

Transcript of the Sheku Bayoh Inquiry

Tuesday, 14 March 2023

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(10.00 am)

(Proceedings delayed)

(10.05 am)

DETECTIVE CHIEF SUPERINTENDENT PATRICK CAMPBELL (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning, Mr Campbell.

THE WITNESS: Good morning, sir.

LORD BRACADALE: Ms Grahame.

MS GRAHAME: Thank you.

Good morning.

A. Good morning.

Q. I'd like to ask you about what your views were on 3 May about separating the officers when they went to the canteen. Now, we've heard some evidence already from Conrad Trickett about what the post-incident procedure SOP says.

A. Yeah.

Q. And we've heard some comments from Colin Robson about his views, and he talked in his Inquiry statement about you pressuring him on that, and then in evidence he said you were pressure testing his views.

I'm interested in what your views were.

A. Yeah. So on 3 May when I was instructed to become SIO round about 08.30 hours, 08.15 hours on 3 May, initial

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1 consultation with Colin Robson at that time via
2 telephone call prior to leaving Livingston Office was
3 around a number of different initial priorities. One of
4 the discussions I had with Colin then, and I believe
5 when I was driving through to Kirkcaldy, was round about
6 discussing with him the location of the officers, status
7 of the officers, and it was -- I had discussion with two
8 investigators, experienced investigators, and it was
9 really -- I heard Colin's evidence round about, I think
10 he indicated he felt under pressure around it. But it
11 wasn't that. It was a consideration, and although the
12 SOP quite clearly states -- and the SOP obviously we
13 were utilising at that time was the PIP for armed
14 policing under the APP, so it was being flexible with
15 that SOP through the work of Conrad.

16 So I didn't really have any great issue, if I had to
17 separate the officers at that time, so it was
18 a consideration. But again thereafter what I was trying
19 to do was balance the status of the officers, the
20 location of the officers, where they were at that time,
21 how long they already had been together.

22 So at 08.30 hours they already had been together
23 one hour on the instruction of Inspector Kay to move
24 from the locus back to the canteen, which Inspector Kay
25 did with the best of intentions. So again, there was

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1 a number of points which I was kind of playing out in my
2 head around the best way forward with this, and
3 I discussed it with Lesley Boal at that time as well.

4 So it was a serious consideration round about the
5 necessity to separate them: was it safe to do so, what
6 was the condition of the officers, was it practical
7 based on the accommodation within Kirkcaldy Office, and
8 was it necessary?

9 So again, the necessity aspect of it was really
10 important round about -- the fact was the officers at
11 that stage and through the duration of 3 May were
12 witnesses, so again to separate witnesses, why were we
13 doing that? So again the other aspect of looking at:
14 were they involved or suspected of any criminality at
15 that time? No, they weren't. Were they suspected of
16 any misconduct at that time? No, they weren't. Would
17 we have been able -- or would we be able to manage the
18 officers within the canteen within what became the PIM
19 suite with putting in suitable control measures around
20 that? And what I mean is putting in individuals who
21 could ensure that there was non-conferral with the
22 officers involved in the incident, within the canteen
23 area.

24 So again that was all playing out, as I say,
25 discussions with Lesley, with Colin, around my thought

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1 process around that, and the requirement to separate,
2 which ultimately did not materialise, because I didn't
3 believe there was a necessity to separate them. Their
4 status was that of witnesses. What -- the direction and
5 the decision I made was in line with the standard
6 operating procedure in place in 2015, and is still in
7 place today around that.

8 So again, it was that balance where the welfare and
9 the wellbeing of the officers, but also ensuring that we
10 could get the benefits for the investigation as well at
11 that time. So it wasn't just a quick flippant decision
12 I made not to separate them. There was a lot of thought
13 went into the reason why I didn't eventually separate
14 them.

15 And again, if my decision had changed through the
16 course of my journey to Kirkcaldy Police Office, and
17 I had decided once I arrived that I would separate them,
18 I simply would have done that, I wouldn't have hesitated
19 with that, if my thought -- if the rationale behind my
20 thinking at that time had changed, I simply would have
21 separated them. But it didn't, and, as I say, I was
22 more than happy with the decision I made around that.

23 Q. From the perspective purely of SIO --

24 A. Yes.

25 Q. -- and from the investigation, what would the advantages

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1 to you have been of separating the officers?

2 A. The aspect is collaboration of the witnesses or the
3 potential aspect of collaboration and discussing the
4 incident prior to you getting that, that initial
5 perception of the officers in a statement form or
6 a personal initial account of what actually had
7 occurred.

8 So again, there is that aspect of the fact, would
9 there be benefit as an SIO to separate at that time, and
10 again you're thereafter balancing it with some of the
11 other aspects I looked at: was it safe to do so, was it
12 practical, was it necessary, what would be the
13 perception of the officers if I had to separate them,
14 put them in individual rooms and put uniformed officers
15 standing by them almost to manage them; I mean, what
16 perception would that play out round about their welfare
17 and wellbeing?

18 So it was that balance, could -- as SIO, what I was
19 looking to achieve through the fact that their evidence
20 or their statements would be sterile as such, could that
21 be achieved by putting in place suitable control
22 measures within the canteen area?

23 Q. When you use the word "sterile", what do you mean?

24 A. I think just the best evidence, you know what I mean,
25 that their evidence is not contaminated in any way, that

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1 what we have is a true recollection of what actually
2 occurred and it's not in any way tainted by
3 collaboration with other officers who were at the scene
4 as such.

5 Q. In collaboration, you mean -- we have heard the word
6 "conferral" used --

7 A. Yes.

8 Q. -- you used the word "tainted", so no influence on their
9 recollection from the recollection of others.

10 And you talk about their perception; was that
11 a significant factor in weighing up the different
12 options open to you?

13 A. No. No, that was solely a decision by myself, looking
14 at that independently, not involved in the actual
15 incident, coming in from outwith the area to lead on the
16 investigation. So there was no pressure on me to have
17 the officers separated or have the officers remain
18 together within the canteen. That was solely a decision
19 I made as SIO.

20 Q. And you twice used the word "safe"; what did you mean by
21 that?

22 A. So what I mean by that is that -- and it was clear when
23 I addressed them that they were extremely traumatised by
24 what had occurred, more so when they obviously were
25 aware that Mr Bayoh had passed away, was deceased. And

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1 what I was aware of the time, after I addressed
2 officers, is there was officers from 6-7 months' police
3 service that were actually probationers that were there
4 as well as officers of maybe 27-28 years' service. So
5 there was that whole dynamic spread of experience of
6 officers and what they were going through at that time.

7 So that aspect of welfare and wellbeing was
8 paramount as well, round about the fact to put
9 an individual in a separate part of the building almost
10 with some sort of control measure in place such as
11 an officer sitting with that individual, what would
12 that -- how would that impact on their welfare,
13 wellbeing, their mental health at that particular time,
14 whereby it's quite clear that the standard operating
15 procedure is not to separate and still is today.

16 Q. In the initial stages you've talked about the journey to
17 Kirkcaldy and keeping an open mind about the different
18 hypotheses.

19 A. Yeah.

20 Q. Did you initially want to separate the officers?

21 A. No. As I say, it was a consideration, but, as I say,
22 the number of different -- that was only one pillar of
23 the investigation that I was considering during that
24 45-minute journey to Kirkcaldy.

25 Q. So if Colin Robson formed that impression --

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1 A. Yeah.

2 Q. -- what would you say about that?

3 A. So to me it was simply a discussion with myself as SIO
4 leading the investigation but Colin as that on-call
5 detective inspector who had a better grip at that time,
6 a better understanding of the environment, the landscape
7 that the officers were in at that stage and where they
8 were in the journey and what had happened at that point.
9 So although I was getting briefed by Colin I just wanted
10 to get a more in-depth understanding of exactly what we
11 had prior to my arrival at Kirkcaldy Office.

12 Q. Can I move on and ask you, you told us last week about
13 going into the canteen and talking to the officers --

14 A. Yeah.

15 Q. -- and you also told us that you wanted the equipment,
16 the police officers' clothing and equipment, to be
17 recovered.

18 A. Yeah.

19 Q. I think you had mentioned that to the officers.

20 A. Yeah.

21 Q. I think you gave evidence about that last week.

22 Could you tell us about your discussion with
23 Conrad Trickett in relation to recovery of the clothing?

24 A. It was very quick. As I say, I was going to brief the
25 officers at the time and I was just explaining to Colin

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1 that we would be looking to, with their consent, seize
2 their external clothing, footwear and their officer
3 safety equipment. However, that would be done under
4 sterile conditions. I'd already arranged for
5 DCI Stuart Houston to come over and manage the various
6 scenes at that time, and also him being the officer
7 involved in the recovery of their equipment. So, as
8 I say, it was a very quick discussion with Colin what
9 I was expecting and what I was going to speak to the
10 officers around.

11 Q. Sorry, was that a conversation with Colin Robson?

12 A. No, Conrad, sorry.

13 Q. Conrad?

14 A. Yes.

15 Q. Then you looked at the 11.30 Gold Group minutes last
16 week and noted that -- forensic recovery of equipment
17 was noted at that meeting.

18 A. Yes.

19 Q. Then we've heard evidence from Conrad Trickett that he'd
20 noted in his PIM log that around 3.30 in the afternoon
21 he'd discussed the length of time the recovery of
22 clothing was taking --

23 A. Yeah.

24 Q. -- and he'd discussed that with you. Do you remember
25 him raising that with you?

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1 A. Yeah, it was a very brief discussion again, I think it
2 was in a corridor outside one of the rooms, and there
3 were a number of reasons around why that was taking
4 quite an extended period of time.

5 Q. Can you tell us about those?

6 A. Yeah. So basically Stuart Houston arrived round about
7 midday or thereabouts and was given the task by myself
8 delegated to him to take control of all the scenes, as
9 people have discussed, with one of the scenes being the
10 canteen and the officers within there and round about
11 how we could ensure that was done under sterile
12 conditions.

13 So the -- that thereafter moved on to Stuart
14 developing the forensic strategy document which we've
15 already discussed, and thereafter the arrival of PIRC
16 round about half past 1 that day. Myself, Stuart, Colin
17 and one or two others went to a briefing round about
18 quarter to 2 with them before the Gold Group, the second
19 Gold Group, whereby again the investigative priorities
20 were discussed with DSI Keith Harrower from PIRC and his
21 team. We went into the Gold Group after that and the
22 forensic strategy document was finalised just after the
23 second Gold Group, and we went into the forensic
24 strategy briefing with PIRC around about 16.45 hours,
25 and at that stage that was signed off by PIRC and by

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1 myself and we agreed the priorities around that.

2 So it did take a bit of time that afternoon, mainly
3 because we were dealing with multiple scenes, we were
4 also awaiting the arrival of PIRC and to discuss with
5 them if they agreed with the priorities and how we were
6 actually going to decant the equipment from the officers
7 under sterile conditions using independent police
8 officers not from the division but from the Major
9 Investigation Team, and also ensuring that we had
10 a force medical examiner there as well to check on their
11 welfare and wellbeing prior to basically being released
12 at that stage or prior to going off duty. So that was
13 all -- it just took a bit of time to basically manage
14 that.

15 Q. Why was it not possible to recover the equipment at
16 an earlier stage?

17 A. It was mainly a systemic structured approach. I agreed
18 with Stuart Houston that we would do it under sterile
19 conditions, we would do it to ensure their privacy as
20 well, we would do it independently from the group, so
21 we'd bring one in at a time to do that and manage it,
22 explain to them in detail why we were doing it so they
23 had no doubts around about the reasons for it and that
24 it wasn't officers that had already been involved in the
25 investigation, so we brought Major Investigation Team

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1 officers in to manage the recovery of some of the
2 individuals' property at that time.

3 Q. And that all took time?

4 A. It did take time, yes.

5 Q. And were you able to secure the services of independent
6 police officers?

7 A. We had -- Major Investigation Team officers came in for
8 it, but we still had to use one or two officers from the
9 neighbouring divisions that had come in to assist the
10 investigation at an early stage.

11 Q. What were the neighbouring divisions?

12 A. So we were -- it would be C division, which is Central
13 Scotland; it would be E division, which would be
14 Edinburgh; it would be J division, which is Lothian and
15 the Borders.

16 Q. Looking back, you've spoken about being in the canteen
17 with the officers, we've heard a number of witnesses
18 give evidence that equipment was lying around, some of
19 it was leaning against walls or on the floor, and we've
20 heard about a table in the canteen which had equipment
21 on it from different officers.

22 Looking back now, do you have any concerns about the
23 forensic integrity, and you've mentioned the word
24 "sterile", and I'm wondering if you had any concerns?

25 A. No. So at the time I arrived at 9 o'clock the equipment

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1 had already been taken, they'd taken off their body
2 armour and their equipment. My recollection of it
3 within the canteen, it was -- the majority was kind of
4 placed against a wall within the canteen area, I can't
5 recall any being on the table you're describing.

6 I think Conrad indicated I sat down, but I didn't,
7 I actually just stood up and briefed the officers
8 because it was very, very quick, I was going into
9 Gold Group at that time, so did we lose anything
10 regarding evidential capture? I'm not sure we did.
11 They were all aware we were going to basically seize the
12 property, the aspect of any cross-contamination had
13 already happened at that particular stage, they had been
14 together for a particular length of time, they had been
15 together at the locus at Hayfield Road, they had all
16 obviously, on the instructions of Inspector Kay,
17 decanted back into the canteen area where they had been
18 together again, and it was more important from my
19 perspective as well as through the work that
20 Stuart Houston done at that time that what we did do
21 thereafter was to ensure the integrity once we took
22 involvement in it, to basically ensure that that, the
23 crime scene or the scene examination of the individual
24 officers was done as best as possible.

25 Q. At any time during that day, did anyone draw to your

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1 attention a matter regarding Nicole Short's vest?

2 A. No.

3 Q. Can I ask you about the CS and PAVA sprays which we've
4 heard had been discharged at the scene?

5 A. Yes.

6 Q. What involvement, if any, did you have in determining
7 the strategy for recovery of those?

8 A. It was again just with the discussion with
9 Stuart Houston prior to discussing it with the PIRC
10 round about how we would manage that, and again Stuart
11 had done some research and had discussed it with various
12 individuals, I'm not sure who, but round about how we
13 would seize it, about how he -- we would wait to detail
14 exactly what had been -- if it had been discharged or if
15 there had been any loss from the PAVA or CS, and
16 thereafter we would appropriately package that to ensure
17 that there would be no aspect of any evidential loss at
18 that time. But again, that whole aspect was delegated
19 through to Stuart Houston around the whole management of
20 that.

21 Q. Did you have any involvement in discussing the packaging
22 or the weighing of the sprays?

23 A. No.

24 Q. Were you advised whether the sprays had been properly
25 recovered, packaged?

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- 1 A. No.
- 2 Q. Have you anything written in your daybook or your policy
3 file that would help us understand what was happening
4 regarding recovery of equipment, or is it simply the
5 forensic recovery strategy?
- 6 A. Forensic strategy document, yes, and the minutes.
- 7 Q. And the minutes. And anything else in your daybook that
8 you want to draw to our attention? You remember we
9 looked at this last week.
- 10 A. Yeah.
- 11 Q. It's PS18269. We looked primarily at pages 4 and 5 last
12 week.
- 13 (Pause)
- 14 We can see page 4 on the screen.
- 15 (Pause)
- 16 A. I think, I don't know if you go to the next page, which
17 starts at the top "Birnie", in the right-hand one.
- 18 Q. Page 5, right-hand side, that one?
- 19 A. Again -- I think it's the one on from that.
- 20 Q. Oh, right, sorry, that will be page 6, I think.
- 21 A. Yes, so if you do down to number 4:
22 "Officers' clothing -
23 "Sterile environment.
24 "Crime scene management..."
- 25 Q. And what does it say under that?

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- 1 A. "Injuries noted."
- 2 So that was the FME aspect of it we were discussing,
3 that we were noting the injury.
- 4 Q. When was this written?
- 5 A. So I think this was written either prior to the
6 Gold Group number 2 or during the Gold Group number 2,
7 I think it was prior to, I think it was maybe at the
8 meeting with the PIRC.
- 9 Q. So we've heard that was a Gold Group meeting at 14.40?
- 10 A. Yeah.
- 11 Q. And that was the first one that PIRC attended?
- 12 A. It was but there was -- we had a meeting before that and
13 I think it's documented in Colin Robson's book at 14.05
14 and PIRC investigator McGuire's book at 14.10, there was
15 a meeting prior to the Gold Group with myself and
16 Keith Harrower and our teams.
- 17 Q. You spoke about that last week.
- 18 A. Yeah, which thereafter led me into that Gold Group,
19 because I think this is potentially -- I think this is
20 what I noted at that time around immediate priorities.
- 21 Q. We were looking at the Gold Group minutes last week for
22 the first Gold Group meeting, 11.30, PS06491. Remember
23 we'd discussed this?
- 24 A. Yes, I do.
- 25 Q. Can I ask you about agenda item 9, please, and it says:

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1 "Resources (DCS Boal/CI Shepherd)."

