

SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT ABERDEEN

[2021] FAI 14

ABE-B427-20

DETERMINATION

BY

SHERIFF ANDREW MILLER

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

into the death of

IAN STUART FORDYCE

Aberdeen, 19 February 2021

DETERMINATION

The sheriff, having resumed consideration of the evidence and information presented at the Fatal Accident Inquiry into the death of Ian Stuart Fordyce, Determines in terms of Section 26 of the Inquiries into Fatal Accidents and Sudden Deaths Etc. (Scotland)

Act 2016 (“The 2016 Act”) that:

- 1) The deceased is Ian Stuart Fordyce, born 4 June 1949 (hereafter ‘Mr Fordyce’).
- 2) In terms of Section 26(2)(a) of the 2016 Act, the death of Mr Fordyce occurred at about 07.45 hours on 15 December 2017 on the B9077 South Deeside Road between Aberdeen and Banchory, at its junction with the unclassified road leading to Maryculter.

- 3) In terms of Section 26(2)(b) of the 2016 Act, the accident resulting in the death of Mr Fordyce occurred at about 07.45 hours on 15 December 2017 on the B9077 South Deeside Road between Aberdeen and Banchory, at its junction with the unclassified road leading to Maryculter.
- 4) In terms of Section 26(2)(c) of the 2016 Act, Mr Fordyce died as a consequence of multiple injuries sustained as the driver of a service bus involved in a vehicular collision. In particular, Mr Fordyce suffered a ruptured aorta and fractures of the pelvis, spine, ribs and both legs.
- 5) In terms of Section 26(2)(d) of the 2016 Act, the accident resulting in the death of Mr Fordyce was caused as a result of the failure of an Audi A4 motor car registered number J77 DOK, then being driven by James Craddock on the unclassified road leading to Maryculter, to stop and give way at the junction between that road and the B9077 South Deeside Road between Aberdeen and Banchory, on which a single decker Volvo motor coach registered number N3 CLL was then being driven on the westbound carriageway by Mr Fordyce and a DAF motor lorry registered number DV64 URH was then being driven in the eastbound carriageway by Ian Duncan. The Audi motor car entered the westbound carriageway into the path of the coach driven by Mr Fordyce, which struck the Audi motor car in the westbound lane and then moved into the eastbound lane, where it collided head on with the lorry driven by Ian Duncan.

- 6) In terms of Section 26(2)(e) of the Act, there were no precautions which could reasonably have been taken and which, had they been taken, might realistically have resulted in the accident being avoided.
- 7) In terms of Section 26(2)(f) of the Act, there were no defects in any system of working which contributed to the death of Mr Fordyce or to the accident resulting in the death of Mr Fordyce.
- 8) In terms of Section 26(2)(g) of the 2016 Act, the only other fact which is relevant to the circumstances of the death of Mr Fordyce is that the failure of the Audi motor car driven by James Craddock to stop and give way at the junction between the unclassified road and the B9077 South Deeside Road was due to ice on the surface of the unclassified road on the approach to its junction with the B9077 South Deeside Road, which prevented the Audi motor car from braking despite the efforts of Mr Craddock to bring the car to a stop at the junction.

Recommendations

In terms of Section 26(1)(b) of the 2016 Act, and having regard to the matters set out in Section 26(4) of that Act, there are no recommendations which, having regard to the circumstances surrounding the death of Mr Fordyce, might realistically prevent other deaths in similar circumstances.

NOTE**Introduction**

[1] At Aberdeen Sheriff Court on 9 February 2021, an Inquiry was held into the death of Ian Stuart Fordyce, which occurred on 15 December 2017 as a result of a collision between a single decker bus driven by Mr Fordyce and a lorry driven by Ian Duncan. The Inquiry was mandatory in terms of Section 2(3) of the 2016 Act, the death of Mr Fordyce having occurred in Scotland whilst Mr Fordyce was acting in the course of his employment. The circumstances were reported to the Crown Office and Procurator Fiscal Service and were the subject of a collision investigation report prepared by officers of the Police Service of Scotland Road Policing Department.

[2] The First Notice in relation to this Inquiry, in terms of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (“The 2017 Rules”) was issued by the Procurator Fiscal on 20 August 2020.

[3] Preliminary hearings in terms of Rule 3.6 of the 2017 Rules were held on 26 October and 23 November 2020 and 8 January 2021. The participants in the Inquiry were the Crown, represented by Mr Andrew Hanton, procurator fiscal depute, Mr Fordyce’s employers, MW Nicoll Hirers (Laurencekirk) Limited, represented by Ms Zoe McDonnell, solicitor, Chap Construction Limited, owners of the lorry driven by Mr Duncan, represented by Mr David McKinney, solicitor and James Craddock, the driver of the Audi motor car, represented by Mr Mark Donaldson, solicitor.

[4] The family of Mr Fordyce chose not to formally participate in the Inquiry, although I was advised by Mr Hanton that Mr Fordyce’s family were following the

progress of the Inquiry and were being kept informed of developments by the Crown.

