the MSA will oversee the safety plan stipulations, I consider that safety would not be prejudiced by a proper and realistic assessment of the predicted number of marshals required for a stage being incorporated in the safety plans. That number not being achieved would clearly be a red light for the clerk of the course and for the safety officers, and the MSA safety delegate would require to become involved if the predicted number was not reached.

[393] Having said that I am bound to observe that at each of these two rallies it would have to be accepted (and perhaps particularly so at JCR) that while marshal numbers were relatively low, they did not fall far below expectation nor below the requirements of the chief marshal and stage commander for the particular events, and so an alert may not have been triggered on the basis of marshal numbers in either of these two cases. It also has to be recognised that in this Determination I do not find that there was a specific shortage of marshals at either rally although in each case the particular pair of marshals involved at the accident location were heavily stretched by the circumstances which affected them at the particular time.

[394] In a sense that demonstrates the difficulties of laying down firm guidelines, and what is perhaps more important is to have a flexibility that allows the rally officials to swiftly draft in assistance when a problem becomes evident, if there is time to do that in what is usually a dynamic and fast changing situation. I recognise the difficulty of moving marshals over distances when a stage is live and to an extent that difficulty of movement pertains even if a marshal has called for a stage to be suspended, since stage suspension cannot in the interests of safety be allowed to continue for more than a few minutes in case spectators begin to move in the belief that no more cars are going to arrive. It is a very difficult area and I suspect that the best that can be achieved by regulation is to insist on a proper, realistic and sufficient number being stipulated as the predicted number of marshals in the formal context of the safety plan, thus creating a situation of focus and concentration on safety, if on the day of the event the number is not achieved. It should be said that at JCR 2013, the organisers took that tough decision for the Eccles stage, and received criticism for it in the MSA Steward's report on the event.

### **Car tracking**

[395] The final Review Group 'recommendation' which was of significance to the Inquiry was, to be strictly accurate, couched as an 'encouragement' of the group rather than anything more specific, but nonetheless it is I think a very important issue and it arose at paragraph 61 of their report. The issue being considered by the group was communication, with and tracking of, rally cars and they were aware that there were technological advances, but also existing clear practical difficulties in relation to communication between race control and cars. It is of course a matter of great importance for the rally control or stage commander to be able to bring live cars on the stage to a safe and immediate halt in order to avoid them running into a critical situation and making it worse. The 'Rallitrack' system has been in use for some time with limited success because of technological issues, such as mobile signal in forest areas. The issue simply is that a reliable way of telling a vehicle that it must stop, has to be found.

[396] At Snowman the highly experienced marshal John Clayton ran up the track after the car crashed into the trees and was only just able to stop the following car which came to rest, all wheels locked, and almost touching his shins as he held up emergency stop boards. As indicated earlier in this Determination the yellow flags were not available to him at his post. At JCR there was photograph evidence of how the car following car 7 was stopped after the crash, and it was in the traditional manner of spectators running on the track and waving their arms. That car was by good fortune able to be stopped in circumstances which did not place its occupants or the spectators in difficulty or danger, but it is easy to envisage that circumstances could have been different depending on where the accident occurred and what time gap existed between the cars at the point where it occurred. The accident could also have happened in a remote part of a stage where there were no spectators available to alert the following car.

[397] Accordingly, this is a situation of importance and difficulty and I was very encouraged to hear in the evidence that the MSA are actively tackling the problem by assessing and piloting different tracking systems. Technology moves on and it appears that they favour a system of centrally triggered coloured light illumination which would appear in the cockpit of every car and would continuously show the driver that all was well, or would flash red or yellow if a situation of emergency lay ahead. I understand that there are difficulties with rolling out such a system but it appears to be the ideal, and I support the MSA's efforts to promote that. I understand that it is hoped to pilot the preferred version in British Championship events for 2018.