2 I'm interested in this agenda item.

3 Tell us about the connection between DCS Boal and
4 resources, please.

5 A. So it looks as if that's been the more wider aspect of
6 divisional resources within that particular division at
7 the time, because of the impact of the number of loci
8 that we had at that stage, and we were standing officers
9 by that, so uniformed officers that were usually
10 involved in the patrols within that area were tied up
11 basically standing by various locations.

12 So it looks as if that's the kind of local staffing
13 issues that's been discussed and I know that was looked
14 at wider, with Garry McEwan around looking at mutual aid
15 coming in from various divisions surrounding Fife to
16 assist over not just that day but it was going to take
17 a number of days to run through this, and the high-vis
18 reassurance patrols that is your normal community impact
19 after a critical incident, just that high-visibility,
20 officers on the street.

21 Q. What was DCS Boal's role in relation to resources?

22 A. I'm not sure exactly why she -- it would really be
23 Chief Inspector Shepherd and Garry McEwan would have
24 that, I don't know if Lesley's maybe just updated round
25 about some aspect to that, but it wouldn't really sit

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1 with Lesley, to be honest with you.

2 Q. Agenda item 11:

3 "Media strategy/communications plan."

4 A. Yeah.

5 Q. This was a matter for Kate Finlay?

6 A. Yeah.

7 Q. Can you tell us: did you have any knowledge about how
8 an allegation about an officer being stabbed had got
9 into the public domain?

10 A. So my recollection, my knowledge of that is that on
11 driving through to Kirkcaldy it was on, I think it was
12 Radio Forth, I'm not sure, one of the radio channels,
13 and the information came that -- it was broadcast that
14 an incident had occurred in Kirkcaldy and an officer had
15 been stabbed, and I knew at that time from my
16 discussions with Colin that that was wholly inaccurate.
17 So I contacted the on-call comms support, which was
18 Kate Finlay, and asked her to ensure that that was
19 withdrawn immediately because of the inaccuracy of it.
20 So Kate had informed me that it hadn't come internally
21 from police, that that had come from an external source.

22 Q. What does that mean?

23 A. So it hadn't come -- we hadn't self-generated that media
24 release, it came internally -- sorry, it had come
25 externally from elsewhere. But it certainly had been

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1 broadcast that an officer had been stabbed and, as
2 I say, I can actually recall I was driving over the
3 Forth Road Bridge at that time when I actually heard it.
4 But, as I say, I asked her to withdraw it immediately
5 because it was inaccurate.

6 Q. And how did you know it was inaccurate?

7 A. Because I had discussed through the course of the last
8 40 minutes with Colin Robson round about what had
9 occurred.

10 Q. And when you say internally and externally, when you
11 refer to internally, what do you mean?

12 A. So police generally, particularly for serious incidents
13 or major incidents we would proactively move towards
14 a media release of some sort, at the early stages of any
15 investigation they would produce what's called an
16 "if asked" normally, which is an if asked statement, if
17 the media asked us for comment. It would be usually run
18 by myself as SIO saying was I happy with this going out
19 to media. Or, if we wanted to be more proactive with
20 anything at all at that stage, again through discussion
21 with the SIO and the comms lead, we would pull together
22 thereafter a statement to be released to the media
23 proactively, either through a witness appeal or through
24 a community reassurance as such or both.

25 Q. So internal would be an official media statement?

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1 A. Yes.

2 Q. Or an if asked media statement being prepared by
3 Police Scotland rather than an individual officer?

4 A. Yeah.

5 Q. Can I ask you to look on the some other minutes, please
6 PS06492 and these are the 14.40 Gold Group meeting
7 minutes, which was the second Gold Group meeting on
8 3 May. Again, we see that you were present at this, and
9 as we've said before, Keith Harrower from PIRC and
10 Keith Hardie from MIT were present for the first time.

11 Tell us what difference it made that PIRC were
12 present at this meeting.

13 A. I mean, it was critical, I mean, they were the lead
14 investigating authority, so they had to be there,
15 you know what I mean, it would have been extremely
16 beneficial for them to be at the first Gold Group at
17 11.30, but it was -- it was critical that we had them at
18 that table for that Gold Group, as I say, as being the
19 lead investigating authority.

20 Q. Why would it have been beneficial for them to have been
21 at the first meeting?

22 A. Mainly due to the fact that they were the lead
23 authority, you know what I mean, they were the lead
24 authority from -- on my understanding, from -- I'd been
25 informed at 09.35 hours by PSD, by Craig Blackhall, that

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1 they had been allocated ownership of the investigation,
2 so -- and due to the fact, as I've indicated before, the
3 investigation was moving at such fast pace and I was
4 keeping Keith Harrower updated via telephone round about
5 some of the actions that were being progressed and what
6 we had established. However, that is just simply the
7 investigation side, I'm speaking to Keith around the
8 whole holistic aspect of the management of a critical
9 incident and a significant investigation, until you
10 basically sit at a Gold Group and you get that kind of
11 wider spectrum of exactly what has occurred and what
12 maybe some of the challenges may be. You don't really
13 get that just through the kind of single lens of looking
14 through the investigation, if that makes sense.

15 Q. Right. And then if we look at item 3, which is on
16 page 2, do we see at this stage that DCI Houston is
17 identified at this point as crime scene co-ordinator?
18 You talked about that last week.

19 A. Yeah.

20 Q. He was actually at this meeting as well?

21 A. Yes.

22 Q. So he had arrived at Kirkcaldy by this time, and then it
23 says:

24 "Witness strategy."

25 Just three bullet points down from that:

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1 "... MIT to be deployed to note statements from
2 significant witnesses. (Update MIT to progress with
3 investigation, ongoing discussions re witness strategy,
4 to be discussed with PIRC, discussion re seizure of
5 production from Police witnesses."

6 Can you tell us about this element of the
7 discussion?

8 A. Yeah, so in the main that was round about any of the
9 significant identified witnesses that became apparent.
10 And a lot of this was down to some of the house-to-house
11 and door-to-door parameters that we'd set at that time,
12 I think I discussed it last week round about if we did
13 come across, through general house-to-house, that the
14 PIRC wanted the option to basically deploy their own
15 resources to some of the more significant eyewitnesses
16 if they became apparent.

17 The MIT coming on board, again we had a number of
18 MIT officers arriving through the course of -- from 10,
19 11 o'clock right through to the Gold Group here, so
20 again having experienced investigators from the Major
21 Investigation Team who were used to the protocols for
22 a major investigation of a major crime or incident as
23 such, was really beneficial. So it was about how we
24 best utilised MIT resources in a line with the PIRC and
25 looking at that response.

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1 Q. And further down you see just at what was the bottom of
2 the page:

3 "Seizure of production from officers being carried
4 out today ... staff have been advised by Federation
5 staff not to provide any statements."

6 Now, you gave evidence last week about your
7 understanding of the position regarding Amanda Givan's
8 evidence and the Federation advice. At the time of this
9 Gold Group meeting, did that remain your understanding
10 of the position regarding the officers and the provision
11 of statements?

12 A. Yes. That really didn't change at all through the
13 course of 3 May, that was the advice coming from
14 Amanda Givan.

15 Q. We'll come back to that in a moment. Further down we
16 can start to see:

17 "[Next of kin] strategy - Partner of deceased made
18 aware and statement noted, no formal ID has taken place
19 but ID has been done via a Facebook image initially."

20 Can I ask you about that, please, the use of
21 a Facebook image and whether you have any concerns about
22 that at that stage in the day?

23 A. So that was carried out without my knowledge, and it was
24 under the direction of Colin Robson, this was the
25 initial discussion with Collette Bell who'd provided

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1 a number of images of the deceased. We also had
2 a further image through the interrogation of police
3 systems that we could utilise as well. So again, it was
4 having, as best as possible, the confidence that the
5 individual at the Victoria Hospital was Mr Bayoh. So
6 again it's -- it's a more informal identification, but
7 to have that confidence prior to visiting the next of
8 kin that you're almost nearly 100% confident without
9 formal identification that this is the individual you're
10 basically explaining to a family that has sadly passed
11 away.

12 Q. There may be concerns that using a Facebook image is
13 a particularly informal method, and there are better
14 methods available to officers. If you had been involved
15 in this aspect, what would you have preferred to do?

16 A. I mean, historically it's best done, if we can, by
17 images that we hold on our police systems and such if we
18 can, if the individual has been involved with the police
19 previously. Again, with the significant use of
20 social media these days, you know what I mean, a lot of
21 the times the best imagery is within some social media
22 sites around the individuals concerned.

23 So, although I wasn't involved, hadn't authorised
24 this aspect of it, I can see why it was done; it was
25 done with the best of intentions to identify as quickly

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1 as possible who the individual there was at the
2 hospital, that was Mr Bayoh.

3 So again, that doesn't -- I mean, there's not hard
4 and fast rules around that, as an SIO I would look at
5 all options round about identification. I mean, the
6 priority is to try to identify as soon as possible, and
7 again there are a number of options. There are probably
8 more options open now than there were 20 years ago, just
9 because of the abundance of individuals now on
10 social media sites. But again, it really is just that
11 informal aspect to have and to provide the police with
12 some sort of confidence that the information we are
13 given is accurate.

14 Q. Looking back now, do you have any concerns about the
15 death message being relayed to Collette Bell prior to
16 any form of identification having been carried out?

17 A. I don't, and I say that having considered the reasons
18 why we did do that. It became clear from -- after
19 speaking -- the death message had already been delivered
20 to Collette before I was made aware of it, but from
21 discussion with Colin Robson, who had obviously -- who
22 was liaising with the two officers who were dealing with
23 Collette -- was that it was very clear to Collette at
24 that time through the discussion that she highly
25 suspected that the person within the hospital who was

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1 deceased was her partner, and just with the information
2 passed, Colin's decision at that time was ... he thought
3 it was a competent decision to deliver that message to
4 Collette as the partner of the deceased with the
5 information she had passed and the fact that she was
6 highly aware that it was her partner that was deceased.

7 So, it's not something we normally do, it's
8 something that we would probably more likely go to the
9 confirmed next of kin initially around that. However,
10 I can see why Colin made the decision to deliver the
11 message to Collette at the time. It was basically done
12 transparently, honestly, it was done because the fact is
13 that she had a great understanding that, from -- not
14 just from what we told her but from the information she
15 had from Mr Saeed and she was putting two and two
16 together at that particular stage. I think it would
17 have been silly not to basically make her aware of it,
18 to be honest, and, as I say, it was done with the best
19 of intentions and to be honest and transparent with
20 Collette round about that.

21 Q. This bullet point in the minutes goes on to say:

22 "[Next of kin] identified as sister and a FLO being
23 identified. (2 x Police Scotland FLOs have been
24 identified 1 x DI as FLO to brief and co-ordinate."

25 Can you tell us what this part of the discussion was

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- 1 about?
- 2 A. Yeah, so this was the issues we had, as I said
- 3 previously, round about identification of the two family
- 4 liaison officers, the issues with the STORM/SCOPE
- 5 system, that we believed these people were on duty. We
- 6 contacted one of the DIs, I think it was within the MIT,
- 7 who was tasked thereafter to try to bring family liaison
- 8 officers out as soon as possible and that's -- the role
- 9 that individual did was identify Kevin Houlston and one
- 10 other who attended thereafter within a relatively short
- 11 period of time. But again, I've already highlighted
- 12 some of the challenges we had round about the family
- 13 liaison sort of thing.
- 14 Q. The final page, I don't need to take you to it, refers
- 15 to the PIRC looking for a definitive point of contact.
- 16 That's agenda item 12, which is on the final page.
- 17 We've heard evidence from you that you were a point of
- 18 contact effectively for Keith Harrower on 3 May.
- 19 A. Yeah.
- 20 Q. What does it mean:
- 21 "PIRC looking for definitive point of contact with
- 22 knowledge of all circumstances"?
- 23 If we come up to item --
- 24 A. Yeah, I can see that.
- 25 Q. -- agenda item 12.

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1 You see the second line under, "Any other business".

2 "PIRC looking for definitive point of contact with
3 knowledge of all circumstances."

4 A. So the initial -- the point of contact for the
5 investigation was myself. I think what that potentially
6 is looking at is PIRC were looking for a single point of
7 contact, it looks as if it is potentially sitting under
8 Garry McEwan, in respect of the wider aspect of the
9 community impact involvement around that. That's the
10 only thing I can think of. It's quite clear, you know
11 what I mean, that myself and Keith were aware that I was
12 the single point of contact for the investigation,
13 I think it's a wider aspect of the critical incident he
14 was looking for a point of contact and I don't know if
15 that was maybe given to Chief Inspector Nicky Shepherd
16 at that time.

17 Q. Right, there are prior entries in relation to the
18 community impact. Maybe we should look at those as
19 well. If we go back a page, we have items 6 and 7 which
20 talk about community issues and community impact
21 assessment review.

22 A. Yeah.

23 Q. Does that assist you?

24 A. Yeah, I think that's the only thing I can think of
25 around that, because it was clear, you know what I mean,

Transcript of the Sheku Bayoh Inquiry

1 from early decision with Keith at 10.20 that I was the
2 investigative lead for Police Scotland for this, so that
3 was clear and Keith said as well that -- I think it was
4 the wider aspect of the various other pillars of the
5 investigation -- the incident, that Keith was maybe
6 looking for a point of contact with other than speaking
7 to someone who's dealing with community impact, speaking
8 to someone who's dealing with the equality and diversity
9 side, speaking to someone who is dealing with the media,
10 I think he was maybe looking for a point of contact who
11 could almost generalise and provide that kind of update.

12 Q. Last week, I think on your first day, you talked about
13 the investigation and you being bronze command of
14 that --

15 A. Yeah.

16 Q. -- but there being other bronze commanders --

17 A. Yes.

18 Q. -- within that structure which dealt with different
19 issues, community, media and that type of thing.

20 A. Yeah.

21 Q. Did you think the point of contact related to the other
22 columns --

23 A. Yes, yeah.

24 Q. -- within that structure?

25 A. I think that's what it does.

Transcript of the Sheku Bayoh Inquiry

1 Q. Can I ask you about delivery of the death message or
2 death messages to the Johnsons, who were -- Kadi Johnson
3 was Mr Bayoh's next of kin. What was your involvement
4 in the delivery of those messages? We have heard that
5 this was roughly around 3.10 in the afternoon, when
6 Mitchell and Parker attended to deliver the first death
7 message.

8 A. Yeah, so I think I detailed last week around the
9 challenges with the family liaison officers being
10 identified that were suitably trained, and thereafter
11 about the discussion with myself and Lesley Boal that we
12 would -- we couldn't delay it any further at that stage
13 and we deployed two family liaison -- sorry, two police
14 officers or detectives that were involved in the
15 investigation.

16 So that information, I think it was about half past
17 2 or thereabouts, we asked the -- Parker, through
18 Colin Robson, to basically attend and deliver the death
19 message to the family, and provide the information that
20 family liaison officers would be deployed as soon as
21 possible to provide further information at that time
22 around that. And thereafter we had the aspect of the
23 death message being delivered to the family round about,
24 I think it was about 3 o'clock, in my understanding.
25 But thereafter the information coming back via

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1 Graeme Dursley, and thereafter Colin Robson, that there
2 had been a number of significant questions asked by the
3 family -- quite rightly so -- around it, and they had
4 asked if there was any further information that we could
5 provide at that stage.

6 Q. Could I ask you about the first death message?

7 A. Yes.

8 Q. We have heard evidence from Mitchell and Parker and
9 Dursley and Robson about this. What involvement did you
10 have in deciding what to tell the Johnsons?

11 A. So the information we asked to tell, inform them was the
12 information that we'd given to Collette Bell at the
13 time, so there was that consistent message with it.
14 That was the reason we identified Parker and his
15 colleague at that time as well, Mitchell, to deliver
16 that, so it was a consistent message that was being
17 delivered.

18 Q. By this time you were aware that the Facebook
19 identification had been carried out?

20 A. Yes.

21 Q. In relation to the information which was being given to
22 Kadi Johnson at that first occasion by Mitchell and
23 Parker, we heard that there wasn't really much change
24 between the message that had been given to
25 Collette Bell?

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1 A. Yeah.

2 Q. Did you reflect on whether more information should be
3 given to Kadi Johnson?

4 A. Yeah. So it was really -- it's really challenging
5 because it does look extremely cold and the fact that
6 we're holding information back, and I've experienced
7 this over a number of years in a number of
8 investigations. Ultimately we can only deliver
9 information that we have at that particular time, that
10 we're confident that we have, so again what we do
11 deliver and what information we do give is what there
12 is -- there is no doubt that that is accurate and 100%,
13 we're confident that the rationale behind it and the
14 information we have can be verified as such.

15 So again, it's -- it does look extremely cold, it
16 does look very, very narrow, the information we give.
17 However, it is what information we know at that
18 particular time, and at that stage we obviously still
19 have a number of different hypotheses we're running
20 through regarding the investigation at that time as
21 well. So again, there are reasons why maybe we wouldn't
22 elaborate on particular strands or particular areas at
23 that point.

24 So again -- and I mean, the priority is just to
25 deliver the message, you know what I mean, to make them

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1 aware at that stage, and thereafter what we're looking
2 at is putting the family liaison officers, trained
3 family liaison officers in directly after that to --
4 again, to engage and thereafter start to feed in some of
5 the other information that we had through the course of
6 that later afternoon and early evening.