Mr Fordyce's son Jason Fordyce observed the Inquiry hearing on 9 February 2021, which proceeded via the Cisco Webex platform, by video link.

[5] The only witness called at the Inquiry was PC Lindsay Edwards of the Police Service of Scotland Road Policing Department, who was one of the officers who carried out the collision investigation and who subsequently produced the collision investigation report which was lodged as a production by the Crown. A number of relevant facts, and the accuracy of the post mortem report, toxicology report and the results of various examinations of the vehicles involved in this collision were agreed by joint minute, as were the accuracy of a number of photographs taken by a police scene examiner of the aftermath of the collision.

[6] The accuracy of statements provided by James Craddock, the driver of the Audi, and Ian Duncan, the driver of the lorry, and the acceptance of those statements as the evidence of Mr Craddock and Mr Duncan, were also agreed by joint minute, with the result that neither was required to give evidence.

[7] At the preliminary hearing on 26 October 2020, I made an order under Section 20(2) of the 2016 Act requiring the Crown to present evidence regarding the treatment by Aberdeenshire Council of the unclassified road from which the Audi motor car emerged on to the B9077, and of the B9077 itself, having regard to the time of year and the weather conditions at the time of the fatal collision. In response the Crown obtained and disclosed the statement of William Lennox, Roads Quality and Resources Manager of Aberdeenshire Council, which explained the procedures and processes followed by

the council in relation to the treatment of these roads in the days leading up to the collision. Ultimately none of the participants sought to suggest that any defect which was relevant to the circumstances of the collision could be identified in the council's system of working with regard to the treatments of the road surfaces, with the result that Mr Lennox's statement was also agreed by joint minute as his unchallenged evidence in relation to this issue.

[8] I am grateful to the legal representatives of the various participants for the steps taken by them to identify and agree undisputed facts, and for lodging outline submissions in advance of the Inquiry hearing, all of which assisted in focussing the issues for the Inquiry.

[9] At the preliminary hearing on 26 October, the following issues to be addressed at the Inquiry were identified:

- i. The cause or causes of the collision which resulted in the death of Mr Fordyce.
- ii. Could James Craddock reasonably have taken any precautions which might realistically have avoided the collision?
- iii. Could Mr Fordyce reasonably have taken any precautions which might realistically have avoided the collision?
- iv. Could Ian Duncan reasonably have taken any precautions which might realistically have avoided the collision?
- v. What procedures were in place, as at the date of the collision, for the treating by Aberdeenshire Council of the unclassified road and the

B9077, having regard to the time of year and the weather conditions and temperature at the time of the collision?

- vi. Were there any defects in the system of working followed by Aberdeenshire Council with regard to the treatment of those roads which contributed to the collision?
- vii. Could Aberdeenshire Council reasonably have taken any further precautions, with regard to the treatment of those roads, which might realistically have avoided the collision?

These issues were all addressed at the Inquiry hearing.

The Legal Framework

[10] Sections 1 and 2 of the 2016 Act are in the following terms:

“1 Inquiries under this Act

- (1) There an inquiry is to be held into the death of a person in accordance with [sections 2 to 7](#), the procurator fiscal must—
 - (a) investigate the circumstances of the death, and
 - (b) arrange for the inquiry to be held.
- (2) An inquiry is to be conducted by a sheriff.
- (3) The purpose of an inquiry is to—
 - (a) establish the circumstances of the death, and
 - (b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances.
- (4) But it is not the purpose of an inquiry to establish civil or criminal liability.
- (5) In this Act, unless the context requires otherwise—

- (a) *“inquiry”* means an inquiry held, or to be held, under this Act,
- (b) references to a *“sheriff”* in relation to an inquiry are to a sheriff of the sheriffdom in which the inquiry is, or is to be, held.

2 Mandatory inquiries

- (1) An inquiry is to be held into the death of a person which—
 - (a) occurred in Scotland, and
 - (b) is within subsection (3) or (4).
 - (2) Subsection (1) is subject to [section 3](#).
 - (3) The death of a person is within this subsection if the death was the result of an accident which occurred—
 - (a) in Scotland, and
 - (b) while the person was acting in the course of the person's employment or occupation.
 - (4) The death of a person is within this subsection if, at the time of death, the person was—
 - (a) in legal custody, or
 - (b) a child required to be kept or detained in secure accommodation.
- ...”

[11] The specific matters to be determined by the court are set out in section 26 of the 2016 Act, which is in the following terms:

“26 The sheriff’s determination

- (1) As soon as possible after the conclusion of the evidence and submissions in an inquiry, the sheriff must make a determination setting out—
 - (a) in relation to the death to which the inquiry relates, the sheriff’s findings as to the circumstances mentioned in subsection (2), and
 - (b) such recommendations (if any) as to any of the matters mentioned in subsection (4) as the sheriff considers appropriate.

