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Form 6.2 Response

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
HAMILTON SHERIFF COURT**

Court ref: HAM-B412-21

RESPONSE

to the

DETERMINATION OF SHERIFF NICOLSON

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

IN THE

INQUIRY INTO THE DEATH OF JAMES KELLY MACGREGOR

To: The Scottish Courts and Tribunal Service

1. The Chief Constable, being a person to whom a recommendation under section 26(1)(b) was addressed, do respond as follows.
2. The Chief Constable was a participant in the inquiry.
3. It is noted that Version 13 of the Care and Welfare of Persons in Custody Standard Operating Procedure (SOP) was considered throughout this Fatal Accident Inquiry (FAI). Each Police Scotland SOP is continually reviewed and amended taking account of learning opportunities and recommendations to improve practices and procedures. Since 2019, the Care and Welfare of Persons in Custody SOP ('the SOP') has undergone a number of improvements and the current Version 18 of the SOP was published on 27 July 2022. The recommendations made as a result of the inquiry into the death of James Kelly MacGregor have provided further learning and opportunity for improvement. The changes proposed in response to the recommendations from this inquiry will result in the publication of version 19 of the SOP.
 - a. **A review of the training of officers should take place to ascertain whether specific and sufficient reference to the SOP is included. Thereafter consideration should be given to officers being tested as part of their training, potentially by way of open book examination, in order to ascertain whether they are familiar with referencing the SOP and have basic knowledge of the SOP.**
4. All officers receive lessons on searching during the two-day Operational Safety Training recertification course. During this course the principles of safe and effective

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search are taught, and the SOP is referenced throughout the course. The introduction of an assessment of physical search is being considered.

5. Successful completion of the three day 'Custody Officers Induction Course' (COI) is a prerequisite to the deployment of officers and staff operating within custody centres. The COI course covers all aspects of the SOP.
6. The course is designed and relies on the provisions of the Criminal Justice (Scotland) Act 2016 and the National Decision Making Model which has integrity, fairness, respect and human rights at its centre.
7. Police Scotland can confirm that ongoing formative assessment throughout the course by instructors is augmented by a final summative assessment for all students. The assessment consists of fifty eight questions based on a case study. Candidates are required to select true/false responses in relation to statements made based on the case study. There is an 80% pass mark. The course is subject to review following the publication of each iteration of the SOP. Course content is also reviewed following relevant determinations and recommendations published at the conclusion of FAI's, Police Investigations and Review Commissioner Investigations, His Majesty's Inspectorate of Constabulary in Scotland Inspections and internal Procedural Reviews.
8. While in-depth training and assessment on the SOP is provided to relevant officers, it is not considered proportionate to provide an extensive level of training to all officers. However, the principles of the SOP are covered during the Prisoner Rights, Care and Welfare lessons delivered to all officer recruits. This unit has a related theory knowledge check and related questions feature within the final theory exam. A review of these questions will be undertaken to ensure suitability following the findings of this FAI.

b. Consideration should be given to inclusion of the mouth and ears as part of the initial search of a person in police custody.

9. Within the 'Initial Apprehension of a Person' section of the SOP, where it states that a thorough and discreet search must take place, the following wording will be included: '*Consideration should be given to request that a person opens their mouth and hands.*' The proposed wording will ensure a level of consistency with other Police Scotland SOPs and remove conflicting guidance.
 10. Within the 'Standard Search' section of the SOP where it states: '*The person should be visually examined to identify any likely places of concealment*'. Consideration will be given to extending this sentence to include reference to the ears.
 11. This section of the SOP will also be amended to reiterate that standard searches should include consideration of open mouth and hands.
- c. The SOP should provide that, where a cage van is being used for the carriage of prisoners, the escort will occupy the seat nearest the cage, unless it is not feasible to do so, so that they may keep the prisoner under observation at all times. Rear**

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facing seats should be kept accessible and in use at all times unless it is not feasible to do so.

12. The current iteration of the SOP states that *'the escort will ideally occupy the seat nearest the cage so that they may keep the prisoner under observation at all times.'* The word *'ideally'* will be removed from this sentence.
13. During the existing Operational Safety Training (OST) courses, explicit reference is made to the direct and constant observation of those being carried within caged vans; utilising the rear-facing/nearest seat to the internal sliding door. All vehicles within the Police Scotland fleet, including caged vans, allow constant observation of a conveyed person.
14. During OST courses and annual recertification courses the issue of keeping rear facing seats clear will be addressed.
 - d. **When police officers are tasked with monitoring persons in police custody, they should maintain their attention on that person. The SOP should be reviewed to consider whether they should include guidance on being alert to any situation arising which impacts on their ability to maintain concentration, such as officers taking turns in maintaining observations during any extended delay in the process.**
15. The current iteration of the SOP states that: *'All persons must be subject to reasonable and proportionate control at all times. If the person cannot be processed immediately, arresting/escorting Police Officers must remain with them and ensure that they are properly controlled and monitored.'* Additional wording to this paragraph will include specific instruction that *'arresting/escorting officers must remain alert at all times and not be distracted by mobile devices or other activities.'*
16. A further addition will provide that *'consideration should be given to relieving escorting officers who are supervising persons in custody if there is any excessive delay during booking in processes.'*
 - e. **Where an officer is monitoring a detained person, the officer should not make use of a mobile telephone or other device unless it is strictly necessary for operational reasons at that time. Where an officer requires to use such a device in these circumstances, they should bring this to the attention of any accompanying colleague in order that the colleague can maintain attention to the detained person; and the officer should end their use of the device as soon as practicable possible.**
17. This recommendation will be incorporated fully within the revised iteration of the SOP. Reference is made to the response to Recommendation d.

NOTES

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(Please refer to section 28 of the Act. A person to whom a recommendation has been addressed under section 26(1) of the Act, if they were also a participant in the inquiry, is under a legal duty to respond to those recommendations in writing. Persons who were not participants but to whom recommendations have been directed are encouraged to respond, though they are not obliged to.

The response must set out–

(a) details of what the respondent has done or proposes to do in response to the recommendation, or

(b) if the respondent has not done, and does not intend to do, anything in response to the recommendation, the reasons for that.

A response must be given to the Scottish Courts and Tribunals Service within the period of 8 weeks beginning with the day on which the respondent receives a copy of the determination in which the recommendation is made.

The response may be published, though you may make representations to SCTS as to the withholding of all or part of the response from publication.

A response made under section 28(1) is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature).

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