7 Q. Were you part of a discussion in relation to that first
8 death message that went to Kadi Johnson?

9 A. So I was, I think, I believe, yeah.

10 Q. Were you -- tell us about that discussion that you had,
11 and who was it with?

12 A. Yeah, so that discussion was through myself and
13 Lesley Boal deciding that we couldn't wait any longer.
14 Keith Harrower was made aware as well and he agreed that
15 we'd just deploy as soon as reasonably practical to the
16 family, and again I relayed that through to Colin Robson
17 and I think Colin spoke to Dursley around it at that
18 time.

19 We had agreed, myself and Lesley, that the two
20 officers who delivered the original message to Collette
21 would be utilised and the information was we would pass
22 the same message at that time, however with the
23 additional information that family liaison officers
24 would be deployed very shortly to provide you with some
25 further information.

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1 Q. We've heard that the first death message that was
2 delivered by Mitchell and Parker contained no
3 information that Mr Bayoh had died after police contact,
4 after coming into contact with officers at
5 Hayfield Road.

6 Why was that information withheld from Kadi Johnson?

7 A. So I'm not sure 100% of the wording of that first
8 message, all we did ask was the same message that was
9 delivered to Collette at that time went out to the
10 family. So again, I had left that with Colin Robson to
11 manage that aspect of it, that there was that consistent
12 message across both what was delivered to Collette and
13 what was delivered to the next of kin and the family.

14 Q. Is it of concern to you that that information was
15 withheld from Kadi Johnson?

16 A. So the more extended second message detailed in far more
17 detail round about that contact and that aspect of --

18 Q. I'll come on to that in a moment.

19 A. Yeah.

20 Q. But looking back now, is it of concern to you that
21 information was withheld from Kadi Johnson about
22 Mr Bayoh having died after police contact?

23 A. So if we had more -- if we had that -- the intention was
24 to deploy family liaison officers at that time with
25 a more extensive update that we could provide to them.

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1 However, because of the delay with that we had to
2 deliver -- because of the passage of time, the
3 understanding, intention from myself and Lesley was
4 simply to deliver the death message and thereafter we
5 would basically provide further information a short time
6 later by the deployment of family liaison officers.

7 So we were aware of the fact that the officers
8 involved in delivering the message weren't family
9 liaison trained and there was going to be potential ...
10 conflict or -- with the family with Police Scotland at
11 that time. So again, could we have provided further
12 information at that stage? Possibly. As I say, what we
13 did do was look at what else -- what further information
14 within the space of within 15, 20 minutes, what else we
15 could provide to them, and that was thereafter the
16 statement which I thereafter drafted and gave to Dursley
17 to deliver.

18 Q. I'll come on to that. Why was Kadi Johnson not told
19 when the first death message was relayed that Mr Bayoh
20 had died after contact with the police?

21 A. So genuinely I'm not sure, I wasn't involved in the
22 exact wording of that, it was simply we were, there was
23 an urgency to deliver a death message to the family and
24 that was what was delivered by Parker and Mitchell at
25 that time.

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1 Q. If you had been aware that the intention was not to
2 mention that he'd died after coming into contact with
3 the police, what would your view have been about that?

4 A. Sorry, could you repeat?

5 Q. Would you have been concerned in any way if you had been
6 aware that when they were delivering the first death
7 message to the Johnsons, they intended not to share with
8 Kadi Johnson that Mr Bayoh had died after coming into
9 contact with the police?

10 A. I think the -- they had limited information at that
11 particular stage as well, so they were simply being
12 asked to deliver what had been delivered to
13 Collette Bell, so I wouldn't put the blame on the
14 particular officers. I think with hindsight could we
15 have delivered a more extended form of words to the
16 family such as the second death message at that initial
17 stage? Yeah, we probably could have.

18 As I say, it was mainly due to the fact we were
19 looking to inform the family as soon as possible,
20 because of the delay which -- there is absolutely no
21 doubt that that could have been quicker than it was at
22 that particular stage and, as I say, there was issues
23 with the deployment of FLOs on 3 May. But, yeah,
24 you know what I mean, it could have been.

25 Q. From an SIO perspective, from the perspective of the

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1 senior investigating officer, was there any reason at
2 the time the first death message was delivered to
3 Kadi Johnson -- so roughly about 3.10 in the
4 afternoon -- so from your perspective at that time was
5 there any reason not to share with Kadi Johnson that
6 Mr Bayoh had died after coming into contact with police?

7 A. No, and as you'll be aware we did -- the second death
8 message was delivered very, very quickly after that, so
9 we could easily have -- I think what we had at the time
10 was we'd identified an urgency to deliver a death
11 message to the family, the next of kin, with the
12 understanding that we were going to deploy family
13 liaison within that 30 minutes, half an hour or so, who
14 would provide a more extended version of exactly what
15 had occurred.

16 So yeah, with hindsight could we have delivered that
17 second death message, a more thorough death message,
18 which again, it's still -- there was still significant
19 questions being asked of the officers when they
20 delivered that message -- quite rightly so as well --
21 but that did probably provide a more thorough update
22 regarding the status of the investigation and where we
23 were with it at that time.

24 Q. At that time no reason from the point of view of the
25 investigation --

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1 A. No.

2 Q. -- or protecting the investigation that would result in
3 withholding --

4 A. No.

5 Q. -- that information?

6 From your perspective as SIO, was there any other
7 reason why that information would be withheld --

8 A. No.

9 Q. -- from Kadi Johnson?

10 A. The information we had at the time, a great deal of that
11 was in the public domain, I would imagine, at that time
12 anyway, it was within the community that there had been
13 an incident involving the police and the deceased. So
14 the information we provided could have been provided at
15 the first instance. There was no reason as SIO, from
16 an investigative perspective, why I would have held back
17 on that.

18 Q. Now, we discussed last week that the initial terms of
19 reference in the Gold Group included a reference to the
20 reputation of the police, and I asked you questions
21 about that last week.

22 A. Yeah.

23 Q. You may appreciate that there was concern that this was
24 perhaps withheld, this information, with some intention
25 to protect the reputation of Police Scotland. Do you

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- 1 have any comment about that?
- 2 A. I think sharing the information with the family probably
3 enhances the reputation of Police Scotland, that we're
4 being open and transparent. So there are two sides to
5 that whole reputation side of things as well as we maybe
6 don't want that in the public domain just now but there
7 was no reason why we couldn't put that to the family in
8 particular, so again I think it would enhance the aspect
9 of the reputation at that particular time.
- 10 Q. Why would you not want that information being in the
11 public domain, if it enhances the transparency --
- 12 A. Yeah.
- 13 Q. -- and perhaps trust of the family to know that; why
14 would it not equally enhance transparency and trust in
15 the public for them to know that?
- 16 A. Yeah, it would, and that's why the second death message
17 was delivered within 20 minutes detailing exactly what's
18 in that death message, which was what we knew at that
19 time.
- 20 Q. And can you -- well, let's move on to that second death
21 message. Can you explain why it was delivered in two
22 visits by Mitchell and Parker rather than simply one?
- 23 A. So the issue with the first death message is on
24 hindsight we should have elaborated more on what we knew
25 at that particular time to the next of kin.

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1 The feedback we got from -- through Dursley into
2 Colin Robson into myself was that, was there additional
3 information that we could provide the family at that
4 time in respect of answering some of the questions that
5 we'd been asked.

6 So again, at that time the discussion with myself,
7 Lesley Boal, Keith Harrower, was round about: well, what
8 exactly do we know just now and what can we provide?
9 And again, the three of us sat at a table and I drafted
10 out formal words around that with inputs from Keith and
11 from Lesley Boal in respect of that.

12 Q. So that was -- the second death message was drafted with
13 Keith Harrower from PIRC?

14 A. Yes.

15 Q. DC Superintendent Lesley Boal?

16 A. Yes.

17 Q. And yourself?

18 A. Yes.

19 Q. We heard evidence from DS Dursley that he'd come up and
20 spoken to, I think, you about --

21 A. Yeah.

22 Q. Do you remember that?

23 A. No, I don't. What I do recall, I think the Gold Group
24 was ongoing at the time, the second Gold Group, and
25 I think Dursley had come to the door, I think

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1 Colin Robson was in the Gold Group and had went outside
2 and came back in and made me aware that there was
3 an issue, and I either went outside or went to a corner
4 of the room and discussed with Colin around it. I think
5 that's how it materialised, and thereafter I discussed
6 it, I don't know if it was at the end of the meeting or
7 if we went outside or went to a different part of that
8 room and just identified that there was an issue with
9 the information that had been provided to the family at
10 that time. I've a feeling we stepped outside, myself
11 and Lesley and Keith, and managed that, managed it in
12 another part of that area, because it was during that
13 period of the Gold Group that started at 14.40, so that
14 was running at the time that this occurred, but I can
15 recall Dursley coming to the door and indicating to
16 Colin Robson to come outside at the time around that.

17 Q. Right. Can we have a look at PS05793, which should be
18 a handwritten note. We've heard from DS Dursley that
19 this effectively is the second death message. Do you
20 recognise that handwritten --

21 A. I do, yes.

22 Q. Whose writing's that?

23 A. So the writing, with the exception of the words, "Shek"
24 and "Islam", is my writing.

25 Q. Right, and this is the second death message that was

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1 delivered to the Johnsons that day?

2 A. Yes.

3 Q. Who wrote "Shek (Islam)"?

4 A. I'm not sure, I've never actually seen that, to be
5 honest with you.

6 Q. We can -- do you want to read out your --

7 A. Yeah, so:

8 "Following an incident this morning, in the
9 Hayfield Road area of Kirkcaldy, officers from
10 Police Scotland have been attempting to arrest
11 Sheku Bayoh, during which time he has become
12 unconscious, conveyed to hospital by [Scottish Ambulance
13 Service] and despite best efforts by medical staff, died
14 shortly after 9 am this morning."

15 Q. And that was the combined efforts of the three of you?

16 A. Yeah. I think that's maybe Lesley's notation at the
17 top, I'm just looking, she's changed the word, I think
18 I've handed it to her and maybe if you go just back up
19 to the top of that again.

20 Q. Yes.

21 A. You see where, I don't think she'd been able to read my
22 writing and she put "this" morning, as in I put:

23 "... incident this morning..."

24 And I think she's added that because she wasn't sure
25 what that said.

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- 1 Q. So you'd written "this morning" and then she's written
2 it herself?
- 3 A. Yeah, I think what I've done is I've written it and then
4 handed it to herself and Keith to examine to see if they
5 were happy with it, and I think that's potentially
6 Lesley's writing.
- 7 Q. So it was approved by PIRC?
- 8 A. Yes.
- 9 Q. And that was then delivered to, was it DS Dursley, as he
10 indicated?
- 11 A. Or Colin Robson. I think Dursley, I think Dursley came
12 in at that time and he was given it, I think, either by
13 myself or via Colin. I think it was potentially handed
14 by myself to him.
- 15 Q. So this was the first occasion that a death message
16 mentioned that officers had been attempting to arrest
17 Sheku Bayoh?
- 18 A. Yes.
- 19 Q. Now, we've been -- we've heard evidence that there is no
20 copy of the first death message, no written record of
21 that. Would you agree with that or do you --
- 22 A. Yeah, I don't think there is.
- 23 Q. In relation to this message, correct me if I'm wrong,
24 but there's a reference to it in your daybook?
- 25 A. Yes, there is.

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1 Q. On page 6 at the bottom.

2 A. Yeah.

3 Q. So that's PS18269, page 6.

4 A. Yeah.

5 Q. And it's just beneath a redacted passage.

6 A. Yeah.

7 Q. And it says:

8 "Disclosure to next of kin."

9 And then there's an entry there.

10 A. Yeah.

11 Q. Do you want to read that out, please?

12 A. Yeah, so:

13 "During the arrest of the male at Hayfield Road

14 around 07.15 hours this morning, the subject has become

15 unconscious and on arrival at hospital despite the best

16 efforts of medical staff has died."

17 Q. We'll just get that on the screen. Now, that wording

18 is --

19 A. Different, yeah.

20 Q. -- it's different. So explain to us how this came

21 about?

22 A. So that was really just my initial draft of what I was

23 suggesting that would be put out, which thereafter led

24 to the wider discussion with Lesley -- DCS Boal and

25 DCI Keith Harrower, which thereafter led to an extension

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1 of that to what was on the screen shortly, which was the
2 message that was delivered.

3 Q. So this was your initial draft and then it became --

4 A. Yeah.

5 Q. -- the handwritten version?

6 A. I think it's in my policy file.

7 Q. Let's look at your policy file as well. So that's
8 PS17854.

9 A. I think it's one of the actions.

10 (Pause)

11 Yeah. So I think it's decision number 23.

12 Q. Right. Can I ask you about 14 first of all?

13 A. Oh, sorry it's not. That's the one for the officers.

14 Q. Can I ask you about 14, because it does talk about
15 wording --

16 A. Yeah.

17 Q. -- changed, involving DCS Boal seems to be mentioned as
18 well.

19 A. Yeah.

20 Q. Could you read out your --

21 A. Yeah, so that is the one. This is after the first
22 message had been delivered, so it's:

23 "Due to request for further information from next of
24 kin decision made to provide form of words indicating
25 incident involving Police Scotland officers. Wording

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1 developed with DCS Boal and provided to DS Graeme..."

2 I couldn't recall his name at the time, but that's

3 DS Graeme Dursley:

4 "... for transmission to officers at locus."

5 Q. So this was the second death message that is referred to

6 there?

7 A. Yes.

8 Q. Let's see what the reasoning is just below on that page.

9 A. "Provide next of kin and family with further information

10 regarding the death of Sheku Bayoh."

11 Q. So had you been made aware, either by Colin Robson or

12 through discussion with DSI Dursley, that the family had

13 been concerned and were asking a number of questions?

14 A. Yeah, yeah and as I previously stated that's why we went

15 for the second message.

16 Q. Looking at the second death message, and we can have the

17 handwritten version back on screen if you wish, can

18 I ask you about the content of that? This is the first

19 time there has been mention of police contact.

20 A. Yeah.

21 Q. There we are. There's mention that he became

22 unconscious and was taken by hospital -- sorry, by

23 ambulance to ... Scottish Ambulance Service and despite

24 best efforts by the medical staff died shortly after

25 9.00.

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1 We've discussed that death message with Mitchell and
2 Parker and others, Dursley and Robson. Looking at that
3 now, what are your views about whether that -- it
4 clearly shared more information, but do you think that
5 shared sufficient information with the family?

6 A. So it was based, as I stated previously, on the
7 information I had at the time that I could verify. So
8 the aspect, the incident this morning, location of where
9 it occurred, the actions of Police Scotland officers to
10 the best of my knowledge, what I had at that time, the
11 fact he had become unconscious at the locus, conveyed to
12 hospital by Scottish Ambulance Service and he had died
13 within the hospital despite the best efforts, so the
14 five main areas of what I knew at that particular time.

15 Q. Looking back now at the way the death messages were
16 delivered, we've heard evidence from Collette Bell that
17 she was told that Mr Bayoh had been found dead, she gave
18 evidence about having made reference to a passer-by
19 having found Mr Bayoh. She left the office, police
20 office, under the impression he'd been murdered, she
21 knew nothing of him having been conveyed by ambulance
22 and having died after medical staff intervened. We've
23 heard evidence from Kadi Johnson about the first death
24 message and differences between what Collette was told
25 and what she was told, and then we see this third death

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1 message with more information.

2 In hindsight, from looking back on how these death
3 messages were relayed to the family and to
4 Collette Bell, do you have any comments to make about
5 how that could have been done differently?

6 A. I mean, it's such a significant aspect of any
7 investigation that you get that information right and
8 there is a consistent message throughout your engagement
9 with the family at all times, I can't -- what the
10 officers told to Collette Bell, I'm aware of
11 Collette Bell's evidence, but I find it unlikely that
12 officers would have said something like that in the
13 knowledge that they had, and again the first -- the
14 message to the family was extremely brief and short
15 with, as I say, with the rationale in my head and
16 Lesley's that we would deploy family liaison almost
17 immediately. But that could have done -- we could have
18 basically said this set of words to -- and I take your
19 point around that, this could have been the death
20 message initially to the family and not simply that
21 Mr Bayoh had passed away.

22 So you can only base it on the information you have
23 at that time, and again it does appear cold, it appears
24 it's not transparent and it appears that there's other
25 information that we may have that we're holding back on,

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1 I can understand all that. However, I based what I had
2 there on what I knew at the particular time. There was
3 very little more that I knew at that stage, to be honest
4 with you, to give the family.

5 Q. So from the perspective of SIO --

6 A. Yeah.

7 Q. -- and from the perspective of the investigation --

8 A. Yeah.

9 Q. -- and integrity of the investigation, this second death
10 message as delivered to the Johnsons could have been
11 delivered to Collette Bell in the morning; is that what
12 you're saying?

13 A. I obviously wasn't there at the time, and I had no
14 control over that, because that was done without my
15 knowledge, so ...

16 Q. As SIO do you see any --

17 A. Yeah, no --

18 Q. -- information in here that couldn't have been shared
19 with Collette Bell in the morning?

20 A. So at that stage in the morning we are really just
21 getting a grip on exactly what's occurred, so Collette's
22 with us I think about quarter to 10 to about 11 o'clock,
23 I believe, and again, that is such an early part of the
24 investigation, it's limited to what we know at that
25 stage. By the time we delivered this at 3 o'clock or

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1 thereabouts, we had filled in significant gaps in
2 respect of the timeline and the movements of the
3 deceased.