- (2) The circumstances referred to in subsection (1)(a) are—
- (a) when and where the death occurred,
 - (b) when and where any accident resulting in the death occurred,
 - (c) the cause or causes of the death,
 - (d) the cause or causes of any accident resulting in the death,
 - (e) any precautions which—
 - (i) could reasonably have been taken, and
 - (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided,
 - (f) any defects in any system of working which contributed to the death or any accident resulting in the death,
 - (g) any other facts which are relevant to the circumstances of the death.
- (3) For the purposes of subsection (2)(e) and (f), it does not matter whether it was foreseeable before the death or accident that the death or accident might occur—
- (a) if the precautions were not taken, or
 - (b) as the case may be, as a result of the defects.
- (4) The matters referred to in subsection (1)(b) are—
- (a) the taking of reasonable precautions,
 - (b) the making of improvements to any system of working,
 - (c) the introduction of a system of working,
 - (d) the taking of any other steps,
- which might realistically prevent other deaths in similar circumstances.
- (5) A recommendation under subsection (1)(b) may (but need not) be addressed to—
- (a) a participant in the inquiry,
 - (b) a body or office-holder appearing to the sheriff to have an interest in the prevention of deaths in similar circumstances.
- (6) A determination is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature.”

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

Summary of Relevant Facts and Circumstances

[13] Ian Stuart Fordyce was born on 4 June 1949 and, at the time of his death on 15 December 2017, he was aged 68 and resided at Flat 6, 36 Arbroath Road, Dundee.

[14] Mr Fordyce was employed as a bus driver by MW Nicoll Hirers (Laurencekirk) Ltd. In that capacity, at about 05.05 hours on Friday 15 December 2017, Mr Fordyce set off from Laurencekirk in a single decker Volvo coach registered number N3 CLL, owned by his employers, to collect a number of school children bound for Lathallan School, Brotherton Castle, Johnshaven. It appears that Mr Fordyce collected a number of children in and around the Aberdeen area before leaving the Aberdeen area for Johnshaven, by which time a total of 13 pupils aged between 7 and 18 were on board the coach.

[15] At about 07.45 hours that morning the coach driven by Mr Fordyce was travelling west on the B9077 South Deeside Road, heading away from Aberdeen. At the same time a DAF tipper lorry registered number SV64 URH, owned by Chap Construction Ltd and driven by their employee Ian Duncan, was travelling east on the same road, carrying a load of sand and concrete to a construction site in Aberdeen. That

stretch of road is a single carriageway, with one lane for travelling in each direction and was, at that time, subject to a temporary speed limit of 30 miles per hour. Subsequent tachograph chart analysis showed that both vehicles were travelling at around 30 miles per hour at the time of the collision described below. Neither was travelling at excessive speed for the conditions.

[16] It appears that the coach driven by Mr Fordyce and the lorry driven by Mr Duncan were due to pass each other at the approximate position of a T-junction between the B9077 and an unclassified minor road which joins the B9077 from the south and which would have been on Mr Fordyce's nearside (left) and on Mr Duncan's offside (right) as they approached the T-junction. Traffic approaching the junction on the unclassified road was required to give way to traffic on the B9077, in compliance with "Give Way" markings and signage at the junction.

[17] As the coach driven by Mr Fordyce and the lorry driven by Mr Duncan approached this junction, an Audi motor car registration mark J77 DOK, driven by James Craddock, was travelling on the unclassified road towards the junction in the course of Mr Craddock's journey to work as an engineer. Both roads had been affected by low temperatures and wintry conditions over the previous week or so. Most of the unclassified road was subject to the national speed limit of 60 miles per hour apart from the final 30 metres or so prior to the junction with the B9077, which was subject to a temporary speed limit of 30 miles per hour. As Mr Craddock's Audi motor car descended the final 60 metres or so of the unclassified road towards the junction with the B9077, he applied the vehicle's brakes but found that, due to ice on the road surface,

the brakes had no effect. He then changed to lower gears and used the handbrake in an attempt to stop the vehicle, again to no avail. The Audi crossed the carriageway onto the wrong side of the unclassified road and then continued through the junction, emerging on to the westbound lane of the B9077 into the path of the coach driven by Mr Fordyce. Evidence from the statements of Mr Craddock and Mr Duncan, dashcam footage recorded by the driver of another vehicle travelling behind Mr Duncan's lorry and the collision investigation report all confirm that Mr Fordyce could not have seen the Audi until it emerged from the mouth of the junction into his path. Having seen the Audi, Mr Fordyce reacted by steering to the offside (right) in an apparent effort to avoid striking the Audi. He was successful in avoiding a 'side on' collision with the offside (driver's side) of the Audi, thus in all likelihood sparing Mr Craddock significant injury. However the coach struck the front offside (driver's side) axle area of the Audi, causing significant damage to the front of the Audi, which then spun anticlockwise onto the southern verge of the westbound lane of the B9077, where it came to rest at the western edge of the mouth of the junction. The movement of the coach driven by Mr Fordyce to its offside brought it into the eastbound lane of the B9077 and directly into the path of the lorry driven by Mr Duncan, who applied his brakes but was unable to avoid colliding with the coach. The coach and the lorry collided virtually head on in the eastbound lane.