[398] In the meantime however, great care must be taken to understand that there may be situations where a double accident could occur before such systems are fully in place. I could not help envisaging at the Inquiry what may have been the consequences if the car following car 7 at JCR, had made up on it to the same extent as car 7 made up on the car ahead of it. A driver following car 7 would have had very little chance to react to what was happening ahead as he came over a blind

jump at 85 mph to find an unfolding accident 80 yards ahead of him. To that extent the danger of that type of situation is accentuated when the gap between the cars is shorter, although I do understand the reasoning behind the 30 second gap which is employed at JCR and which already requires specific permission from the MSA, since one minute is regarded as the norm. Accordingly, the yellow flag system must be tightly regulated and enforced in the interim, but of course, in all of this it has to be accepted that there can be situations where even with good radio communications, there is simply insufficient time to stop some of the cars.

[399] Other technological developments were briefly discussed although largely I was more interested in any that may assist in spectator control and add to spectator safety, and in that connection I would encourage the MSA to continue to consider technology such as remotely controlled cameras to monitor spectator congregation and movement.

### **Tabards**

[400] It may be slightly out of place to deal with this issue here, but as mentioned elsewhere in this report and in the recommendations, there appeared to me to be some laxity in relation to the identification of marshals by tabard at both rallies, and since I consider that it is highly important for spectators to know who is and who is not a marshal I think it is worthy of mention. I have already made reference to the difficulty at Snowman, but at JCR the two marshals who were in attendance at the accident location were through no fault of their own, wearing yellow unmarked tabards which were the light vest type which are commonly carried by a multitude of people including car drivers and cyclists. I heard no evidence to advise me why that was, but I do not think that it was their responsibility, these simply were the tabards that they were issued with, and they were not readily identifiable as marshals, although they were highly visible. It is perhaps fortunate that they were so visible, because it was a warm day and nobody else in the area was wearing hi vis jackets, but nonetheless I take the view that all marshals should have the proper equipment with identification of their role evident on the tabard. The fact that there



were two photographers wearing green tabards with writing on them made it appear to the inexperienced rally goer that they may have had some official capacity. That was particularly unfortunate standing the location that they both selected as described earlier. I understand from Mr Jones that a plan is underway to issue newly accredited marshals with a red tabard and card ID, and this seems to me to be the right way forward.

[401] The MSA provided me with a 'checklist' of the 28 Review Group's recommendations and the stage of implementation in each case. It is pleasing to see that the process has been smooth, with virtually all of them now completed and integrated into the Rally Future guidelines and the newest editions of the blue book.

## **19. EXPERT REPORTS ON SAFETY**

[402] I was greatly assisted at this Inquiry by having a number of expert reports, all of which I had the opportunity of reading and some of which were specifically dealt with in the evidence.

### **Discussion**

[403] I have already referred to the accident investigation reports by the police specialists, but in the intervening period between the first accident and the Inquiry there were a number of other investigations and reviews. I heard evidence from John Symes the technical director of the MSA, a highly qualified and experienced specialist in areas of accident investigation and risk management, who had 23 years' service with the MSA. Like so many others he also had a long history of involvement in rally competition and organisation. He produced a full and detailed report on behalf of the MSA in relation to the Snowman accident and would probably have done likewise in relation to JCR, but was prevented from doing so in the fullest terms by the existence of the police investigation which placed constraints on him. He did however produce a report, although limited in scope, in relation to that accident also. In point of fact he says in his report that he was instructed by the police to stop his investigation, and while I accept what he says, I consider that that was an unfortunate position because a man of his great experience may well have had something of significance to contribute on the technical side. In evidence however, he accepted that he was limited in what he could review in the way of evidence, and because of that I cannot regard his report as being anything other than useful in an advisory sense. There is no suggestion in the recommendations which he was able to make that this Inquiry did not fully examine all of the issues which concerned him at the time.

[404] In relation to Snowman, Mr Symes report was very full and what he recommends in that connection is very much along the lines of the findings which I make in this Determination.

[405] I also saw a report prepared by Peter Young who was engaged by the Crown to investigate and report upon the spectator fatalities at JCR. Mr Young is the owner of a company based in the Isle of Man which provides event safety services to local authorities and private clients, and he has previous experience as a police collision investigator before taking the qualifications which led to his current profession. His report was disclosed to parties but he was not led as a witness at the Inquiry. I took the opportunity to read it as general background information and I am pleased to report that all of the matters which he raises have also been raised and focussed upon at the Inquiry. He made no recommendations but restricted himself to conclusion and opinion.