4 Q. Looking at this message, is there any information in
5 this message that wasn't available to you in the
6 morning?

7 A. No.

8 Q. Is there any reason that this information couldn't have
9 been shared with Collette Bell in the morning?

10 A. Probably not. However, we were looking at obviously
11 discussing in more detail with the next of kin at the
12 time, as I say, it was unusual that we would -- the
13 first person we made aware of the death of Mr Bayoh was
14 the partner, which is unusual, but again just with the
15 circumstances I can understand why they did do it. So
16 it was unusual and the information they gave was
17 extremely brief at that time.

18 Now, that may have been one of two things. One,
19 that the officers delivering the message weren't fully
20 aware of exactly what's contained within this death
21 message, I mean, they're speaking to her at 10 o'clock
22 in the morning or 10.30, and again the direction with
23 Colin Robson may have been something different at that
24 particular stage, prior to him making me aware that they
25 had delivered that death message. So there's no reason

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1 why it couldn't have been, the information was known at
2 that particular stage, if that answers your question.

3 Q. Yes, thank you.

4 You talked about -- you used the word "consistent",
5 and I'm interested in your experience of death messages.
6 We've heard that the first death message to Collette --
7 not to Collette, sorry, to the Johnsons -- wasn't noted
8 down, and I'm interested in whether your understanding
9 is that death messages are not normally written down?

10 A. No, I mean, they are and they aren't, to be honest with
11 you, there's no hard and fast rule with them, you know
12 what I mean, a lot of times that's the normal course of
13 the duty of a police officer, whether that's a uniform
14 officer on patrol who's sent to inform a family of
15 a death of a family member, maybe in another part of the
16 UK or elsewhere. They will simply be told the
17 information they have is that he has passed away and can
18 they make contact with such and such, so again that
19 information would be very, very limited at that time.

20 In respect of a major crime investigation, it is
21 normally kind of written down, nine times out of ten
22 it's written down, to be honest with you, the first
23 death message which is delivered by again usually
24 detectives prior to the involvement of the family
25 liaison officers, they would basically run it through

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1 the SIO or the deputy SIO around the fact that this is
2 what they're intending to deliver as such.

3 So again, in my experience, it normally is written
4 down what is delivered to the family at that time.

5 Q. And in terms of ensuring consistency, if that message is
6 shared with more than one member of the family or next
7 of kin --

8 A. Yeah.

9 Q. -- or partner, how does writing it down assist with
10 that?

11 A. It's a form of words, it's a form of words that are
12 there are to basically deliver that consistent message.

13 Q. So I suppose the flipside of that, if it's not written
14 down anywhere, how do you ensure that consistency?

15 A. Well, in respect of this one we ensured -- the
16 consistency was we ensured that the officers who
17 delivered the original death message to Collette
18 delivered the same wording and the same message to the
19 next of kin initially for that death message.

20 Q. I'd like to move on to look at the minutes for
21 a Gold Group meeting the next day, if I may --

22 A. Yeah.

23 Q. -- just to complete this. So this is PS03161. Sorry,
24 I've rushed too far ahead. I'm interested in looking at
25 the 2015 Gold Group minutes, which are PS06493. Sorry,

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1 we will come back to that one.

2 Again, this, I think you gave evidence about this
3 last week, that there was a Gold Group meeting at 8.15
4 in the evening?

5 A. Yeah.

6 Q. And again you attended, Houston attended, and I think if
7 we move down the page we'll see that PIRC were also
8 there, and so were MIT and John Ferguson, who was also
9 from PIRC as I understand it?

10 A. John was, yeah.

11 Q. If we could look at page 2, agenda item 3, please, I'm
12 interested in -- sorry, let's move further down. Let's
13 look at 5. Family concerns. It says -- thank you, we
14 were there:

15 "Chief Superintendent McEwan discussed
16 brother-in-law of deceased, he is part of an independent
17 advisory group and had advised the initial attending
18 officers that he knew Mr McEwan and requested that he
19 attend and speak to him within 24 hours.

20 "Chief Sup and Chief Insp Shepherd attended at home
21 address of [next of kin], highly charged environment,
22 deceased's partner Collette and extended family within,
23 family concerned that early contact they had was
24 purposely vague. They were unhappy they had not been
25 told anything about who contacted the Police and

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1 Ambulance. Chief Sup provided them with
2 an understanding of events. Chief Sup discussed the
3 role of the PIRC and reassured them it would not be
4 P Division officers investigating the incident.

5 "TASK -- Family crave reassurance and are asking
6 about witnesses etc they do not wish anything publicised
7 until they inform deceased Mother who is in London."

8 Then if we can just move on to the next page, it
9 goes on:

10 "Discussed that police did not know [next of kin]
11 whilst Collette ... was at Police Station.

12 "Chief Sup discusses initial decision to have
13 Police Scotland FLOs but now hand over to PIRC FLOs for
14 arrangement to gain entry to house of deceased re
15 collecting belongings for child. Discussion re initial
16 contact on phone from PIRC.

17 "Chief Sup discusses family desperate to know about
18 PM, and also arrangements on having them conveyed to
19 mortuary in Edinburgh.

20 "TASK -- To address all family issues raised."

21 I'd like to go through this agenda item with you, if
22 you don't mind, and ask you some questions, if we move
23 back to the top please.

24 Tell us about the discussion in relation to the
25 visit by Chief Superintendent McEwan.

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1 A. Yeah, so that was, Chief Superintendent McEwan discussed
2 at the conclusion of the second Gold Group with --
3 there's a small group: myself, the Chair, ACC Nicholson,
4 DCS Boal were present, I think Nicky Shepherd was
5 potentially there as well, and Garry had indicated or
6 DCI Chief Superintendent McEwan had indicated that he
7 was aware of the brother-in-law of the deceased, and
8 that also came back from the two officers who had
9 delivered the second death message that a family member
10 had asked for Mr McEwan to make contact with the family
11 or provide them with some further information at that
12 time.

13 So when they returned, the two officers, to
14 Kirkcaldy that information was passed through Dursley to
15 Colin Robson to myself, that they had actually requested
16 or suggested that Garry makes contact with them, Chief
17 Superintendent McEwan to basically provide them with
18 some other information around that. That was due to
19 they knew each other from I think a previous -- a forum
20 within Fife.

21 So that's -- that discussion took place and this was
22 the aspect of the -- we were aware of the kickback and
23 the resistance from the family round about
24 Police Scotland officers being involved in any aspect of
25 this at the conclusion of delivering the second death

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1 message and the decision had been made by myself and
2 Lesley, that there was no point at that time deploying
3 Police Scotland FLOs -- I think I provided that
4 information previously -- because of that resistance,
5 and it would be more beneficial that we simply deploy
6 FLO -- FLOs from PIRC when they do attend, and I know
7 DSI Keith Harrower was trying at that time to get PIRC
8 FLOs to attend that evening around that.

9 But Garry had offered to attend,
10 Chief Superintendent McEwan had offered to attend at the
11 family home with Chief Inspector Shepherd and tried to
12 basically answer some of the difficult questions that
13 they had and that was agreed by the ACC, he agreed that
14 that may well be beneficial at this stage. As I say,
15 it's unusual for a Chief Superintendent to attend at the
16 next of kin's home address, or the silver commander as
17 Garry was, but, as I say, I could see the rationale
18 behind that.

19 Q. And was that a reflection of the nature of the family's
20 concerns and the contact that we've heard Ade Johnson
21 had with Garry McEwan?

22 A. I think it was both, I think it was the previous
23 relationship that they had but also it just wasn't
24 appropriate at that time to deploy Police Scotland FLOs,
25 and myself and Lesley agreed with that, just because of

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- 1 the resistance that had basically came from them.
- 2 Q. And was that resistance or concern from the family only
- 3 about Fife police officers or was it any police
- 4 officers?
- 5 A. I think it was Police Scotland officers in general, but
- 6 in particular Fife officers, because of the nature of
- 7 the incident, but I think that was what was -- you know,
- 8 Fife officers are Police Scotland officers.
- 9 Q. And we have heard that there may have been investigators
- 10 in PIRC who are former police officers?
- 11 A. Yeah.
- 12 Q. Was that a concern of the family's that you were aware
- 13 of in relation to PIRC as well?
- 14 A. No, I wasn't aware of that, no.
- 15 Q. And you'll see there that it says:
- 16 "Chief Sup [that's Garry McEwan] provided them with
- 17 an understanding of events. Chief Sup discussed the
- 18 role of the PIRC and reassured them [the family] it
- 19 would not be P Division officers investigating the
- 20 incident."
- 21 A. Yeah.
- 22 Q. What area did P Division cover?
- 23 A. That was Fife, that was Kirkcaldy and the surrounding
- 24 Fife area.
- 25 Q. So not just Kirkcaldy police officers?

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- 1 A. No.
- 2 Q. Lochgelly, Cupar, officers from there?
- 3 A. Mm-hm.
- 4 Q. When he reassured the family it would not be P Division
5 officers investigating the incident, what awareness was
6 there within the Gold Group that in fact there were
7 officers from P Division helping with the investigation?
- 8 A. So I think Garry's referring to the fact that he knew at
9 that stage it was going to Major Investigation Team
10 officers, so it was going to the MIT, and that there
11 wouldn't be any P Division officers involved in it
12 whatsoever and it would be PIRC led, so I think that's
13 why he can reassure them that there wouldn't be anyone
14 involved, within that division, in the investigation.
- 15 Q. I'm interested in, we talked last week about it being
16 PIRC-led?
- 17 A. Yeah.
- 18 Q. But you talked about the fact they only had four or five
19 investigators --
- 20 A. Yeah.
- 21 Q. -- who were brought to Kirkcaldy to deal with the
22 matter, and as I understood your evidence last week, you
23 were talking about police officers continuing to be
24 a resource that PIRC would rely on in carrying out --
- 25 A. Yes.

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1 Q. -- the investigation.

2 Was there a view that P Division officers should not
3 be involved in the investigation?

4 A. No, not at that stage, no. I mean, the following -- the
5 4 May we moved on to the MIT, I mean, in a numbers --
6 Major Investigation Teams came in in numbers to manage
7 the investigation with PIRC. As I said in previous
8 evidence, is that there were a number of P Division
9 officers not from the Kirkcaldy area but had come in
10 from elsewhere and P Division were managing critical
11 actions.

12 So they continued doing that for the first day
13 around that, and I was more than content they were there
14 with it. However, the eventual end game with this is
15 that after 3 May we were going to move to a complete
16 PIRC-led, MIT-supported investigation for the entirety.

17 Q. So on 3 May P Division officers did continue --

18 A. Yes.

19 Q. -- to be involved, but the following day, 4 May, you say
20 there were no P Division officers involved?

21 A. Yeah, there may have been one or two, just to basically
22 tidy up one or two actions that they were involved in,
23 but in general we were removing all P Division officers
24 from the enquiry.

25 Q. So when you say tidying up on the 4th, what sort of

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1 things do you mean?

2 A. They may have -- without going into individual officers
3 and what actions they had at this time it's difficult to
4 say. I mean, an action may require further
5 investigation to eliminate what your action has been
6 asked. So if you are asked to -- such as "Eliminate
7 Pat Campbell from the investigation", you know what
8 I mean, it's maybe checking his statements, CCTV, the
9 movements, corroboration of his movements.

10 So again, there may be other aspects that they would
11 be asked just to conclude that action around what they
12 had at that time. But again, the intention, as I say,
13 was that we would not utilise P Division officers for
14 the investigation itself.

15 Q. So the intention was there but perhaps P Division
16 officers did continue for a period of time --

17 A. Yeah, yeah.

18 Q. -- to complete actions?

19 A. That discussion was at an early stage between myself and
20 Lesley Boal round about the intention was to attempt to
21 utilise Police Scotland detectives from outwith the Fife
22 area and that was an earlier discussion with Lesley,
23 you know what I mean, when I was made aware of it, that
24 that whole transparency, the kind of independent aspect
25 of our role -- I had no concerns with the P Division

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1 officers but just how -- you know, through the lens how
2 that may look as such.

3 So, as I say, there was an early discussion with
4 myself and Lesley around that but due to the fact that
5 resources were tight in the early part of the
6 investigation and some of the P Division officers from
7 outwith Kirkcaldy had really significant actions round
8 about Collette Bell, round about one or two of the other
9 significant witnesses, we -- my take on that is that we
10 would continue with them and in respect to that,
11 I didn't see anything around any integrity issues with
12 it.

13 Q. When you use the phrase how it would look "through the
14 lens" --

15 A. Yeah.

16 Q. -- what would the concerns be, as far as you were aware?

17 A. I think there was a -- what we were almost pre-empting
18 was the fact what we were moving towards on day two
19 would be a completely independent investigation from
20 P -- without P Division officers having any footprint on
21 it at all. So day one, early stages, you're going to
22 have that -- the aspect of local officers still being
23 involved in it but with the intention that eventually
24 you move towards an investigation solely resourced from
25 a Police Scotland perspective by Major Investigation

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1 Team officers which would support the PIRC-led
2 investigation.

3 Q. When was the point reached, as far as you're aware,
4 where you were satisfied that no P Division officers
5 were involved in the investigation?

6 A. So I was involved in it for the first two days.
7 I couldn't answer that, to be honest with you, I'm not
8 sure, but I know that that's where we were moving
9 towards, but, as I say, one day just merged into the
10 other day, as you can imagine.

11 Q. In terms of the remit of PIRC, we talked last week about
12 that --

13 A. Yeah.

14 Q. -- and how we may -- we will hear further evidence about
15 this, but it may be that there were five letters from
16 the Crown Office extending the remit of PIRC over
17 a period of time?

18 A. Right.

19 Q. What clarity did you have on 3 or 4 May as to the
20 precise remit and scope of the investigation to be
21 carried out by PIRC?

22 A. So my understanding, and I hadn't seen the terms of
23 reference that you're referring to there, was that the
24 PIRC were the lead investigation and would examine the
25 lead-up to the death of Mr Bayoh as well as the

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1 subsequent actions of the response to his death. That
2 was my initial understanding for day one and day two,
3 what their remit was. There were other aspects that may
4 well fall into Police Scotland officers round about,
5 I mean, the background or whatever, but that whole focus
6 on the incident at Hayfield Road and the subsequent
7 response around that was quite clear in my head that
8 that sat with PIRC leading on it.

9 Q. But in terms of having a clear picture available to you
10 as to what parts of the investigation may remain with
11 Police Scotland --

12 A. Yeah.

13 Q. -- and what parts were handed over to PIRC --

14 A. Yes.

15 Q. -- looking back now, do you feel that you had a clear
16 picture in your mind of what parts perhaps remained with
17 Police Scotland and what parts were handed over?

18 A. Yeah, I mean, it was clear that, I mean, we were
19 supporting PIRC from the early morning of 3 May, it was
20 their investigation, we were simply supporting it, we
21 had the assets on the ground at that time to manage it.
22 The -- I don't think the terms of reference and the
23 visibility of the terms of reference from
24 a Police Scotland perspective came until potentially the
25 end of day two, day three, and I think that was into

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1 Keith Hardie, who had taken over my role as such around
2 it. But certainly I had no visibility at all of what
3 the terms of reference were. We were running with the
4 priorities which we've already discussed around that but
5 the more detailed aspect of how the kind of choreography
6 of the investigation would thereafter play out was
7 something that would be managed between PIRC and the
8 Major Investigation Teams more than myself as responding
9 to it.

10 Q. So you talked last week about was it the golden hour or
11 the golden hours?

12 A. Yeah.

13 Q. And during that period, is that a fixed period or is
14 it ...?

15 A. It can last more than an hour.

16 Q. During that period, was it essentially Police Scotland
17 that were doing --

18 A. Yes.

19 Q. -- the investigation?

20 A. Yes.

21 MS GRAHAME: I wonder if that would be a --

22 LORD BRACADALE: A convenient point? Well, we'll take
23 a 20-minute break.

24 (11.30 am)

25 (A short break)

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1 (11.55 am)

2 LORD BRACADALE: Ms Grahame.

3 MS GRAHAME: Can I ask you: was there a formal handover to
4 PIRC in the morning? You were made aware they were
5 taking the lead in the investigation, and I'm interested
6 in whether there was some sort of formal handover at
7 that stage or did that happen later?

8 A. Are you talking about 10.22 when I speak to
9 Keith Harrower?

10 Q. Yes, you had that initial conversation with
11 Keith Harrower at that time in the morning.

12 A. Yeah. So, I mean, it was clear -- Keith obviously
13 informed me at that time that he had been instructed to
14 lead on the investigation by Crown Office, so it was
15 clear -- it was clearer to me before that, to be honest
16 with you, I had been informed at 9.45 by Craig Blackhall
17 who had had that discussion with Dave Green from
18 Crown Office and Craig had contacted me back to inform
19 me that PIRC would lead on the investigation, so at
20 10.20 when Keith contacted me, Keith just reinforced the
21 fact it was going to be PIRC-led.