[18] Maps showing the relationship between the unclassified road and the B9077 appear at pages 8 and 9 of the collision investigation report.

[19] The collision caused extensive damage to the front of the lorry and the front of the coach, as well as to the front of the Audi. Mr Fordyce was thrown from his seat towards the centre aisle of the coach, where he was trapped by his legs as a result of the significant crush damage to the front of the coach and to the interior panelling.

Emergency services attended the scene, but ambulance personnel found that Mr Fordyce had succumbed to his injuries.

[20] Both Mr Duncan and Mr Craddock suffered injuries as a result of this collision, from which they recovered. It also appears that six of the passengers on the coach driven by Mr Fordyce suffered injuries including concussion, cuts, bruises and, in the case of two passengers, broken noses. The remainder of the passengers were uninjured.

[21] Examination of all three of the vehicles involved in the collision revealed no pre-collision defects which could have contributed to the collision.

[22] The tachograph equipment removed from both the coach driven by Mr Fordyce and the lorry driven by Mr Duncan was examined. No evidence was found of any infringements of drivers' hours legislation by either Mr Fordyce or Mr Duncan.

[23] A post mortem examination of the body of Mr Fordyce, conducted on 18 December 2017, confirmed the cause of death as multiple injuries sustained as the driver of a service bus involved in a vehicular collision. In particular, Mr Fordyce had suffered a ruptured aorta and fractures of the pelvis, spine, ribs and both legs.

[24] Toxicological analysis of samples and specimens taken during the post mortem examination revealed the presence of no alcohol or illicit substances.

[25] The police collision investigators were able to confirm that Mr Fordyce was not wearing his seatbelt at the time of the collision. However the opinion of Professor James Grieve, Emeritus Professor in Forensic Medicine at Aberdeen University, who carried out the post mortem examination, was that the immediately fatal injury sustained by Mr Fordyce, namely traumatic rupture of the aorta, would most likely have occurred irrespective of whether Mr Fordyce was wearing a seatbelt. Professor Grieve's opinion was agreed by joint minute and was supported by PC Edwards' evidence that the crushing damage to the front of the coach was such that the steering wheel and front panelling of the coach were pushed back onto the driver's seat, leaving virtually no room for the driver (see photograph 046, reproduced at paragraph 4.11 of the collision investigation report).

The standard of James Craddock's driving

PC Lindsay Edwards

[26] The only witness called at the Inquiry hearing was PC Lindsay Edwards, a highly experienced police officer attached to the Police Scotland Road Policing Department. PC Edwards' evidence was not the subject of any factual dispute between the participants. He was called in order to provide an overview of the collision investigation. Many of the issues covered in his evidence, for example with regard to the mechanism and reconstruction of the collision, post-collision examinations and analyses, feature elsewhere in this Determination. In this section I wish to focus on PC Edwards' evidence with regard to the standard of James Craddock's driving.

[27] PC Edwards described the unclassified road as a 'rat run,' used by commuters driving towards Aberdeen from locations west of the city in order to avoid congestion on the B9077 to the west of the site of this collision. The road is an unlit, single carriageway road of bitumen construction and in good condition, but with no centre markings or passing places. In some places it is not wide enough for two cars to pass each other, although as it approaches its junction with the B9077 it widens to allow two cars to pass and there are a few centre line markings, along with 'give way' markings on the road and a 'give way' sign at the junction.

[28] From the entrance to the unclassified road (at the end furthest from the junction with the B9077), the road runs more or less straight, parallel with the B9077 and on a slight decline for 800 metres or so. It then enters a slight left hand bend and continues to decline before turning sharply to the left and continuing a further 100 metres or so to the junction with the B9077. Immediately after the sharp left turn the road rises slightly for about 40 metres to a crest and then descends for the final 60 metres or so to the junction. The layout of the road is shown in dashcam footage apparently recorded by PC Edwards in daylight on 8 January 2018.

[29] On the day of the fatal collision the unclassified road was subject to the national speed limit of 60 mph apart from the final 30 metres or so, which was subject to a temporary 30 mph limit.

[30] According to PC Edwards, when he drove the unclassified road on the day of the collision, subsequent to his attendance at the collision site, it was obvious to him that the surface of the road was untreated. The long straight section was affected by snow, slush

and ice. A section of around 40 metres after the sharp left hand bend was wet but unaffected by snow, slush or ice due to shelter provided by overhanging trees. The final section, descending to the junction, was badly affected by 'obvious ice.' The final section would not have been visible to Mr Craddock as he drove along the preceding 'sheltered' section, due to the slight crest at the end of that section. Overall the road was passable with caution, by a careful driver driving to the road conditions. The road was open for use. There were no signs prohibiting its use that day.