[406] The principal expert was Rod Sylvester-Evans who is an acknowledged and renowned expert in the field of safety management and hazard and risk assessment. He has on many occasions been commissioned to deal with the investigation of accidents and incidents which were later to become court matters, and he has given expert evidence on many occasions in the past. He was asked by the Crown in late 2015 to produce a report in relation to JCR 2014, and the report which was before this Inquiry was dated November 2015. That report runs to very many pages and again it is not practicable to annexe it. The format of the report demonstrates that Mr Sylvester-Evans decided to prepare and produce a factual matrix in order to reach conclusions upon which he could give his opinion as to the circumstances and what he may be able to recommend by way of precaution. I gathered from him that virtually all of the evidence which was available to the Inquiry in relation to JCR had been available to him as he went about his very detailed and careful investigation.

[407] The Crown asked him to perform a similar exercise in relation to Snowman, and it appears that this instruction came in the middle of 2017, because his report in connection with that rally is dated July 2017. Again, he had access to essentially the same information as was disclosed to parties at the beginning of 2017. His report followed the same general form in that he assessed the evidence, considered the spectator safety implications and made certain observations and conclusions.

[408] Because of the intervening and ongoing situation surrounding the Review Group report and the changes within rallying brought about by the MSA implementation of their recommendations, Mr Sylvester-Evans was also asked to review the evidence of Rob Jones, and to return to the Inquiry to continue giving evidence in the light of the content of the Review Group report and the sport's reaction to it.

[409] Turning first to Mr Sylvester-Evans assessment of Snowman 2013, he quickly and understandably focussed his attention on the spectator situation in the area of Post 16, and he was specific in his conclusion and observation that spectators should not be allowed to walk on or near the track after the rally has started and the stage is live. He had some concerns about the planning issues surrounding the arrival of spectators at Post 16, and the poor access for them to other parts of the stage, and specifically, he opined that the inside of the hairpin and the area up to and including the spot where the car eventually left the track should have been designated as prohibited areas. I am content to record that all of these identified issues in the Snowman report were fully dealt with at the Inquiry and feature in my findings and/or recommendations.

[410] In relation to JCR 2014, Mr Sylvester-Evans prepared a commendable factual matrix running to almost 100 pages, and presenting a very interesting, detailed and accurate overview and summary of all aspects of that event, with the focus of course, on the spectator safety issue which was his original remit. Again, his focus was very much in the areas which emerged in the evidence at the Inquiry and perhaps his key observations came at paragraphs 10.17 to 10.20 of his conclusions. These were as follows:

“10.17 The key problem was that the intended setup on the safeguards at Leet Bridge was not implemented as planned. If it had been and with effective marshalling, then a fatal accident would have been avoided.

10.18 The error was that there was no 3m wide prohibited area delineated on the right-hand side of the field down from the Leet Bridge jump. While the immediate cause of this were failures in communications and false assumptions, in my opinion the root cause was the lack of a verification process to ensure that the intended safeguards were actually implemented in practice.

10.9 It is not clear whether the role of checking that spectators safeguards were set up as intended, was assigned to anybody for the 2014 JCR, or whether that role fell into a gap. The information I have suggests nobody was assigned to that role.

10.20 That said, in my opinion there still lacked a process of certification that formally identified, assessed and approved changes to the intended set up of spectator safeguards”.

[411] Again, I am clear that this Inquiry identified and fully examined the issue which Mr Sylvester-Evans saw as “the key problem”, and I have had some further information available to me which allows me to examine all of the surrounding circumstances and make the clearer and more specific findings which I have made in that connection.

[412] On the matter of marshal numbers, Mr Sylvester-Evans made the observation, as he had done in Snowman, that “there were insufficient marshals to monitor and control” the relevant area, and he had observations about the ad hoc nature of the marshalling arrangements and the experience of the marshals. Again, that is fully covered in this Determination.

[413] It would not be fair to leave Mr Sylvester-Evans reports without adding that in the case of both rallies he had great praise for the dedication and enthusiasm of

the volunteers, and he recognised fully the huge organisational effort which is required to run successful rallies. He also properly recognised the many features of the rally organisation which worked perfectly, including importantly the rescue and medical services. His reports were in my view very fair and even-handed and presented a very balanced view.