22 Q. And what about a formal handover where you give
23 a briefing?

24 A. Yeah. So that really didn't happen until, through the
25 course of the day, you know what I mean, the PIRC attend

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1 at 13.30, 13.35 hours, we get into an investigative
2 briefing at that time, thereafter into a Gold Group,
3 thereafter into a forensic strategy meeting, and
4 thereafter a further Gold Group that evening. So
5 that -- the enquiry was still, although being led by
6 Keith as a lead investigator for PIRC, was heavily
7 supported by myself and my resources from
8 Police Scotland at that time, and I didn't actually do
9 a handover in respect of my role to Keith Hardie, the
10 DCI from the MIT, until I think it was the second day
11 after the post-mortem examination. So I continued with
12 that involvement all the way through the second day as
13 well.

14 But it was clear round about the -- and again, that
15 whole aspect, the question you're asking about a formal
16 handover, that was a kind of gradual progress through
17 the different forums and meetings and the progression of
18 the investigation around the fact once HOLMES, the
19 HOLMES team were into the investigation on day two and
20 that more defined structure round about PIRC-led, fully
21 supported by MIT, was thereafter going to take the
22 investigation on over the coming days and weeks.

23 Q. So if we look at your policy file, I think you gave
24 evidence last week about the handover to Keith Hardie
25 from MIT --

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1 A. Yeah.

2 Q. -- and I think is that at the rear of your policy file?

3 A. Yeah, yeah.

4 Q. It may be decision number 22, if I'm right. I may be
5 wrong on that. No, it's not that one.

6 (Pause)

7 A. So it's -- I think Keith's detailed it ... 24 is --

8 Q. 24?

9 A. Yeah, and then 25 is Keith basically indicating that
10 that's the meeting that handovers occurred with
11 Keith Harrower -- sorry, with Keith Hardie.

12 Q. So 24 mentions Chief Superintendent Garry McEwan?

13 A. Sorry, decision 20 ...

14 Q. Sorry --

15 A. Sorry, I'm at 29, it is, sorry.

16 Q. Sorry.

17 A. Sorry, it's just my writing.

18 Q. No, not at all. So decision number 29, page 61478. And
19 what does that say?

20 A. It's:

21 "Handover meeting with Detective Super --
22 It's actually DCI:
23 "... Keith Hardie at Livingston Police Office."

24 Q. So that's the official handover to Keith Hardie at MIT?

25 A. So it actually happened the previous evening on the 4th,

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1 however, it just basically ran into the morning of the
2 5th, and the morning of the 5th I met Keith out at
3 Livingston Police Office and we sat down and had
4 a coffee and did a more thorough handover in respect of
5 some of the areas that we were going to concentrate on
6 at that time and some of the work that had been carried
7 out so Keith had a full understanding of where we were.

8 Q. Tell me when the handover with Keith Hardie was the
9 previous day, that wasn't a formal handover then?

10 A. No, it was -- it was during the progress of the evening
11 of the 4th, there was a meeting after the post-mortem
12 examination results came through, I think it was round
13 about 19 ... 19.30, 19.35, it was a meeting between --
14 what had actually happened on that day was that the PIRC
15 had changed on the 4th, the lead investigator, so
16 Keith Hardie stood down, I think he was on annual leave,
17 I'm not sure.

18 Q. Harrower?

19 A. Harrower, sorry, and Billy Little took on that role so.

20 Q. I think you mentioned that last week?

21 A. Yeah, so basically what happened with that was
22 Keith Hardie and Billy Little had attended the
23 post-mortem examination and Keith had contacted me with
24 the result. Thereafter we did -- I'd arranged a meeting
25 with Billy Little back at the -- back at Kirkcaldy

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1 Office that evening, I think it took place prior to the
2 last Gold Group meeting and that was really just a kind
3 of more definitive handover with PIRC at that stage
4 because Keith -- sorry --

5 Q. Billy Little?

6 A. -- Billy Little was coming on to it at that point.

7 Q. So that was the 4th, the day after?

8 A. I think it was the evening of the 4th, the day after,
9 yeah.

10 Q. Do you remember what time that handover was?

11 A. I think it was 19.30. It may be detailed in my actual
12 policy file actually.

13 Q. I was going to ask you, is --

14 A. 28th. I think it's 28th:

15 "Meeting with PIRC new lead Billy Little regarding
16 the scope of the investigation to date."

17 And then:

18 "Instruction from DCS Boal/ACC Nicholson that
19 enquiry will now rest with the MIT SIO Detective Super."

20 But it was actually DCI Keith Hardie that was the
21 lead on it.

22 Q. Right, so there was a meeting with the new lead,
23 Billy Little, that was 4 May?

24 A. Yes, the evening of the 4th, after the post-mortem
25 examination.

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- 1 Q. After the post-mortem and before the Gold Group meeting?
- 2 A. Yeah.
- 3 Q. Or maybe there wasn't -- did you just say there was
- 4 a Gold Group meeting on the evening of the 4th?
- 5 A. Yeah, 19.15 or 20.15, I think there was a 20.15 one.
- 6 Q. I thought that was on 3 May?
- 7 A. Ah, sorry, the 3rd, yeah. Sorry. No, 4 May was the
- 8 post-mortem in the afternoon and there was a meeting
- 9 with myself and PIRC on the evening at Kirkcaldy Office
- 10 at 19.30 with Billy Little and some of the PIRC reps
- 11 round about a more thorough kind of handover with Billy
- 12 at that time.
- 13 Q. So that was the handover to Billy Little, who was taking
- 14 on the lead role for PIRC. What about an official
- 15 handover to Keith Harrower?
- 16 A. Yeah.
- 17 Q. He was for PIRC on 3 May?
- 18 A. Yeah, so that morning a thorough investigative handover
- 19 was prior to the second Gold Group round about
- 20 14.00 hours on 3 May, that was a meeting I explained
- 21 round about my team, plus Keith's team and round about
- 22 that these are the investigative priorities and this is
- 23 where we are with it, just bringing Keith and the team
- 24 fully up to date with where we are with things.
- 25 Q. So PIRC arrive at Kirkcaldy at roughly half past one?

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- 1 A. Yeah, yeah.
- 2 Q. You go into a meeting with PIRC, that's the handover to
3 PIRC as far as you're concerned?
- 4 A. So it was very clear in my head from 9.30 that this was
5 PIRC-led, you know what I mean, I think round about the
6 mechanics and the priorities and all that had all been
7 discussed through the course of the morning with Keith,
8 although remotely, but this was the first time we'd
9 actually been able to sit round a table and discuss it
10 in detail.
- 11 So round about handover as such, I was always aware
12 that they were leading on it. I mean, it's Keith's
13 ultimate decision round about the actions and priorities
14 and anything to do with the investigation, but round
15 about that more thorough full investigative update came
16 prior to the Gold Group meeting.
- 17 Q. So if we're thinking about a handover where you hand
18 over responsibility --
- 19 A. Yeah.
- 20 Q. -- of the investigation to PIRC, when did that take
21 place?
- 22 A. So I would suggest it was before the Gold Group meeting,
23 the 14.40 one, round about that investigative handover
24 whereby Keith is actually at Kirkcaldy Office leading on
25 the investigation in person with the support from myself

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1 and my team around that, so --

2 Q. And is that Keith Harrower?

3 A. Keith Harrower, yeah.

4 Q. And they're in Kirkcaldy at that time?

5 A. Yes.

6 Q. So is that handover noted in the policy file?

7 A. I don't think it is, but, as I say, it was -- it was
8 very clear in both our heads that at 10 o'clock, 10.30,
9 when Keith phones me at 10.22, that they were leading on
10 it, it wasn't a case of handing over as such, they were
11 always leading on it from very early that morning, it
12 was just a case of a more -- a further investigative
13 update to ensure they were fully sighted on all aspects
14 of the investigation to date.

15 But as in an official handover, it was clear from
16 9.30 in the morning to me that this was not
17 Police Scotland-led, this was PIRC-led, but they did
18 require significant support around it.

19 Q. Looking back now, do you think that having a formal part
20 of the process where there was an official handover and
21 setting out the scope of what was being handed over
22 would maybe have assisted?

23 A. I don't think so, I think from the investigative
24 priorities and the areas under my control at that early
25 stage in the handover I don't see really anything at all

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1 we could have done any better, with the exception of the
2 family liaison aspect of it which we've already
3 discussed.

4 Q. And --

5 A. I think -- sorry, I think the problem with the PIRC
6 deployment at that stage, other than the resources, is
7 that over the course of 24, 36 hours they changed the
8 lead investigator. So Keith had --

9 Q. What issues did that cause?

10 A. Just obvious challenges, the fact is you're bringing
11 someone on fresh into the investigation when you've been
12 there for 12, 13 hours at that stage, you know what
13 I mean, before that ... before Billy Little's appointed
14 around that. So again, there was challenges with the
15 fact that the change of a senior investigator from PIRC
16 at such an early stage of a critical investigation would
17 undoubtedly cause challenges.

18 Q. When you use the word "challenges" can you give us
19 an example, what do you mean?

20 A. Just a natural awareness of the investigation and where
21 the priorities lay, and some of the issues that we'd
22 came across during the course of 3 May from the early
23 morning right through to the evening, as well as
24 obviously the challenges with the family liaison and
25 some of the problems we'd encountered that day.

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1 So again, what we had was that Keith Harrower had
2 been fully briefed on it through the course of that
3 morning into the afternoon, into the evening, and
4 thereafter we have a change of senior investigator from
5 the PIRC side which, to be honest with you, if we'd done
6 that with Police Scotland and we'd changed our SIO after
7 day one it causes the same problems because it leads to
8 potential confusion, it leads to more additional
9 briefings having to be given to who's came in to take on
10 that particular role. So, as I say, it's probably not
11 the best practice in respect of how you run
12 an investigation.

13 Q. Is that the type of thing that Police Scotland would do,
14 change a senior investigator --

15 A. So we would normally do a handover now at this stage.
16 In 2015 we were in the very early stages of it whereby
17 the majority of homicides and extended investigations
18 would normally sit with the Major Investigation Team, so
19 what would happen, and what did usually happen, is that
20 I would go out and deal with the initial stages of
21 a homicide and within a couple of days I would do
22 a handover to the Major Investigation Team to basically
23 thereafter take the investigation on, which would
24 probably run for a number of weeks or months.

25 So that's the way it does work with Police Scotland,

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1 but the initial stages is still with the on-call
2 detective super or a detective chief super who would see
3 that aspect of it, but a great majority of the
4 investigations, unless the homicide is quickly resolved,
5 they normally fall with the Major Investigation Teams to
6 take primacy on.

7 Q. And that's within a couple of days did you say?

8 A. Yeah.

9 Q. Why was, if you have awareness of this, why was
10 Billy Little not involved on 3 May?

11 A. I genuinely don't know. As I say, I was given no
12 indication by DSI Keith Harrower that he was intending
13 on not being there on the 4th as such, so I don't
14 actually know why that was. Something in my mind makes
15 me think he was going on annual leave, but I'm unsure on
16 that, I don't know how I got that information, but
17 that's maybe came from Billy Little.

18 Q. Was it a surprise to you that he wasn't there on the
19 second day?

20 A. Yeah, yeah, I wasn't, I wasn't -- I think I'd been made
21 aware on the evening of the 3rd, but again I can't
22 recall exactly who made me aware of that, but I was --
23 I knew Billy Little was coming on to run the
24 investigation from the PIRC side.

25 Q. And how were you feeling about this change in PIRC of

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1 their senior investigator?

2 A. It really didn't make any, any significant ... of note
3 to me. There was nothing at all -- I mean, it was just
4 a case that I would have to now go back and brief the
5 new DSI coming on, although there is absolutely no doubt
6 Keith Harrower would have gave Billy quite an extensive
7 handover, I would imagine, you know what I mean, in
8 respect of that, and that was clear when I spoke to
9 Billy Little, he was aware of the work that had been
10 progressed over that period of time. But, as I say,
11 it's -- I think it was mainly due to the kind of
12 personal circumstances of Keith Harrower, he was
13 finishing after that particular day, which I think it
14 was potentially a pre-planned holiday that he had or
15 whatever, so again from my own perspective it really
16 didn't matter that much to be honest.

17 Q. When Billy Little came in on the 4th, did he change any
18 of the decisions that had been made or priority actions
19 that had been identified?

20 A. I don't recall. However, I had a briefing, I had a --
21 I chaired a joint -- I think we've seen the document
22 minutes, I chaired a meeting with -- which was
23 an investigative meeting on the morning of the 4th round
24 about 10 o'clock and I'm sure Billy Little was at that
25 with a number of other PIRC resources who had attended

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1 that morning, as well as Police Scotland MIT resources.

2 I can't recall him changing anything --

3 Q. Right.

4 A. -- at this stage. Again, I may be wrong on that.

5 Q. Can I go back to the minutes of the evening meeting of
6 the Gold Group at 20.15. We were looking at that just
7 before the break. PS06493. I hadn't quite completed
8 the questions I wanted to ask you about that. Can we
9 look at item 5 again, please, that's the bottom of
10 page 2, I think. So it says there:

11 "TASK -- Family crave reassurance and are asking
12 about witnesses etc they do not wish anything publicised
13 until they inform deceased Mother who is in London."

14 Then if we can go on to the next page, paragraph 3:

15 "Chief Sup discusses Family desperate to know about
16 [post-mortem], and also arrangements on having them
17 conveyed to mortuary in Edinburgh."

18 And:

19 "TASK -- To address all family issues raised."

20 Can I ask you about the nature of this part of the
21 discussion at the Gold Group meeting, about the family's
22 concerns?

23 A. Yeah. So the family concerns were obviously around --
24 as it states there, round about the post-mortem
25 arrangements and how quick that they'd actually been put

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1 in place for the following day, and that's what's
2 detailed there with -- we have Chief Superintendent
3 Garry McEwan coming --

4 Q. Can I stop you there?

5 A. Yeah.

6 Q. When you say they were concerned about how quick the
7 post-mortem had been put in place the following day,
8 we've heard evidence that the family didn't know that
9 the post-mortem was going to take place on 4 May until
10 they found out on 5 May, in the morning. So can you
11 think back to this discussion, which is at 20.15 on
12 3 May, and tell us what your recollection of that
13 discussion is?

14 A. Yeah, so the discussion at that time was that the family
15 liaison for the post-mortem arrangements would sit
16 solely with PIRC at that stage because of the challenges
17 that we had from Police Scotland perspective, and that
18 resulted in obviously following this we had
19 Keith Harrower contacting the family via telephone and
20 thereafter arranging to visit the family to make them
21 aware of the arrangements for the post-mortem
22 examination and that we would be requiring family
23 members for identification. So I'm unsure exactly what
24 Keith explained to the family round about the
25 arrangements for the post-mortem examination.

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- 1 Q. Keith Harrower?
- 2 A. Keith Harrower, yeah, but that aspect of it following
3 this Gold Group sat solely with PIRC, the deployment of
4 family liaison officers to the family from PIRC, and not
5 Police Scotland, and the liaison with the family in its
6 entirety would sit with PIRC and not with
7 Police Scotland at that time.
- 8 Q. Subject of course to any other arrangements through
9 Chief Superintendent McEwan?
- 10 A. So there wasn't any other arrangements.
- 11 Q. There wasn't anything else?
- 12 A. No.
- 13 Q. So where it says "Task" at the end of item 5 --
- 14 A. Yeah.
- 15 Q. -- "To address all family issues raised."
16 That was a task to be carried out by PIRC?
- 17 A. By PIRC, yeah.
- 18 Q. And I think we said before the break that this was
19 a meeting that was attended by Keith Harrower and
20 John Ferguson from PIRC?
- 21 A. To the family?
- 22 Q. No, they were present at the Gold Group meeting.
- 23 A. At the Gold Group, at this meeting, yeah.
- 24 Q. So they were aware of this part --
- 25 A. Yeah.

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1 Q. -- of the discussion.

2 And there was mention on the previous page, just at
3 the bottom, about the family wanting reassurance and not
4 wishing anything publicised until they informed the
5 deceased's mother, who is in London.

6 Do you remember any part of the discussion regarding
7 Mr Bayoh's mother who was in London?

8 A. Yeah, I can, that I think she'd planned to travel up to
9 Scotland the following day or the days after this, but
10 it was -- it was coming from Garry McEwan to be honest
11 with you. The only aspect of that was that -- that
12 I had any input on was that I had spoke to Dave Green
13 round about the post-mortem examination, I think I spoke
14 about this last week, round about in the absence of any
15 formal identification what can -- basically what was the
16 fallback options around that, and Dave Green had
17 explained to me at that time that there was no
18 flexibility with the timing of the post-mortem
19 examination the following day due to the availability of
20 pathologists.

21 Q. I think you did mention that last week.

22 A. Yeah, yeah. So that's the only aspect I have on it, but
23 I can recall Garry mentioning that the deceased's mother
24 resided in London and was travelling up.

25 Q. From your memory of that meeting, was there -- what

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1 impression did you have about the family's perception or
2 attitude towards the post-mortem and about a formal
3 identification taking place with their involvement?

4 A. So my understanding from that forum that I can recall
5 was that there were -- there was still resistance from
6 the family about attending to identify Mr Bayoh prior to
7 the post-mortem actually taking place the following day.