[31] According to PC Edwards, a driver on the 'sheltered' section of the road, prior to the final descent, might not have anticipated the condition of the final section of the road, due to the slight crest which divided the final descent from the sheltered section which immediately preceded it. Even a slight misjudgement of speed on entry to the final descent might have made it difficult for a driver to maintain control and brake safely, such was the condition of the final descent.

[32] PC Edwards stated that he checked the dashcam footage from Mr Craddock's car after the collision. Although it covered the Audi's journey along the long straight section of the unclassified road, it stopped around 30 seconds prior to the collision. It therefore did not cover the car's journey from the sharp left hand bend to the collision site. PC Edwards stressed that this was a common feature of collision investigations. Dashcam systems often take 30 seconds or so to 'write' images to the system memory. Thus, when a collision stops the system from working, the system is unable to finish writing the images from the previous 30 seconds or so onto its memory. The dashcam footage which was recovered did not display the speed of the vehicle, but by subsequently driving a

police vehicle along the straight section of the road (perhaps on 8 January 2018, when PC Edwards appears to have recorded dashcam footage of the road layout) and comparing the distance covered with the time taken by Mr Craddock to cover it, according to the dashcam footage from his car on the morning of the collision, PC Edwards estimated Mr Craddock's average speed along that section on the morning of the collision as being 58 mph, which was within the speed limit although PC Edwards clearly had some concerns about the appropriateness of driving at that speed given the prevailing conditions that morning. PC Edwards agreed that Mr Craddock would have had to slow to around 30 mph for the sharp left hand bend, and because the dashcam footage did not cover the final 30 seconds or so prior to the collision there was no evidence other than that of Mr Craddock of the speed of his vehicle on the final section of the road towards the junction.

[33] PC Edwards adhered to the conclusion at para 9.6 of the collision investigation report that "[t]he most reasonable explanation for the collision is driver error by witness Craddock. The possibilities include driver inattentiveness, a lack of observation, driving too fast on an icy road or any combination of them." He explained that in his view a competent and careful driver would drive a little more slowly than usual in wintry conditions in order to avoid being caught out by the conditions. PC Edwards described how, in the aftermath of the collision, a number of other vehicles had approached the junction between the unclassified road and the B9077 and had stopped at the junction, but conceded that those drivers would have been able to see on their approach to the junction that there had been a collision (indicated by the flashing lights of the emergency

vehicles, for example) and would have adjusted their speed accordingly well before the junction.

[34] When asked what Mr Craddock could have done differently in order to avoid losing control of his car on its approach to the junction with the B9077, PC Edwards replied that he could have taken another route along a treated road, rather than using this untreated road, and that he could have driven according to the conditions, bearing in mind the wintry weather and the presence of visible ice and snow on the road surface. When later asked to comment on the hypothesis that even experienced, careful drivers who are familiar with a road can be caught out by the road conditions, PC Edwards observed that “the best advice is not to get into the skid in the first place.”

[35] PC Edwards’ evidence of fact was not disputed and was, in my view, entirely credible and reliable although, for the reasons given in my conclusions, I was ultimately unable to accept the suggestion, made in the conclusions of the collision investigation report, that the most reasonable explanation for the failure of the Audi motor car driven by Mr Craddock to give way at the junction between the unclassified road and the B9077 was driver error on the part of Mr Craddock.

James Craddock

[36] James Craddock gave a statement, which was agreed by the participants as his evidence, with the result that he did not give evidence at the Inquiry.

[37] Mr Craddock's statement describes his recollection of his journey to the collision site that morning. He states that he has held a driving licence for 25 years and that he knew this road well, having driven it for many years. He had left home that morning in plenty of time for his journey to a client's office in Kingswells, to the west of Aberdeen. The long straight section of the unclassified road was slightly slushy, though in better condition than it had been in previous days, and he adjusted his speed accordingly. He saw tyre tracks indicating that other vehicles had already used the road that morning. He encountered no difficulties and slowed for the sharp left hand bend towards the junction with the B9077, driving at an appropriate speed for the conditions. As he neared the junction he tried to brake but found his brakes unresponsive and realised that he did not have control of the car and that it was not in contact with the road surface due to ice on the road. He changed down through his gears and applied his handbrake, all to no avail. He was essentially a passenger in the car as it slid towards the junction. His hope that there would be no passing traffic on the B9077 and that his car would slide across the junction to an access road on the opposite side of the B9077 without encountering any other vehicles was confounded when he saw headlights approaching from the right on the B9077 and prepared himself for the inevitable collision. Mr Craddock's statement expresses the profound impact on him of the realisation that another driver, Mr Fordyce, had died in the collision but states that, having considered repeatedly what he could have done differently, his view is that, having made the decision to use the unclassified road the morning, there was nothing

more he could have done to maintain or regain control of his car after the brakes became unresponsive.