[414] Having reviewed the evidence of Rob Jones, Mr Sylvester-Evans returned to complete his own evidence at the end of the Inquiry. He was highly complimentary of the MSA's proactive position and the speed with which they have made the changes recommended by the Review Group. He urged them to continue to progress in managing the changes and to perform full risk assessment before such changes are signed off.

[415] In some more specific areas, he spoke of the new safety delegate role and was very supportive of it, but he warned that this role was there to assess, and that he is an auditor and not an organiser. The organisers must not abrogate responsibility to the safety delegate, and there is a risk of overload onto him if that happens. I consider that that is a fair and wise cautionary note, and I consider that adequate training and guidance must be provided by the MSA in respect of this important role.

[416] In the course of his evidence there were again some exchanges on the familiar topics of yellow flags, course cars, spectator safety information and designated spectator areas. In all of those there was little disagreement between Mr Sylvester-Evans and the position currently adopted by the MSA, and he was generally very supportive of them, as he was of the measures contained in the report of the Review Group. That does, however, bring me to one topic in which there was a minor disagreement, in that Mr Sylvester-Evans prefers the Review Group terminology of "minimum" number rather than the MSA "predicted" number when it comes to marshal complement. This is also an area that I deal with specifically within this Determination.

[417] Finally, in relation to Mr Sylvester-Evans reports, he makes reference in each of them to some sort of register of “near misses” indicating that rally organisers must learn not only from actual incidents but also from near misses, and by near misses he means incidents where a car leaves the stage, but where by sheer good fortune, no spectators are present. I agree with Mr Sylvester-Evans in this respect and this is also an area which I deal with specifically in my recommendations.

## **Annexe 1**

### **List of witnesses**

#### **Snowman**

1. Michael Hossack – spectator
2. Graham Schoneville – driver
3. Michael Hendry – co driver
4. John Finlayson – assistant clerk of course
5. Nathan Roberts – radio communications
6. Christopher Robson – spectator (son of deceased)
7. Andrew Ross – spectator (father of injured child)
8. Catherine Robertson – spectator
9. Caroline McKay – spectator
10. David Hendry – spectator
11. Gordon Sutherland – spectator
12. Dr James McHugh – rally doctor
13. Gavin Butterworth – spectator
14. Annie Butterworth – spectator
15. PC George Lemmon – accident investigation
16. Andrew Jardine – course cars
17. Steven Davies – deputy stage commander
18. John Clayton – marshal
19. David Munro – assistant clerk of course
20. Andrew Straube – chief marshal
21. Neil McHaffie – stage commander
22. Ian (Charlie) Campbell – deputy clerk of course
23. David Smart – marshal
24. Neil Moir – clerk of course
25. Bruce Adams – safety officer
26. Fiona Moir – organisation
27. Stephen Baillie – competitor
28. Euan Thorburn – competitor