8 Q. And when you say resistance, can you help us understand
9 what your --

10 A. Yeah.

11 Q. -- impression was of the level of that resistance?

12 A. It really came from Garry McEwan, to be honest with you,
13 and it was really about the fact that they had made it
14 clear that they would not attend for the post-mortem
15 examination, for the identification aspect.

16 Q. We've heard evidence that they wished to give time for
17 the deceased's mother, to arrived from London before
18 they would formally identify Mr Bayoh prior to the
19 post-mortem. Do you have any recollection of that being
20 expressed at this Gold Group meeting?

21 A. No, as I say, that whole aspect of post-mortem,
22 identification, liaison with the family, passed straight
23 over to PIRC in respect of any involvement, I had no
24 involvement at all after this forum.

25 Q. Was there any discussion about clarifying the family's

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1 position in relation to the post-mortem?

2 A. I think there was, and I think that thereafter sat with
3 Keith Harrower to make that engagement with the family,
4 and that thereafter led to the subsequent phone call and
5 visit to the family that evening.

6 Q. Again, that was something that you understood PIRC to be
7 taking control of?

8 A. That was very clear, in respect of that.

9 Q. And did you have any other involvement with that matter
10 from this meeting?

11 A. No, and I think I detailed it in one of my policy logs
12 round about the fact that that whole aspect sat with
13 PIRC.

14 Q. Do you want to look at the policy log and just identify
15 -- it may be decision 17. I'm not sure. There's
16 mention there of the family and the post-mortem.

17 (Pause)

18 A. No, that was just about the various aspects that I'd
19 discussed with Dave Green around --

20 Q. Right.

21 A. -- other than -- but I think there was an additional
22 entry. Yeah, I think 22 maybe just clarify -- I don't
23 know if it will clarify it a bit.

24 Q. 22.

25 A. Sorry, that's on the 4th, that's on the day after

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1 actually, it was just about the FLOs from the PIRC to be
2 deployed to deliver the cause of death to the family.

3 No, I don't think I've detailed it.

4 Q. Do you want to look at your daybook? Maybe you have
5 something in there.

6 (Pause)

7 If we go to page 6, we were talking about the death
8 message note that you'd taken at the end, and then on
9 the right-hand side there's some notes that you've
10 taken.

11 A. Yeah.

12 Q. And then they go on to the next page, 7.

13 A. I don't think there is anything at all.

14 Q. Nothing there?

15 A. No.

16 Q. But in any event that's your recollection now?

17 A. Yeah.

18 Q. And if we could go back to the minutes, sorry, which are
19 PS06493, I'd like to come on to item, agenda item 12,
20 which is at the bottom of page 3. It's just any other
21 business, and then if we move on to the top of the
22 following page, there are actions listed, and one action
23 is:

24 "Liaise with PIRC re deployment of their FLOs, not
25 deploying FLOs of Police Scotland."

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1 A. Yeah.

2 Q. So was it at this meeting that that decision was taken
3 not to deploy Police Scotland FLOs?

4 A. It was actually before that, but that was rubber stamped
5 at that forum as such by the gold.

6 Q. We've heard -- you gave evidence last week that officers
7 had been recalled to duty --

8 A. Yes.

9 Q. -- and brought to Kirkcaldy to act as FLOs but they were
10 then released from that obligation --

11 A. Correct.

12 Q. -- at that stage.

13 Then it says:

14 "A definitive resolution is required re contact with
15 family and reassurance to them."

16 Can you explain what that was?

17 A. I think it was that discussion round about-- did this
18 now best sit with the PIRC to take on in its entirety
19 around any future liaison with the family. I think it
20 kind of explains it a wee bit belower, about the PIRC
21 (inaudible) family and the arrangements.

22 Q. It says:

23 "Chief Superintendent not averse to going back to
24 the house if required to assist in retrieving items for
25 the baby of Collette Bell. Telephone contact to be made

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1 by PIRC re the family and arrangements etc for conveying
2 to mortuary."

3 A. Yeah.

4 Q. So certainly at that Gold Group meeting can you tell us
5 what your understanding was in relation to the family,
6 the purpose for the family being conveyed to the
7 mortuary? You'll see where you've noted that
8 previously, on page 3, where at the top of that page --
9 this was at the end of item 5 -- there was comment about
10 arrangements on having them, the family, conveyed to the
11 mortuary in Edinburgh, and then that's repeated under,
12 "Action", on the final page.

13 So again can you explain your understanding of why
14 this was being discussed, of the family being conveyed
15 to the mortuary?

16 A. Yeah, so that's normal arrangements that we would make
17 for a deceased's family. Rather than trying to get them
18 to explain where the City Mortuary is and where to park
19 and so on and so forth, the family liaison officers
20 would normally convey the family or the next of kin to
21 the mortuary and thereafter explain the whole process of
22 identification. So again, that's pretty normal
23 arrangements for any incident as such.

24 Q. And was the purpose of this for identification?

25 A. Yes, it would be, yeah.

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- 1 Q. At this Gold Group meeting was it your understanding
2 that the family would have some involvement with
3 identification prior to the post-mortem?
- 4 A. I think it was intended and it was hoped that they
5 would, but again that thereafter passed in its entirety
6 to Keith Harrower and PIRC to manage that engagement
7 with the family around the post-mortem exam --
8 arrangements.
- 9 Q. So you won't know whether it was explained to the family
10 that there was no flexibility in relation to the timing
11 of the post-mortem?
- 12 A. I wouldn't. No, that would need to come from
13 Keith Harrower.
- 14 Q. We'd have to hear evidence --
- 15 A. Yeah.
- 16 Q. -- from him about that. Thank you.
- 17 I'd like to move on to the next set of minutes for
18 the Gold Group meeting, please, which is 4 May 2015, and
19 minutes that we have for 12.30 the following day.
20 I think that's PS03161. You will see these minutes,
21 this is the following day, 12.30, there's no reference
22 there to who was present at that meeting. Do you
23 remember?
- 24 A. Hmm. (Pause). I genuinely don't. I think I'd only
25 slept for about an hour that day into the next day, type

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1 thing, so I was unsure exactly who would have been at
2 that.

3 Q. Right, and you were at that anyway.

4 A. Yes, I was at it, yes.

5 Q. So we see in the factual update, paragraph 3 under the
6 factual update, item agenda 2, move down, the mention of
7 the name DI Stuart Wilson. Who was he?

8 A. Stuart was in the MIT at that time.

9 Q. So this was in relation to an officer from MIT, not
10 Hardie?

11 A. No, one of Keith Hardie's team.

12 Q. What did DI Wilson, what was his role?

13 A. I think Stuart came on in the afternoon of 3 May to
14 offer some assistance with the investigation.

15 Q. So he was part of that team?

16 A. Yeah.

17 Q. And it says there:

18 "Factual update:

19 "Officers despatched from Kirkcaldy and on arrival
20 were faced with deceased to engage them physically,
21 assaulting a female officer and fighting with others."

22 Can you explain what the factual update was at that
23 time? I'm interested in particular in the words:

24 "... on arrival were faced with deceased to engage
25 them physically."

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- 1 Can you explain that?
- 2 A. (Pause). It looks to me as if it's been written, it
3 looks very much kind of police talk, descriptions, the
4 way it's written, "Deceased to engage them physically",
5 it's something that we would put in a police report as
6 such. But I don't know who has written the minutes, to
7 be honest with you. But I think what it generally means
8 is that the officers were call -- were aware of a number
9 of calls on that morning to attend Hayfield Road and on
10 arrival had been involved in a physical coming together,
11 or altercation with the deceased.
- 12 Q. You gave this factual update, did you?
- 13 A. I did, but it looks as if it's a very condensed version
14 of what's actually been said.
- 15 Q. I'm interested in whether this minute suggests that the
16 deceased was an aggressor?
- 17 A. No.
- 18 Q. Or whether it just simply is talking about there being
19 some sort of physical engagement between the officers
20 and the --
- 21 A. Yeah. I think all that is is a kind of high level
22 synopsis of exactly what I have said, in a kind of more
23 detailed update.
- 24 Q. As we move down to item 3 on the agenda, you will see
25 this is:

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1 "Investigative process - DI Stuart Wilson."

2 And you've explained he was with MIT?

3 A. Yeah.

4 Q. And if we can look at a paragraph:

5 "There are potentially 210 dwellings between
6 Arran Crescent and Hayfield Road locus."

7 And you mentioned last week about house-to-house
8 enquiries --

9 A. Yeah.

10 Q. -- being undertaken. Were those house-to-house
11 enquiries being undertaken by Police Scotland officers?

12 A. They were under the instruction of PIRC but supported by
13 Police Scotland so we had the most -- we had the legs on
14 the ground as such, chapping doors. As you say, the
15 house-to-house is basically split into the initial
16 zones, the kind of priority zones that we were looking
17 at, at that time, and that early discussion with PIRC
18 was round about that they were looking to note
19 statements from any significant crucial eyewitnesses; if
20 we chapped a door and we identified someone they would
21 ask for us to make them aware and they would attend and
22 detail that statement. But the great majority of the
23 210 houses that had to have their door chapped, that was
24 going to be done by Police Scotland.

25 Q. You talked last week about having 20 or 22 detectives

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1 involved with the investigation under your --

2 A. Yeah.

3 Q. -- role. Did that, were there officers within that

4 number who then carried out these house-to-house --

5 A. So this is 4 May, so this is when we have significant
6 MIT resources now attending at Kirkcaldy to take on the
7 investigation long term. So these were -- as I say, 95%
8 of the resources from Police Scotland were MIT resources
9 with the remainder being resources that had carried out
10 initial actions the day before but were just completing
11 those actions as I've discussed.

12 Q. How many MIT resources came online on 4 May?

13 A. I'm unsure.

14 Q. Can I ask you about the task that we just see at the
15 bottom, if we can move that up slightly:

16 "TASK -- Advice to be gained from PIRC regarding the
17 disclosure of the PM results to the officers involved in
18 the incident. Supervisor to be identified to carry this
19 disclosure out."

20 I'm interested in your recollection of this item,
21 this task on the agenda.

22 A. Yeah, so there was obviously we were moving towards the
23 post-mortem examination that afternoon on 4 May and
24 I think it was Garry McEwan that had raised the matter
25 round about -- and he raised it to the Chair -- round

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1 about the disclosure of post-mortem results to the
2 officers involved in the restraint. So there was quite
3 a detailed discussion around that, and PIRC were
4 involved in it to an extent but again, the main
5 representative from PIRC at that time was Keith --
6 sorry, was Billy Little, who was in attendance at the
7 City Mortuary for the post-mortem, I believe.

8 So there was -- first of all, there was a discussion
9 round about we would deploy PIRC FLOs to deliver the
10 death message -- sorry, the result of the post-mortem
11 examination to the family, and the second aspect to that
12 was round about -- and I think it was, as I say,
13 Garry McEwan, the Chief Super, who had indicated he
14 thought it would have been beneficial in their status as
15 witnesses to provide, for their welfare and wellbeing,
16 a result of the post-mortem examination as well.

17 Q. Right, can I just ask you about this. This meeting took
18 place before the post-mortem had been carried out?

19 A. Yeah.

20 Q. And you've said there was to deliver the information
21 about the post-mortem to the family, that was going to
22 be done by PIRC; is that right?

23 A. That was going to be done by PIRC FLOs.

24 Q. PIRC FLOs?

25 A. Yeah.

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- 1 Q. Was there any discussion about when that was to be done?
- 2 A. So that would have been done, my understanding was after
- 3 the post-mortem results were known, which was on the
- 4 evening of 4 May.
- 5 Q. 4 May. But that was under the control of PIRC?
- 6 A. Yes.
- 7 Q. Now, the idea of telling police officers who are
- 8 witnesses the results of the post-mortem, I'm interested
- 9 in how this came around, because, I mean, is this
- 10 something that's normally done, telling witnesses about
- 11 the post-mortem?
- 12 A. Police witnesses or witnesses in general?
- 13 Q. Well, first of all would you normally tell witnesses in
- 14 general?
- 15 A. Erm ... it's not a normal process that I'm aware of,
- 16 that we would normally tell witnesses in general round
- 17 about the result of a post-mortem examination. Family,
- 18 yeah, definitely.
- 19 Q. Is it part of a process if you've got officers involved
- 20 that you would tell them, if they're witnesses?
- 21 A. I'm aware that it has been done before in respect of
- 22 deaths in custody in that respect, just round about the
- 23 whole welfare/wellbeing aspect of it. But these aren't
- 24 normal events.
- 25 Q. Right. So when you say they're not normal events, who

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1 raised the issue about telling police officers?

2 A. So I think that was Garry McEwan, as the divisional
3 commander for P Division Fife and looking after the
4 welfare of his officers at that time.

5 Q. Did he explain at this meeting why he was making this
6 suggestion?

7 A. No -- I think he did actually, but I can't recall
8 exactly his rationale behind it, but I think it was
9 around the grounds of their welfare and the fact that
10 they were obviously extremely traumatised and concerned
11 exactly what had occurred around the restraint of
12 Mr Bayoh, and that discussion thereafter took place with
13 the Chair, with ACC Nicholson, round about obviously the
14 direction or the authority for that would simply sit
15 with PIRC and not with Police Scotland because they were
16 the lead investigators in respect of that.

17 Q. You talked about the hypotheses last week, you've talked
18 about keeping an open mind on all of them until you were
19 in a position to exclude them, you've not got initial
20 personal accounts or operational statements from the
21 officers --

22 A. No.

23 Q. -- at this stage. What concerns did you have, as SIO,
24 about sharing information with the officers about the
25 cause of death?

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1 A. Yeah, so it was mainly what information we would share
2 was, I wouldn't say was my concern but I wanted to be
3 made aware of what we were actually going to share with
4 them.

5 Q. Why was that?

6 A. As you say, mainly down to the hypotheses that were
7 apparent and whether or not there had to be some further
8 discussion around whether or not we would disclose that
9 once we found out what the results of the post-mortem
10 were at that point. So this discussion was based solely
11 on welfare and wellbeing of the officers, about
12 supporting them in the days and weeks ahead around what
13 the result was. But again my thoughts were: okay, let's
14 see what the results of the post-mortem are, and
15 ultimately that decision lay with PIRC, it did not lie
16 with me.

17 Q. So you expressed concerns about wanting to know what the
18 post-mortem --

19 A. Yeah.

20 Q. -- results were?

21 When you later discovered what the results were, did
22 they come -- did PIRC come to you and ask you to be part
23 of a further discussion about this matter?

24 A. Yeah.

25 Q. Tell us about that.

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1 A. So, and I think I can refer to it in my policy file, but
2 they did --

3 Q. Do you want to go to that?

4 A. Yeah, so I think it's policy decision number 22.

5 Q. Tell us what you have written here.

6 A. So -- so, sorry, can I take you to decision 20, first of
7 all?

8 Q. Yes. So decision 20 is page 61469.

9 A. So this is the information coming back to me from
10 Keith Hardie at the City Mortuary regarding the result
11 of the post-mortem examination.

12 Q. Right, let's just get this on the screen, decision 20,
13 61469, and what does this say here?

14 A. "Information from post-mortem examination regarding
15 cause of death. Edinburgh City Mortuary. DCI Hardie
16 present."

17 And I've got in inverted commas basically what Keith
18 has informed me:

19 "Unascertained pending toxicology."

20 Q. When did you get that information --

21 A. So I got that round about, I think it was about half
22 past 6 on the 4th, I got a phone call, Keith was still
23 at the mortuary, the post-mortem had ran for the best
24 part of four hours or thereabouts, and he basically
25 phoned saying that's it just concluded and here are what

Transcript of the Sheku Bayoh Inquiry

1 we have at this point and that basically he'd asked
2 that -- Billy Little was there at the time as well and
3 Billy had indicated that he was wanting a meeting now at
4 Kirkcaldy Police Office directly after that.

5 Q. Then can we look at the reasoning, please, and what does
6 it say there?

7 A. Yeah, so:

8 "Meeting to be arranged with PIRC at 19.30 hours at
9 Kirkcaldy Police Office to discuss findings and
10 communications back to next of kin and family and also
11 to officers involved in incident."

12 Q. Was that the meeting that you mentioned earlier --

13 A. Yes.

14 Q. -- with PIRC? And you were present at that?

15 A. Yes, I was.

16 Q. And there was a discussion as part of that meeting about
17 whether to share the results with --

18 A. Yes.

19 Q. -- the officers. Tell us about that meeting.

20 A. So that thereafter if you go to decision 22.

21 Q. Thank you. It says:

22 "Agreement with PIRC --"

23 A. So:

24 "Agreement with PIRC at meeting within Kirkcaldy
25 Police Office with PIRC deputy lead investigator [that's

Transcript of the Sheku Bayoh Inquiry

1 Billy Little] to progress the following."

2 So the two points that came from that meeting:

3 "FLOs to be deployed. PIRC to inform next of

4 kin of cause of death."

5 And secondly:

6 "An agreed form of words to be developed by SIO and

7 PIRC in respect of notification of officers involved in

8 incident."

9 Q. So was that you and someone from PIRC?

10 A. It was myself and Billy Little.

11 Q. Can we find that form of words?

12 A. Yeah. So that's in the -- that's the next decision.

13 Q. And this was a form of words that was to be shared with

14 the officers?