Ian Duncan's statement

[38] Mr Duncan's statement describes his journey eastwards along the B9077 towards Aberdeen. When describing Mr Craddock's Audi emerging from the unclassified road into the path of Mr Fordyce's approaching coach, Mr Duncan states that: "It was obvious to me that the car was sledging down the hill and wasn't going to be able to stop at the junction, not on purpose [but] just because of the road conditions. It was obvious the driver couldn't stop the car."

Dashcam images

[39] In the course of the police collision investigation, dashcam video footage from a number of vehicles was recovered. Neither the coach driven by Mr Fordyce nor the lorry driven by Mr Duncan had dashcams. The dashcam footage recovered from Mr Craddock's Audi has already been discussed. The only footage of the collision came from a vehicle driven by witness Ghandi, which was travelling on the B9077 directly behind Mr Duncan's lorry. The images from witness Ghandi's vehicle show the lorry approaching the junction with the unclassified road (which was on the lorry's offside/ right). It is raining lightly, the surface of the B9077 appears to be wet and the morning is dark. The approaching coach driven by Mr Fordyce is not initially visible, but as Mr Duncan's lorry draws level with the junction, Mr Craddock's Audi is seen to emerge

from the unclassified road into the westbound lane of the B9077. As the dashcam looks past the front offside (driver's side) of Mr Duncan's lorry, the moment of collision between Mr Fordyce's coach, which can be briefly seen approaching in the westbound lane of the B9077, and Mr Craddock's Audi is shown. Immediately after that collision, the Audi is seen to rotate violently anti-clockwise, before coming to rest on the southern verge of the B9077 immediately to the west of the mouth of the junction with the unclassified road, its hazard lights flashing. Whilst that is happening, Mr Fordyce's coach is seen to move to its offside (right), into the eastbound lane and into the path of Mr Duncan's lorry. Mr Duncan's lorry is seen to lurch to its nearside (left) and come to a sudden stop in the eastbound lane of the B9077, approximately opposite the mouth of the junction with the unclassified road, having struck Mr Fordyce's coach head-on. All of these events occur almost instantaneously as soon as the Audi appears from the mouth of the junction. The dashcam images support the conclusion that neither Mr Fordyce nor Mr Duncan had time for anything other than the most immediate and reflexive of reactions to the events which unfolded in front of them and that neither could realistically have taken any other action to avoid the collisions which occurred.

[40] It appears from witness Ghandi's dashcam footage that, finding himself unable to pass the collision site, he turned his car and effectively retraced his steps, travelling west along the B9077 until he made a left turn onto the B979 followed by another left, which brought him onto the unclassified road which Mr Craddock had driven a short time previously. He followed this road to the collision site at its junction with the B9077, apparently with the intention of exiting the junction on the eastern side of the collision

site and continuing his journey eastwards towards Aberdeen, which he did in fact manage to do. Witness Ghandi's dashcam footage during this journey along the unclassified road sheds little additional light on the standard of Mr Craddock's driving when he made the same journey a short time earlier. Like Mr Craddock, witness Ghandi negotiated the long straight section of the road without apparent difficulty. Unlike Mr Craddock, having made the sharp left turn towards the final descent to the junction, witness Ghandi found himself travelling behind a slow-moving school bus which is seen to stop and pick up passengers near to the top of the final descent and which then continues very slowly to the junction, conditions which did not replicate the circumstances of Mr Craddock's descent to the junction a short time earlier.

The treatment of the road surfaces

[41] Despite the unchallenged evidence that ice on the surface of the final section of the unclassified road leading to the junction with the B9077 must have been a significant factor in the failure of James Craddock's Audi to stop at the junction, none of the participants sought to identify any failure in Aberdeenshire Council's system of working with regard to the treatment of the road surface. In response to my order under section 20(2) of the 2016 Act requiring the Crown to present evidence regarding the treatment by Aberdeenshire Council of the unclassified road and the B9077, the Crown lodged and disclosed a statement by Mr William Lennox, the council's Roads Quality and Resources Manager. By the time of the Inquiry hearing, Mr Lennox's statement had been agreed by joint minute, underlining the absence of any controversy with regard to this issue.

[42] Mr Lennox's statement highlighted the fact that each local authority has autonomy to decide how to comply with the general requirements of the Roads (Scotland) Act 1984 and a UK-wide code of practice (*Well Managed Highway Infrastructure: A Code of Practice*, UK Roads Liaison Group, October 2016) with regard to the winter maintenance of roads within their areas. Around 30% of Aberdeenshire Council's roads are 'primary routes,' and during the winter months the council chooses to prioritise the treatment of those routes by treating them proactively to ensure that they remain passable. The remainder of the council's roads are treated reactively, meaning that the council only treats them in response to reports indicating that they are in need of treatment, and even then only where the conditions which necessitate treatment are likely to persist for 48 hours or longer. The council has a fleet of 50 gritters and makes decisions with regard to the deployment of gritters and the prioritisation of routes for treatment based on weather forecasts, reports of hazardous road conditions and its policy of prioritising primary routes.