## **JCR**

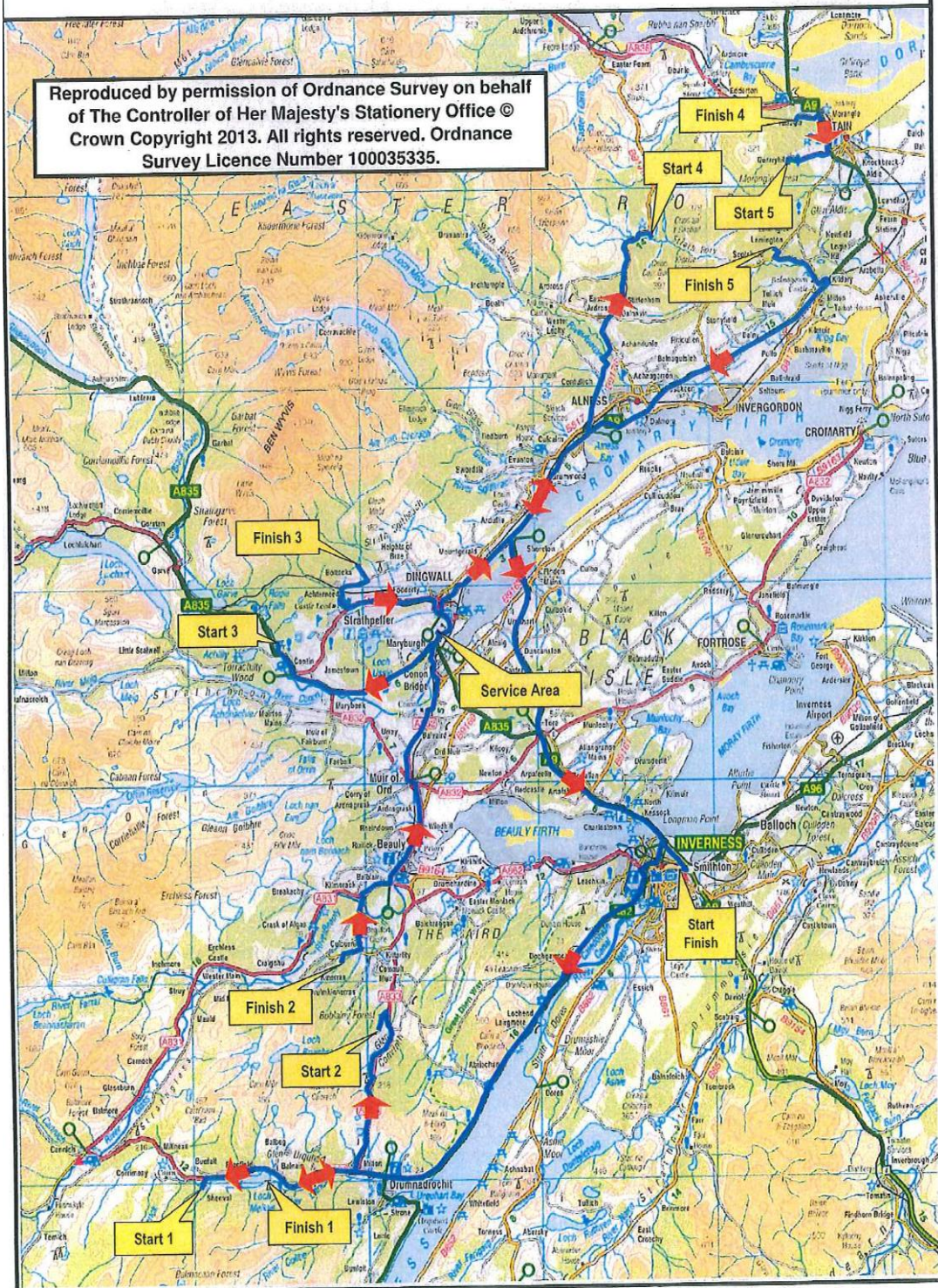
### **List of witnesses**

29. Ian Cockburn – estate manager
30. Alan Johnstone – rally official
31. Michael Jack – spectator
32. Donald Martin – spectator (injured party)
33. Andrew Martin – spectator
34. Jeffrey Betts – spectator
35. Susan Betts – spectator
36. Colin Gracie – spectator
37. Brian Bolton – spectator
38. Andrew Davie – spectator
39. Robert Toner – spectator
40. Gary Wilson – spectator
41. Keir Scott – spectator
42. Mark Scott – spectator
43. Darren Munnerly – spectator
44. Paul Taylor – spectator
45. Connor McRae – spectator
46. Derek McRae – spectator
47. Mark Fisher – spectator
48. Callum Shanks – spectator
49. Mark Brady – spectator
50. Douglas Brydon – spectator
51. Paul Campbell – spectator
52. Melanie Holmes – competitor
53. Duncan Orr – competitor
54. Neil Mathews – competitor
55. Gary Hoddinott – spectator
56. Colin Keenan – marshal