15 A. And the next of kin.

16 Q. And the next of kin. Can you tell us what we see on

17 page -- on, sorry, decision number 23?

18 A. So:

19 "Agreed form of words from PIRC agreed --"

20 So:

21 "Following post-mortem of Sheku Bayoh cause of death

22 has been detailed as unascertained pending toxicology.

23 There is no evidence of any blunt force trauma injury

24 which would have been a contributory factor to

25 Mr Bayoh's death."

Transcript of the Sheku Bayoh Inquiry

1 Q. What does it say under -- we won't read that.

2 A. Yeah.

3 Q. "Reason", and then it says:

4 "To ensure no mixed messages to family and others is

5 --"

6 A. Passed.

7 Q. "-- passed to ensure consistency."

8 So that was a form of wording agreed for -- to be

9 shared with all of the officers --

10 A. Yeah.

11 Q. -- who had attended Hayfield Road?

12 A. Yes.

13 Q. And the next of kin?

14 A. Yeah.

15 Q. As far as you understood?

16 Do you know if PIRC did share that with the next of

17 kin?

18 A. That action was solely for PIRC to take on.

19 Q. Right, and who was going to share that information with

20 the officers?

21 A. So basically I think I've detailed it. Yeah, I think in

22 the next decision so that, the direction for the Chair

23 at the Gold Group meeting which we've already discussed

24 was that as soon as we were aware of the outcome and the

25 results from the post-mortem examination that I would

Transcript of the Sheku Bayoh Inquiry

1 inform ACC Nicholson directly around what that was.

2 ACC Nicholson had spoke to me around the fact that
3 he believed that message would have been -- would be
4 better delivered by Chief Superintendent Garry McEwan to
5 the officers because he had personal knowledge of them,
6 I didn't, and that he was -- he was probably better
7 placed round about welfare and wellbeing to pass that
8 message to the officers.

9 So again, the aspect to that decision is that
10 Chief Superintendent briefed -- so I phoned Garry McEwan
11 on the -- after speaking to Mr Nicholson saying, "This
12 is the cause of death are you quite happy for this?"
13 And I read out verbatim the information we were going to
14 pass to the officers, and ACC Nicholson endorsed that
15 and asked me to contact Garry McEwan and pass that
16 information to him at that time, and I think I can
17 recall Garry actually was writing it down as I was
18 speaking to him on the phone around what exactly he was
19 going to say so there would be no mixed messages around
20 that.

21 Q. Do you know who actually delivered the --

22 A. I think it was Garry.

23 Q. Himself?

24 A. To all the officers, yes.

25 Q. To all the officers?

Transcript of the Sheku Bayoh Inquiry

- 1 A. Yeah, yeah.
- 2 Q. Do you know how he did that?
- 3 A. So, Garry had said to me that he was going to come into
4 Kirkcaldy Police Office to do it. Now, I don't know
5 whether that was to do with the privacy and he would be
6 able to make phone calls privately within
7 Kirkcaldy Office but he was at home at that time, so
8 I took it he was coming in to make the phone calls from
9 Kirkcaldy Office and it was going to be done via
10 telephone and not in person. But again, I may be wrong
11 with that.
- 12 Q. Do you know when that --
- 13 A. That happened later that evening.
- 14 Q. That evening, 4 May?
- 15 A. Yeah, yeah. Yeah, yeah.
- 16 Q. So it had been -- the suggestion had been raised by
17 McEwan, the wording was drafted and noted in your policy
18 file by you, and Keith Harrower from PIRC?
- 19 A. Yeah.
- 20 Q. That was then approved by --
- 21 A. No, sorry, Billy Little.
- 22 Q. Oh, sorry. It was approved by Billy Little from PIRC?
- 23 A. Yeah, yeah.
- 24 Q. Approved by ACC Nicholson?
- 25 A. Yes.

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1 Q. And then essentially delivered to McEwan to roll out to
2 all of the officers --

3 A. Correct.

4 Q. -- who had attended Hayfield Road?

5 You've mentioned the welfare issue. We've heard
6 that -- we've heard from Conrad Trickett that he was
7 post-incident manager and he was required in his role to
8 balance the welfare of the officers with the
9 facilitating the investigative needs of the
10 investigation. Why was Conrad Trickett not involved in
11 any of these discussions?

12 A. One, he wasn't part of the Gold Group. Two, the role of
13 PIM wasn't as ... we weren't aware of the whole aspect
14 of what the PIM brought to post-incident procedures and
15 to an investigation, so again it wasn't widely known
16 what his role was, in respect of that, and not having
17 him at the Gold Group he didn't have the ability to
18 provide that input round about, "This is what I should
19 do in respect of that". So again --

20 Q. I think last week you gave evidence that you thought
21 with hindsight it would have been of benefit to have him
22 within the Gold Group?

23 A. Absolutely, yeah.

24 Q. Do you think in relation to this discussion that there
25 would have been benefit in having input from

Transcript of the Sheku Bayoh Inquiry

- 1 Conrad Trickett as PIM?
- 2 A. Yeah, but ultimately that decision lay with the gold
3 commander, ACC Nicholson, to -- who he deemed to be more
4 appropriate to deliver that message, so again I could
5 see his rationale behind doing that and not coming from
6 Conrad.
- 7 Q. Was it only ACC Nicholson's decision as to who should
8 deliver it or was it also his ultimate decision whether
9 it should, in fact, be delivered?
- 10 A. Ultimately, yes.
- 11 Q. And as SIO, did you have any lingering concerns about
12 providing information to police officers who had been at
13 Hayfield Road in relation to the cause of death prior to
14 actually having initial personal accounts or operational
15 statements from them?
- 16 A. So, ideally I would have preferred to be in the position
17 of having the personal initial accounts or operational
18 statements, but I wasn't -- I knew for a fact that that
19 obviously wasn't going to happen. So my perception of
20 the cause of death was -- it was very vague in respect
21 of that wording which is within that. It's a pretty
22 general result that comes from a number of post-mortem
23 examinations where further analysis is required
24 regarding the cause of death around that.
- 25 So it was relatively brief and it really didn't say

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1 very much, to be honest with you, you know what I mean,
2 it was obviously pending toxicology and pending further
3 information at that time. So, balancing the welfare,
4 did it impact on my investigation or the PIRC
5 investigation? Ultimately it wasn't my decision to
6 simply decide that at that time but Billy Little was
7 happy for it to go out to the officers concerned and
8 ultimately the decision lay with Billy.

9 Q. So, was the decision ultimately Billy Little's or was
10 the decision ultimately ACC Nicholson's?

11 A. So the decision to allow the message to go to the
12 officers sat with Billy Little. The decision about who
13 would deliver the message sat with ACC Nicholson, and
14 thereafter he instructed me to deliver the message to
15 Garry McEwan to deliver to the officers.

16 Q. So the decision to share information about cause of
17 death with the attending officers --

18 A. Yes.

19 Q. -- rested with Billy Little?

20 A. Yeah, and that's detailed in the policy file on the
21 discussion I had with Billy Little at that time.

22 Q. We may have heard that -- the suggestion that without
23 information about the cause of death from the
24 post-mortem, officers would be unwilling to give any
25 sort of statement. Was that part of the discussion that

Transcript of the Sheku Bayoh Inquiry

1 you had either at the Gold Group meeting or the meeting
2 with PIRC at 7.30 in the evening?

3 A. There was some reference to it, I think it came from
4 Chief Inspector Shepherd or potentially Garry McEwan,
5 I'm not sure, that there was information about the fact
6 that officers were not going to provide a statement
7 until the result of the post-mortem examination, so that
8 there was information there, it hadn't come directly to
9 me, but it was discussed at the Gold Group and it was
10 perhaps an extension of what I already knew, they
11 weren't willing to provide statements.

12 Q. What influence did that have on you as SIO? You've
13 explained last week that there was a gap and you wanted
14 to get statements.

15 A. Yeah. It would have been extremely beneficial if that
16 was the case, that they would have provided operational
17 statements directly after that, which we know now wasn't
18 the case. However, did it impact as SIO and did it
19 impact from a PIRC perspective on the information we've
20 provided the officers? I thought the information we
21 gave them was extremely vague around the result of the
22 post-mortem examination and, as I say, I think that the
23 legal advice they supplementally got was to delay any
24 statement at all until after toxicology comes back and
25 that there was thereafter a delay of 30 days or so

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1 because of that.

2 Q. In relation to the wording of the cause of death we
3 looked at a moment ago, there was specific reference to
4 blunt force trauma and that not having been part of
5 the --

6 A. Yeah.

7 Q. -- cause of death. What were the particular reasons for
8 noting blunt force trauma?

9 A. So that all came from the information that I was given
10 from Keith Hardie, who was at the post-mortem
11 examination. So again, it was, as I say, very vague
12 information at that time, but again, it was -- the cause
13 of death was unascertained at that time, so again we
14 were not eliminating any potential hypothesis at that
15 stage.

16 Q. We've heard about PC Tomlinson and his concerns when he
17 returned to Kirkcaldy Police Office on the morning that
18 he'd struck Mr Bayoh on the head on a number of
19 occasions with his baton, and we've heard other evidence
20 that striking someone with a baton to the head is a red
21 zone, I think it was called, or a red area that can
22 cause death. Was there any part of the discussion or
23 the rationale or the thinking to provide some sort of
24 reassurance to PC Tomlinson that he had not caused death
25 as a result of striking Mr Bayoh to the head with

Transcript of the Sheku Bayoh Inquiry

1 a baton?

2 A. Yeah, so I didn't have that information round about
3 Tomlinson, so the information we passed to the officers
4 was a form of words which was agreed between PIRC and
5 myself but ultimately PIRC signed off on it, and, as
6 I say, for me it was relatively vague round about what
7 information we were passing to the officers. The
8 information you've explained to me I wasn't aware of,
9 and that obviously came subsequently during the noting
10 of more extensive statements and accounts. But at that
11 stage, as I said before, and I've consistently said, the
12 gap was the fact that I didn't have that information
13 which would have gave me that -- allowed me to fill the
14 gap from an investigative perspective.

15 Q. So, even though we've heard evidence from PC Tomlinson
16 that he came back and he spoke to officers in Kirkcaldy
17 Police Office, in particular I think Austin Barrett,
18 that wasn't information that was available to you on
19 3 May?

20 A. No, there was no information at all coming to me from
21 the officers or from the Federation -- Austin Barrett
22 obviously was a Federation member, but I never met
23 Austin Barrett on the day, it was Amanda Givan, but as
24 I've already gave evidence, Amanda Givan's direction was
25 that they would not be providing statements.

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1 Q. Reflecting now on that decision to share the information
2 with officers, it may be said that there is a perception
3 on the part of the family or the public more widely, and
4 concern, that people who were witnesses but where they
5 had not given initial accounts or operational statements
6 were being shared information about cause of death, and
7 concern that that might influence in some way their own
8 account which they'd not yet given.

9 Can you understand that that decision could give
10 rise to concern in public perception, in perception with
11 the family?

12 A. Yeah.

13 Q. And how would that impact on your role as SIO?

14 A. So the information we gave, when we gave the officers
15 that information, they were witnesses, their status did
16 not change at all through the course of my involvement
17 with them, there was no reasonable cause to suspect that
18 they had been involved in any criminality or any
19 misconduct. From the information -- and the very vague
20 information we had was that force had been reasonable,
21 but again there was huge amount of gaps within what had
22 actually happened round about force but there was
23 nothing to indicate excessive force that we could pick
24 up at that particular stage, so their status was that of
25 witnesses.

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1 So again, back to welfare, wellbeing, support of the
2 officers was that we would provide them -- and again,
3 there was quite a detailed, as I say, with Garry McEwan
4 with the Chair, with a number of other members, round
5 about the rationale of providing this information to
6 them, but it was simply based on their welfare and
7 wellbeing.

8 Q. Were you ever in a position -- you've described your
9 involvement as SIO.

10 A. Yes.

11 Q. Were you ever in a position to exclude the hypothesis
12 that excessive force had been used on Mr Bayoh?

13 A. Not when I -- no.

14 Q. Or that it had been used on him because he was black?

15 A. So I think that's two questions there, two separate
16 questions.

17 Q. I haven't finished my first question, that's why I was
18 asking. So was there ever a position when -- a point at
19 which you were involved as SIO where you were able to
20 exclude the possibility and the hypothesis that
21 excessive force had been used?

22 Let's leave that at one question.

23 A. No, there was not, no. When I had done a handover to
24 Keith Hardie, to the MIT, that hypothesis still remained
25 open.

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1 Q. And was there ever a point in time when you were
2 involved as SIO that you could exclude the possibility
3 that the actions of the officers had been influenced by
4 the fact that Mr Bayoh was black?

5 A. At no times, at no time at all.

6 Q. So those hypotheses could not be excluded as
7 possibilities by you?

8 A. So the hypothesis round about the attack or the
9 restraint happened on him because he was black was not
10 one of the hypotheses I've already mentioned to you.

11 Q. Well, why not?

12 A. Because the aspect of the information I had at the
13 particular time did not indicate in any way that it was
14 racially motivated.

15 Q. Was that not something that you considered because you
16 were keeping an open mind?

17 A. Absolutely, but the aspect that I had at that time round
18 about the hypotheses that I was running with, with the
19 circumstances of Mr Bayoh being in the street with
20 a knife, this was not some unprovoked attacked or
21 restraint by police officers at the stage, with the
22 information I had.

23 Q. But if you were keeping an open mind, you were aware
24 that Mr Bayoh was black?

25 A. Absolutely.

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- 1 Q. And you've talked last week about the fact that there
2 were a number of Inquiries down south --
- 3 A. Yeah.
- 4 Q. -- and we'll come on to that later today, but why was it
5 not part of your working hypotheses about excessive
6 force being used?
- 7 A. So excessive force being used was a hypothesis which
8 I have already described, yes.
- 9 Q. And was it not part of any hypothesis that the reason
10 for excessive force being used could have been because
11 Mr Bayoh was black?
- 12 A. There was nothing which I had in respect of the
13 information or evidence, and we have independent
14 witnesses from the public that have called about
15 Mr Bayoh being in the street with a knife, acting
16 erratically. The restraint came as a result of
17 Mr Bayoh's behaviour, that did not in any way -- there
18 was no relevance at all, the fact he was black, in
19 respect to that. The restraint occurred because of his
20 activity and because of his behaviour.
- 21 Q. But he had died at the scene, and you've said the
22 post-mortem was unascertained.
- 23 A. Yes.
- 24 Q. When I say the post-mortem, I mean cause of death was
25 unascertained. So were you closing your mind to the

Transcript of the Sheku Bayoh Inquiry

1 possibility that the fact he was black had something to
2 do with the circumstances?

3 A. No, and I've already said that one of the hypotheses
4 which remained open was excessive force had been used,
5 and, as I say, that was still apparent and still evident
6 until I actually handed over the investigation.

7 Q. Before I move on to other questions about this, can
8 I ask you briefly about completion of paperwork. We've
9 talked last week and today about statements. Can you
10 explain the obligations on officers to complete use of
11 spray forms in May 2015?

12 A. I genuinely can't. In my role, even back then, it's
13 nothing I would have actually had kind of hands-on
14 experience of doing. I'm aware there were online forums
15 or electronic forms that they had to complete, but
16 regarding how you complete them and where you submit
17 them through to, I think it's to the Officer Safety
18 Training Unit, or wherever else it goes to. But in my
19 role in 2015 there was nothing I really actually got
20 involved in was the completion of use of spray forms,
21 that would have been their line manager that would have
22 basically ensured that the various processes were
23 carried out around that, but nothing as SIO I would have
24 been involved in.

25 Q. What about use of force forms?

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- 1 A. Similar, I mean, that's the personal responsibility of
2 the officers or their line managers to complete.
- 3 Q. In the absence of getting initial personal accounts or
4 operational statements, would these forms not have
5 provided some assistance to you as SIO?
- 6 A. Absolutely.
- 7 Q. And did you consider at any stage whether you could --
8 you had some leverage in terms of requiring the officers
9 to complete these forms prior to going off duty?
- 10 A. It was clear from my discussion with Amanda Givan that
11 there was -- they were not going to complete notebooks,
12 forms or provide operational statements prior to legal
13 advice.
- 14 Q. And so you classed the use of spray forms and the use of
15 force forms as part of that?
- 16 A. Yes.
- 17 Q. And did you consider whether any further steps could be
18 taken by you as SIO in relation to these forms?
- 19 A. Erm, not at that time, not on 3 or 4 May, that was
20 obviously something that was going to come through the
21 subsequent investigation, but, as I say, on 3 May,
22 extremely fast-moving, it was clear that the advice from
23 the Federation was not to provide any further
24 information at this stage until seeking legal advice.
- 25 Q. And we've heard that although that can be the advice, it

Transcript of the Sheku Bayoh Inquiry

1 is still an option for officers to --

2 A. Yeah.

3 Q. -- give statements or to complete forms or to give
4 information, even if the legal advice is not to do that.
5 At any time did you consider asking the officers
6 individually if they would be prepared to give initial
7 personal accounts or statements or complete any of the
8 forms?