[43] According to Mr Lennox's statement, snowfall on the evening of 7/8 December 2017 throughout the Aberdeenshire Council area was followed by a prolonged period during which temperatures fell well below freezing overnight and rose to, or just above, freezing during the day, accompanied by further falls of snow, sleet and rain, until 18 December. This pattern was unusual and was the most prolonged period of this kind of weather in the area since 2010. The council's entire fleet of gritters was deployed every day throughout this period.

[44] The B9077, being a primary route, was treated on Wednesday 13 December (between 0550 and 0740 and again between 1525 and 1720), Thursday 14 December (between 0540 and 0735 and again between 1530 and 1735) and Friday 15 December (between 0535 and 0735 and again between 1640 and 1845). The unclassified road, not being a primary route, was treated during the mid-to late-morning of Thursday 14 December but was not treated again prior to this fatal collision. It appears therefore that ice on the surface of the unclassified road which affected the braking of Mr Craddock's Audi must have built up at some point after the road was last treated, on the morning of the day prior to the collision.

[45] All of the participants at the Inquiry accepted that Aberdeenshire Council's decisions with regard to the prioritisation of road treatment during the period prior to this collision fell within the scope of its discretion and none of the participants sought to identify any failure in the council's system of working with regard to the treatment of the unclassified road, or any further precautions the council could reasonably have taken which might realistically have avoided the collision

Submissions

[46] The representatives of all participants adopted their written submissions and added brief further submissions at the Inquiry hearing. No significant points of disagreement or controversy emerged. None of the participants sought to make any criticism of the driving of Mr Fordyce, Mr Duncan or Mr Craddock or of the approach of

Aberdeenshire Council to the treatment of either of the roads which are relevant to the circumstances.

Discussion and Conclusions

[47] The weight of the evidence, in particular from the agreed statements given by Ian Duncan and James Craddock, the dashcam footage supplied by witness Ghandi and the police collision investigation, leads to the inevitable conclusion that this fatal collision would not have occurred but for the failure of Mr Craddock's Audi motor vehicle to stop and give way at the junction between the unclassified road, on which it was then travelling, and the B9077, on which the coach driven by Mr Fordyce and the lorry driven by Mr Duncan were then travelling

[48] As to why Mr Craddock's Audi failed to stop at the junction, my assessment of the evidence leads to the conclusion that, despite Mr Craddock having driven his vehicle on the unclassified road in an appropriate manner, having regard to the prevailing conditions, and despite his efforts to brake as the car descended the final slope of the unclassified road on its approach to the junction, the brakes did not slow the vehicle due to the presence of ice on the surface of that section of the road, which caught Mr Craddock by surprise having regard to the manageable conditions which he had encountered up to that point in his journey along the road. But for the condition of that final stretch of the unclassified road, Mr Craddock would have been able to bring his vehicle safely to a stop at the junction, as he attempted to do.

[49] According to the undisputed statement of Mr Lennox, although the B9077, along with other primary routes in the area, had been treated twice on 13 December, twice on 14 December and between 05.35 and 07.35 on 15 December, the unclassified road on which Mr Craddock's Audi vehicle travelled on its approach to the collision site had not been treated since mid to late morning on Thursday 14 December, the day prior to the collision, consistent with Aberdeenshire Council's road treatment schedule, which prioritises the treatment of primary routes.

[50] None of the participants identified or suggested any defects in Aberdeenshire Council's system of working with regard to its approach to the treatment of these road surfaces during the period prior to this collision, and particularly with regard to its policy of prioritising the treatment of primary routes and of treating secondary routes to the extent permitted by circumstances and prevailing conditions, as a result of which the unclassified road had not been treated since the morning of the day prior to the fatal collision. None of the participants suggested that there were any further precautions the council could reasonably have taken which might realistically have avoided the collision.

[51] I accept, as did all of the participants in the Inquiry, that Aberdeenshire Council's approach to the treatment of the B9077 and the unclassified road was reasonable having regard to the need to prioritise the deployment of finite resources and the reasonable priority given by the council to the treatment of primary routes, recognising that it is unrealistic to expect the council to have given the same level of priority to the treatment of every road at all times. It is clear that the council did not neglect the need to treat the

surface of the unclassified road; the road surface was treated on the morning of the day prior to the fatal collision. However, between the treatment of the surface of the unclassified road on the morning of 14 December 2017 and the fatal collision at about 07.45 hours on 15 December, the council had simply prioritised the treatment of its primary routes and had not yet effected any further treatment to the surface of the unclassified road. That was a decision which was squarely within the council's operational discretion. None of the participants sought to suggest otherwise.