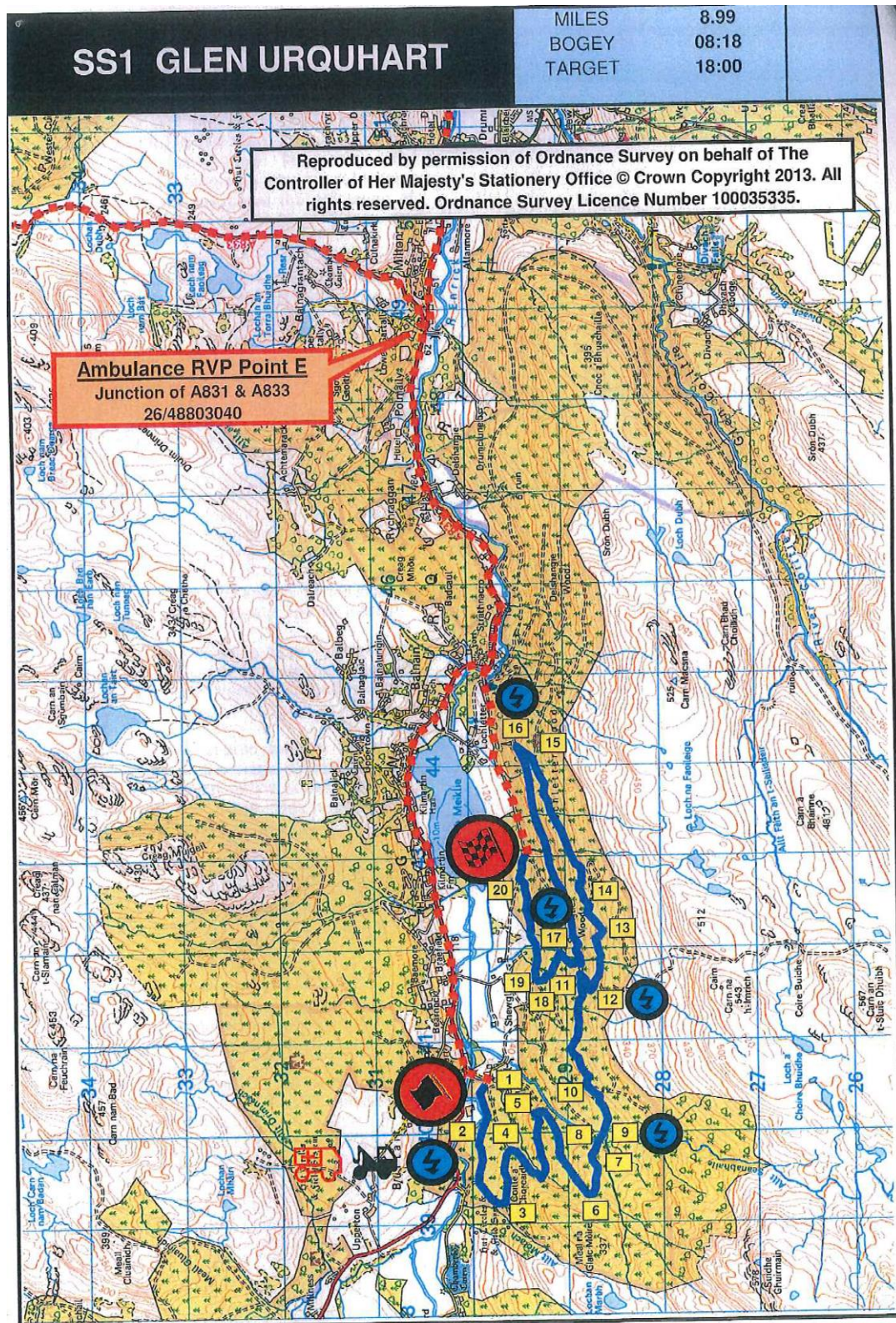
57. John Straughan – spectator
58. Paulo Baptista – spectator (photographer)
59. Steven Aitken – marshal
60. Tom Rodgers – marshal
61. David Carney – competitor
62. James Knox – spectator
63. Kevin Knox – spectator
64. Keith Brown – rally official
65. Christopher Edwards – marshal
66. Diane Buxton – marshal
67. David Andrew – course cars
68. Stephen Jubb – marshal
69. Alison Wilson – marshal
70. Alistair Thorburn – spectator
71. Euan Thorburn - spectator
72. Constable Neil Wilson – collision investigator
73. Ewen Stanhope – marshal
74. Jonathan Welsh – marshal
75. Andrew Jardine – course cars
76. James Moir – rally official
77. Brian Donnelly – rally official
78. Jeffrey Balls – rally official (previous years)
79. Andrew Turnbull – rally official (previous years)
80. Charles Tynan – course cars
81. Stephen Kinghorn – course cars
82. Brian Kinghorn – course cars
83. Graham Provest – deputy clerk of course
84. Andrew Whittaker – course cars
85. James Elliot – marshal
86. Christopher Warboys – rally communications
87. Darren Smith – rally official (logistics officer)

88. Ian Bone – safety consultant
89. Clayton Lackenby – rally official (safety officer)
90. David Brodie – chief marshal
91. Andrew Fleming – course cars
92. Derek Holgate – rally official (chief safety officer)
93. Peter Stanhope – deputy stage commander
94. Craig Smith – spectator (photographer)
95. Lara Holman – rally organisation
96. Lock Horsburgh – stage commander
97. Russell Blood – clerk of course
98. John Symes – MSA official
99. Jonathan Lord – MSA official
100. Bruce Adams – safety control
101. Rodger Reed – (deceased) MSA steward
102. Dr Robin Kerr – rally medical team
103. Alan Cockburn – spectator
104. Richard Hyslop – rally official (rescue)
105. James Millar – spectator
106. Anthony Cowan – spectator
107. Scott McKenzie – spectator
108. Zoe Bottrell – safety adviser
109. Rod Sylvester-Evans – safety consultant
110. Rob Jones – chief executive MSA

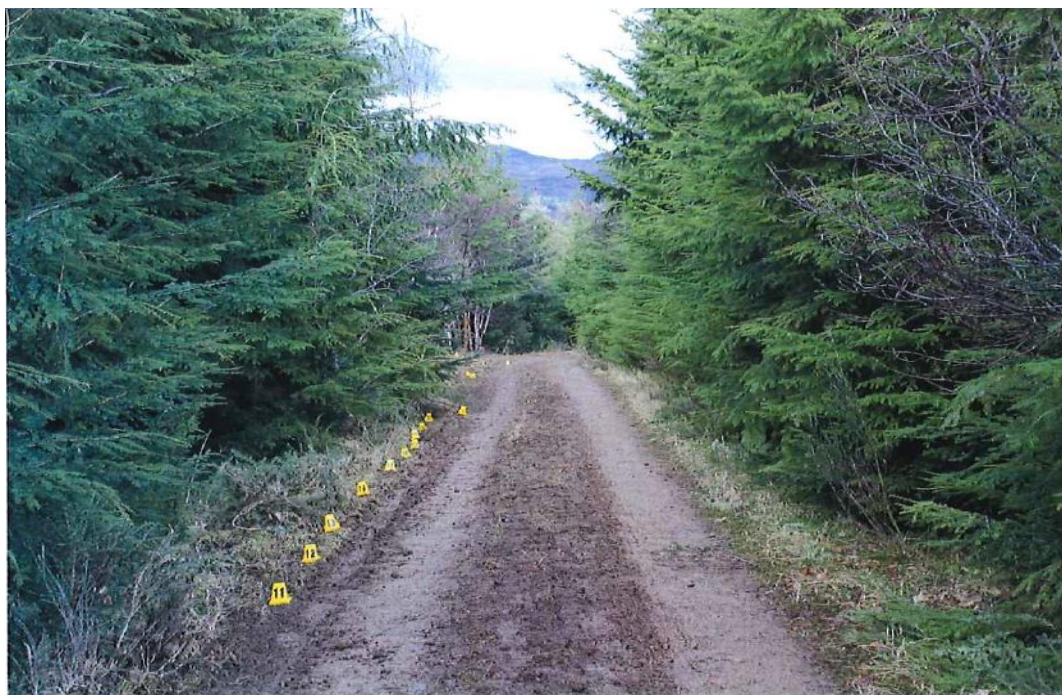
# Route Map



Annexe 3



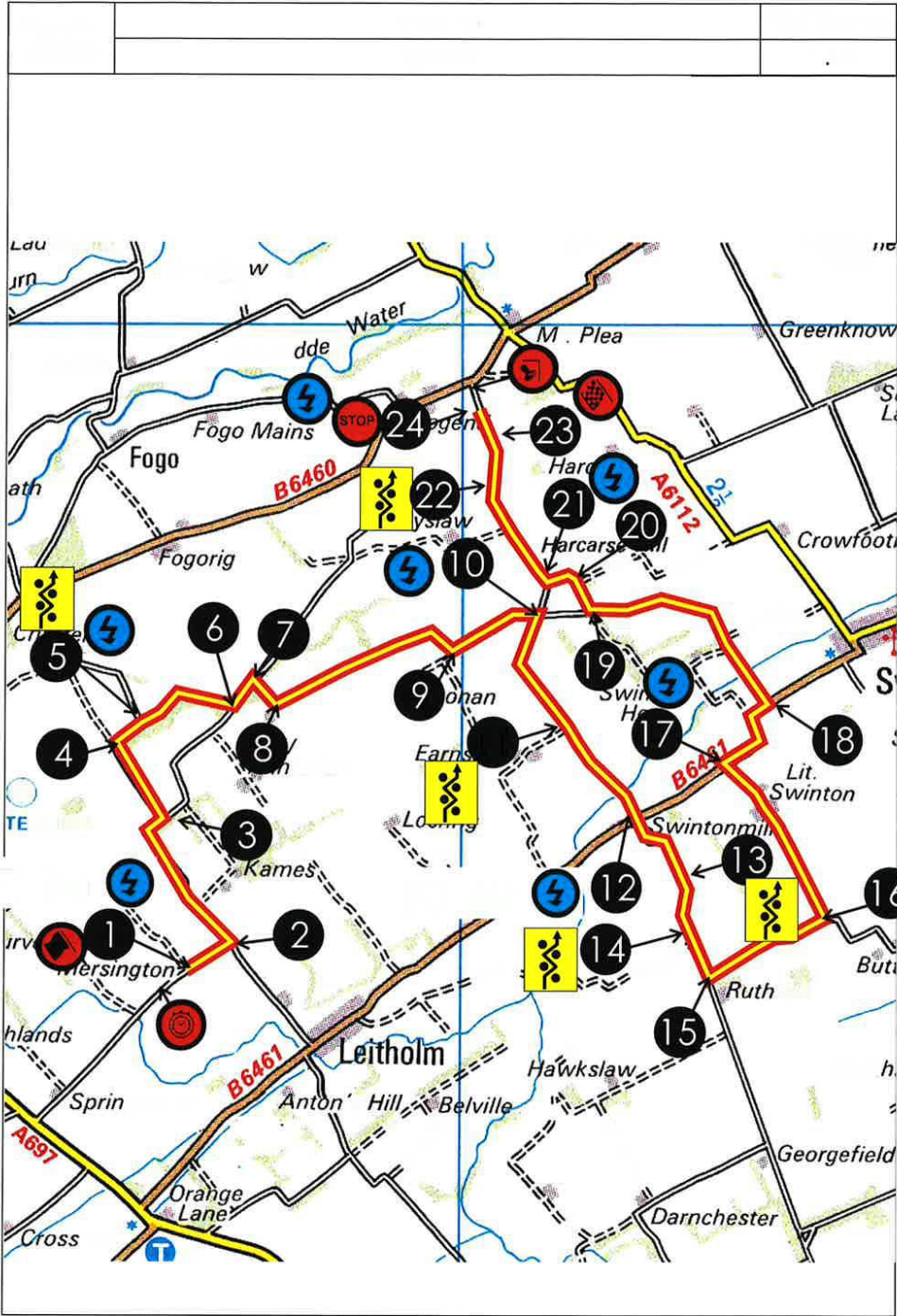
**Annexe 4**



**IMAGE 3**

**VIEW OF LOCUS IN A NORTH EASTERLY DIRECTION**

Annexe 5



Annexe 6

<p>8.71</p> <p>0.16</p>		<p>18a.1 The area prior to and after this jump is highly dangerous and should be kept clear at all times. Do not allow standing within 3m of the hedge particularly from the bridge to the cottage. DEFINITELY NO PHOTOGRAPHERS</p> <p>Any incursion should be reported immediately and the stage stopped until rectified.</p> <p>Marshals can park at post 18b</p> <p><b>Marshal preferably with a handheld</b></p>
		<p><b>A</b>   <b>LEET BRIDGE</b></p>



## Annexe 7



Annexe 8



**Annexe 9**



Annexe 10



**Annexe 11**



**Annexe 12**