[52] I find that the evidence does not support PC Edwards' conclusion (report, paragraph 9.6) that "[t]he most reasonable explanation for the collision is driver error by witness Craddock. The possibilities include driver inattentiveness, a lack of observation, driving too fast on an icy road or any combination of them." It is clear that the unclassified road was open and available for use that morning. Mr Craddock's statement indicates that tyre tracks on the road showed that other vehicles had used it before him that morning. There was also evidence that other drivers used the road shortly after Mr Craddock. PC Edwards, when giving evidence that he had calculated Mr Craddock's average speed along the straight section of the unclassified road as 58 mph, implied that that was excessive for the conditions. On the other hand, Mr Craddock appears to recall the straight section as being somewhat less hazardous than described by PC Edwards, PC Edwards' observations would have been gleaned from driving the road some time after Mr Craddock that morning, which makes comparison between the conditions encountered by Mr Craddock and those encountered by PC Edwards difficult, and in any event it is clear that Mr Craddock

negotiated the straight section safely, as did witness Ghandi a short time later. PC Edwards accepted that Mr Craddock must have taken the sharp left-hand bend at a low speed, as stated by Mr Craddock, and there is neither dashcam footage nor any other evidence to contradict Mr Craddock's evidence that he drove the final section, after the sharp left hand bend, at an appropriate speed, compliant with the temporary 30 mph limit which applied to the final section of the road prior to the junction. It seems that, having negotiated the sharp left hand bend, Mr Craddock would have driven over a 40-metre long section of road, rising to a slight crest, which was wet but free of ice due to shelter provided by overhanging trees. He would then have entered the final 60-metre descent towards the junction with the B9077 and found that that section, which he would have been unable to see until he entered it, was badly affected by ice, to the extent that his vehicle brakes were rendered ineffective and he could not stop his car. These were clearly conditions which he had not encountered at any prior stage of his journey along the unclassified road that morning. PC Edwards gave evidence that even a slight misjudgement of speed on entering this final section could have produced a loss of control. Mr Craddock clearly did not anticipate the presence of ice on the final section of the road to the extent which he encountered. It seems to me that even a careful driver in Mr Craddock's position could have experienced a similar loss of control.

[53] Without criticising PC Edwards, the conclusions of the collision investigation report do not discuss the possibility that Mr Craddock's failure to stop at the junction could simply have been due to the ice on the untreated surface of the final section of the unclassified road, without the need for any fault or failure on Mr Craddock's part to

compound the situation. The conclusions of the report almost assume the presence of some driver error in order to account for the loss of control and failure to stop.

[54] In my view, driver error on the part of Mr Craddock is one possible explanation for his inability to stop his car safely at the junction, but I do not accept PC Edwards's conclusion that driver error by Mr Craddock is "the most reasonable explanation" for the collision; in other words that, but for some error on Mr Craddock's part, it is likely that his vehicle would have stopped safely at the junction.

[55] In my judgment, the dominant cause of this fatal collision was simply the presence of ice on the untreated surface of the unclassified road on its approach to the junction with the B9077, to an extent which Mr Craddock had not anticipated, as a result of which Mr Craddock was unable to bring his vehicle to a stop at the junction despite driving in an appropriate manner and despite his efforts to bring his vehicle to a stop prior to the junction.

[56] The collision investigation report makes it clear (paragraphs 4.11 and 8.10) that Mr Fordyce was not wearing his seat belt at the time of the collision. It is not clear from the evidence why this was so. It seems clear that Mr Fordyce ought to have worn his seat belt. I have considered the possibility that Mr Fordyce may have survived the collision if he had worn his seat belt. However, having regard to Professor Grieve's opinion that the outcome for Mr Fordyce would most likely have been the same even if he had been wearing his seatbelt at the time of this collision, and the evidence of PC Edwards in relation to the significant crushing damage to the front of the coach, around the driver's

area, it seems to me that there is no evidence to suggest that Mr Fordyce would have survived if he had worn his seatbelt.

[57] Returning to the issues which were identified at the preliminary hearing on 26 October 2020, having considered the available evidence and the submissions on behalf of the participants, I can find no fault in the driving of Mr Fordyce, Mr Duncan or Mr Craddock and I can identify no precautions which any of the drivers could reasonably have taken which might realistically have avoided the fatal collision.

[58] Having considered the available evidence with regard to Aberdeenshire Council's approach to the treatment of the two roads which are relevant to this Inquiry, and the submissions on behalf of the participants, I can identify no defects in the system of working followed by the council which may have contributed to this collision and no further precautions which the council might reasonably have taken with regard to the treatment of the roads which might realistically have avoided the collision.

[59] Having regard to the nature of the crushing damage to the front of the coach, around the driver's area, and to Professor Grieve's opinion that the outcome for Mr Fordyce would most likely have been the same even if he had been wearing his seatbelt at the time of this collision, although I recognise the obvious fact that, as a general statement of good practice, drivers of any vehicles on public roads ought to wear seatbelts, I am unable to make any recommendation with regard to the taking of reasonable precautions, the making of improvements to any system of working, the introduction of a system of working or the taking of any other steps, which might realistically prevent other deaths in similar circumstances.

[60] At the commencement and conclusion of the Inquiry hearing I extended the court's condolences to Mr Fordyce's family. I was joined in so doing by the procurator fiscal depute and by the solicitors representing the other participants. I would wish to conclude this determination by reiterating those condolences.