9 A. Yes, so that sits with the PIM, because PIP's been
10 initiated, so again that sits with Conrad.

11 Q. And did you ask Conrad Trickett to facilitate obtaining
12 use of spray or use of force forms.

13 A. Not in particular, but I did ask around personal initial
14 account/operational statements, as I've just --

15 Q. Yes, you gave evidence about that.

16 So was there anything done by you in relation to
17 seeking the forms to be completed?

18 A. No, I mean, it was discussed but the position of the
19 officers was so clear that they were not going to be
20 providing any statements, documentation at all. I take
21 your point round about: well, is there anything more we
22 can do to almost ask or direct them that they have to do
23 it? You know what I mean, it's a really difficult one:
24 how do you actually force someone to give a statement or
25 give a personal initial account when their position is

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1 they are basically not doing anything at all until they
2 seek further legal advice around this at this stage?

3 The SOP states that obviously officers should
4 account for their accounts and their movements whilst on
5 any tour of duty or whilst engaged with ... but again,
6 how do you physically do that without their consent to
7 provide that information to you? You know what I mean,
8 it's extremely difficult, you know what I mean, you can
9 ask them, you can prompt them to do it, thereafter if
10 they don't you revert back to performance regulations
11 and misconduct or whatever else. But at that stage of
12 a critical investigation, what can you actually
13 physically do?

14 Q. Did you consider the possibility of using misconduct or
15 disciplinary proceedings as some sort of lever to
16 encourage the completion of the forms?

17 A. No. No, no. But it was in the back of my mind because
18 I was aware obviously that officers have a duty to
19 provide information to an SIO as such in respect of that
20 and I think it was the investigation of death SOP at the
21 time, they should make you aware of the circumstances of
22 the death.

23 But again, standard operating procedures are there
24 as how it should work, but again sometimes there are
25 occasions such as this whereby you're left with

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1 a significant incident whereby the advice and the legal
2 advice they are getting, even before I arrived --
3 they've got a Federation rep there before I arrived
4 providing that direction, Amanda (inaudible) she did do
5 that.

6 But it was clear from my engagement and through the
7 course of that whole day of 3 May that there was -- it
8 was extremely unlikely that they were going to submit
9 anything at all, and, as I say, that progressed through
10 the 3rd and into the 4th and on the 4th it became the
11 indication was that they would potentially submit after
12 the post-mortem examination, but with the post-mortem
13 examination being extremely vague in its findings it
14 thereafter brought in the whole aspect of the toxicology
15 which takes a period of time.

16 Q. What could you have done if you'd wanted to raise the
17 spectre of disciplinary or misconduct proceedings; what
18 could you have done in your role as SIO?

19 A. So there's a number of things, but that probably sits
20 more with their line management round about the fact
21 that they failed to do that. So there is that whole
22 line management aspect starting from the sergeant to
23 their inspector. So round about the aspect that
24 Stevie Kay has the role of the governance of that shift
25 as such, of the officers involved.

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1 And regarding my own perspective of it is that if
2 the legal advice is not to provide anything at all, as
3 I say, other than -- I'm not -- I'm unsure, I mean do we
4 put down or do you actually move towards misconduct at
5 such an early stage on the back that the Federation
6 advice is not to provide anything at that stage? So
7 again, it was trying to kind of balance this through.
8 It was extremely unusual, as I said, 27 years I've never
9 had the refusal of operational statements, but I'm still
10 a bit puzzled how you force someone to give a statement,
11 and I think that's the challenge I had.

12 MS GRAHAME: Thank you.

13 I'm conscious of the time.

14 LORD BRACADALE: We'll stop for lunch and sit at 2 o'clock.

15 (1.02 pm)

16 (The short adjournment)

17 (2.04 pm)

18 LORD BRACADALE: Detective Chief Superintendent, could you
19 help me clarify a couple of things, please.

20 Could we have on the screen the minute of the
21 Gold Group meeting on 4 May, that's PS03161, isn't it?
22 Can you help me to understand how the minute of the
23 meeting is produced?

24 A. Yeah, so it will be an identified minute taker which the
25 Chair or a member of -- either the gold or silver

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1 commander will identify. That individual is obviously
2 within the room whilst the meeting commences, and in the
3 great majority of Gold Groups there are a kind of
4 running parallel action log which thereafter moves from
5 meeting to meeting in respect of that. The individual
6 usually who takes the minutes is probably not actively
7 involved in the investigation, it's usually someone
8 independent from that who's brought in just simply for
9 that kind of bureaucratic process. They will condense
10 what's been said into a synopsis of what they deem to be
11 the basis of what is being communicated by the
12 individual who makes that input.

13 The important aspect of the Gold Group minutes is
14 that at the conclusion and when they're drafted they
15 should be sent back to the gold commander to have final
16 sign-off. So ultimately ACC Nicholson should have
17 signed off on all the Gold Group minutes that have been
18 progressed over the two days, 3rd and 4 May, and as
19 I say, only after the sign-off by ACC Nicholson will
20 they thereafter be published.

21 LORD BRACADALE: So if there are different editions of these
22 minutes, should I understand that a final version will
23 be approved by the Chair?

24 A. That's the way it should work, sir.

25 LORD BRACADALE: Now, was there anyone from PIRC at this

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1 meeting?

2 A. I'm sure there were, on the 4th, yeah. I don't think --

3 LORD BRACADALE: Who was that?

4 A. I don't think it was Billy Little, however, I think he
5 was at the post-mortem examination, but I'm not sure who
6 it was, but I know for a fact there were PIRC
7 representatives at the investigative briefing I gave at
8 10 o'clock that morning on the 4th. So I think we've
9 already looked at the minutes of that meeting, sir, so
10 there were PIRC representatives at that meeting that had
11 come online on the 4th, that came to that forum, but in
12 the absence of membership of that Gold Group I can't
13 actually say who was at it, but I would imagine
14 certainly there would have been some representatives
15 from PIRC at it.

16 LORD BRACADALE: On another matter, were you aware as to
17 whether there were written terms of reference for PIRC
18 provided by the Crown Office on 3 May?

19 A. No, but I was aware it was getting drafted, so I'd spoke
20 to Keith Harrower, the DCI, on the 3rd and he says that
21 there were definitive terms of reference getting drafted
22 by Crown Office for PIRC, but I did not have sight of
23 them.

24 LORD BRACADALE: Did you ever have sight of them?

25 A. No, I didn't.

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1 LORD BRACADALE: Thank you.

2 Ms Grahame.

3 MS GRAHAME: Thank you.

4 Perhaps if possible could we go back to, I think
5 it's PS784, we talked about this, I think this is the
6 briefing note that you've just --

7 A. Yeah.

8 Q. -- referred to. We've not discussed them today, but
9 they were previously part of your evidence. So there
10 they are. Do you remember looking -- is this the
11 briefing notes you're referring to?

12 A. Yes, that's correct.

13 Q. This is a briefing note from 10 o'clock in the morning
14 on 4 May and we did note previously you have had chaired
15 this briefing?

16 A. That's correct.

17 Q. And that PIRC had asked for all original manuscript
18 statements to be given to them, along with typed copies.
19 Was that a request made at the meeting by someone from
20 PIRC, or was it something that you raised at the
21 meeting?

22 A. I believe I'd raised that at the meeting.

23 Q. Right.

24 A. On the knowledge that that's what PIRC were looking for.

25 Q. And I think you gave evidence last week that that was --

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1 I put to you that that would include officers?

2 A. Yes.

3 Q. But would it also include other original manuscript
4 statements from witnesses that you'd obtained?

5 A. Yeah.

6 Q. Then it mentions further down that:
7 "The PIRC lead is Billy Little."
8 Do you see the name of anyone there from PIRC?

9 A. No, but I don't think Billy was at that meeting, as
10 I say, I think he was at the post-mortem, I think the
11 post-mortem was due to start at 2 o'clock, I believe.

12 Q. If we could maybe look through that first page and then
13 on to the second page, do you see any other references
14 to anyone from PIRC there that might help?

15 (Pause)

16 If we stop there.

17 (Pause)

18 Do you want to see that again?

19 A. No, I'm just reading through it just now. No, I don't
20 see anyone. It's difficult, there's no membership of
21 that group at all, but my understanding at that time
22 there were members from PIRC there but I can't actually
23 recall who was there as such, but ...

24 Q. But that's your recollection anyway now, that there were
25 people from PIRC here?

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1 A. No.

2 Q. Would there be any reason not to have people from PIRC
3 there on 4 May?

4 A. Absolutely not, no, that was obviously the second day
5 and they were beginning to move very quickly, some of
6 their actions and activity around it, so we would -- we
7 would have required PIRC there.

8 Q. I think you've said a number of times PIRC first came to
9 a Gold Group meeting at the 2.40, the 14.40?

10 A. Yeah.

11 Q. Once they'd arrived and become part of that Gold Group
12 structure, did they continue to attend those Gold Group
13 meetings?

14 A. Yes, that's correct.

15 Q. Could I ask you to look at a statement from Lesley Boal,
16 please, and this is SBPI 00223. We've not yet heard
17 evidence from Lesley Boal. This is a statement that
18 DCS Lesley Boal gave on 23 September and 4 November last
19 year. It's been signed and I'd like to look at
20 paragraph 121, please:

21 "Ch Supt McEwan and I didn't discuss the nature of
22 the investigation. Race as a possibility was not
23 discussed with Ch Supt McEwan. However, it is in the
24 back of your mind when you're thinking about all
25 possibilities. In terms of hypotheses, one would have

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1 been that the male had been treated differently because
2 he was a black male. I can't remember having
3 a conversation with anybody else about it, but the
4 feeling I got was that everybody was thinking along the
5 same lines as me that it was a possibility that the
6 actions of the police officers or a police officer was
7 because Mr Bayoh was black."

8 I wonder if, looking at that, do you have any
9 comments about whether this was something that you had
10 in your mind?

11 A. I think it was a wider aspect of the impact that we had
12 the death of a black male within Kirkcaldy after police
13 contact. It was, as I said prior to the break, we had
14 the circumstances of the incident and the fact that
15 restraint had been made and officers responded to
16 a spontaneous incident involving Mr Bayoh. The
17 community impact, the media impact, the climate within
18 the UK at that time in 2015, as I said, the previous
19 incidents we had, down south in particular, where about
20 the death of individual black males in particular
21 following restraint was, I mean, was paramount, I mean,
22 it was significant and I've already gave evidence around
23 that. The hypothesis round about restraint and the
24 aspect of Mr Bayoh being black, there was nothing to
25 indicate that that was a motivation for the officers

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1 that I could see at that particular time, but it was
2 something I was aware of.

3 Q. So did that possibility remain open until at least you
4 could get the statements and accounts of the officers?

5 A. Yeah, and that linked into the whole aspect of restraint
6 being one of the hypotheses and round about the
7 motivation and what would thereafter subsequently come
8 from that, from once we got the personal accounts off
9 the officers involved.

10 Q. So when you were considering the hypothesis of restraint
11 having contributed to his death and you were considering
12 the information that you were aware of regarding
13 particular matters about the -- as DCS Lesley Boal says
14 here, that the male had been treated differently because
15 he was a black male; that was one of the hypotheses, was
16 it?

17 A. So that's Lesley's hypothesis, that's one of the things
18 that she's saying that she hasn't shared with anyone
19 around that, as she quite rightly points out, but again
20 I was keeping a very open and transparent approach to
21 this. Was this a particular option that was going to
22 develop as we got personal initial accounts, that there
23 was some aspect that it was racially motivated, so it
24 fitted in with the aspect of the hypothesis round about
25 restraint being used, excessive force potentially being

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1 used: what was the motivation around excessive force
2 being used if it was excessive force? So it was, it was
3 obviously, it was a significant aspect of the response
4 to the investigation.

5 Q. So the restraint and the possibility of excessive force
6 having been used by the police officers at Hayfield Road
7 was one of the hypotheses?

8 A. It was.

9 Q. And in keeping an open mind it was a possibility which
10 you were bearing in mind that race was a factor, the
11 fact that Mr Bayoh was black was a factor in that, in
12 assessing that hypothesis?

13 A. Absolutely, there was nothing discounted at that
14 particular stage.

15 Q. So that remained a part of the hypotheses and part of
16 the investigation until it could be excluded?

17 A. Yes.

18 Q. And it couldn't really be excluded until you had initial
19 accounts or operational statements from the officers?

20 A. Correct, and the wider aspect of the investigation as
21 well, house-to-house, CCTV review, and so on and so
22 forth.

23 Q. Thank you.

24 You've mentioned -- if we could go to your own
25 Inquiry statement, please, you've mentioned in

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1 paragraph 47, and you've mentioned just a moment ago,
2 other Inquiries that you were aware of in relation to
3 deaths -- here we are -- of black men following on
4 police contact.

5 I'll just read out this paragraph:

6 "For experiences arising from significant
7 incidents -- such as the Stephen Lawrence, Habib Ulla,
8 Sean Rigg and Christopher Alder cases -- as well as
9 other incidents that were relevant to equality,
10 diversity and race, there were significant inputs into
11 the equality and diversity and OST courses over the
12 years, in terms of identifying potential shortcomings
13 and good practice. None of these courses 'stood still',
14 they were constantly evolving. My impression is that
15 the findings from the various inquiries and reviews are
16 still filtering through into law enforcement.
17 For example, the findings of institutional racism
18 following the MacPherson Public Inquiry, led to
19 significant internal review across all UK law
20 enforcement agencies."

21 I'm interested in a number of things that you've
22 mentioned in this paragraph. We will no doubt hear more
23 evidence in the future about these matters, but since
24 you've raised them here. We know, and a number of
25 officers have given evidence about the Stephen Lawrence

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1 Inquiry, which was the MacPherson report, MacPherson
2 Public Inquiry, that there was a finding of
3 institutional racism in relevance to
4 the Metropolitan Police investigation into the murder of
5 Stephen Lawrence. That was published in 1999.

6 And again, we'll hear more information about
7 Christopher Alder, but we understand that he had been
8 unlawfully killed in 2000. Sean Rigg died following
9 unsuitable and unnecessary force from officers,
10 including a prone restraint in 2012. The conclusion of
11 the inquest jury into the death of Habib Ulla was in
12 2015.

13 Would you agree that those Inquiries and those cases
14 involved concerns about the use of force by police
15 officers, and in particular there was concern about the
16 treatment of black men in police custody, or after
17 police contact, due to their race?

18 A. Yes.

19 Q. And that some of those concerns that were raised in
20 these Inquiries demonstrate that there are, there may be
21 different considerations for black people rather than
22 white people?

23 A. Erm ...

24 (Pause).

25 So, again, I think you have assessment of -- my

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1 understanding of the cases are pretty -- is pretty
2 accurate around that, about the aspect of their arrest,
3 they're in custody, and about their treatment and
4 excessive force being used. Sorry, can you just repeat
5 what the final question was on that?

6 Q. Let's just look at this generally, then. You seem --
7 you've named these Inquiries specifically --

8 A. Yeah.

9 Q. -- and you've obviously got a working knowledge of these
10 matters. Tell us what you know about ...

11 A. I probably would be doing them a disservice to try to
12 explain each and every one of them, but I mean my
13 synopsis was that, the Lawrence one aside, the three
14 which I've mentioned there, I think there was one
15 whereby there was apparent mental health issues with one
16 of the individuals concerned, he attended hospital, and
17 thereafter -- he was a previous victim of an assault and
18 thereafter conveyed to -- restrained and conveyed to
19 custody and died within the cell passageway. And again,
20 it's clear that there wasn't an appreciation of the
21 background to some of the individuals involved in these
22 sort of critical incidents, that there should be
23 a greater understanding of mental health, how we treat
24 individuals when we come into contact with them, and
25 again, back into the whole aspect of restraint and what

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1 is appropriate in the circumstances. So --

2 Q. And what did you take personally from your understanding
3 of these Inquiries in relation to the factor that there
4 were concerns that these cases involved black men?

5 A. Yeah, I mean, my conclusion with them was that there was
6 significant shortcomings on behalf of the police in
7 respect of the management of each of these incidents
8 involving black males.

9 Q. So can you give us a little more information about your
10 understanding of what those concerns were?

11 A. Erm, so, as I said, I think -- I mean, it was to do with
12 the level of restraint utilised in one or two of the
13 incidents, it was to do with the lack of appreciation of
14 underlying mental health issues with one or two of them
15 as well, round about the -- is custody the correct place
16 for these individuals who are going through such
17 a traumatic event?

18 So again, I can't recall in detail, as you would
19 appreciate, the ins and outs of every one of the cases,
20 but the outcome for me was that there had been
21 shortcomings and failings on behalf of the police in
22 respect of how we had responded, how we managed, how we
23 dealt with such incidents. And again, I mentioned that
24 it was brought up on some of the OST courses, so some of
25 the officer safety training courses you went on after

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1 that, they would perhaps refer to one of the cases round
2 about an incident or a case down south or the findings
3 from an incident down south whereby positional asphyxia
4 or whatever was basically identified and the
5 shortcomings were this or that in that respect.

6 So --

7 Q. Had you had training from Police Scotland in relation to
8 these cases?

9 A. No.

10 Q. Is that how you knew the names?

11 A. No, no. Basically I'd done research myself. I was
12 aware of the cases that were kind of running down south,
13 and some of the findings of them, but I think what they
14 did do for the OST, they didn't go into any detail that
15 I can recall -- they maybe did name them but I can't
16 recall them back to that time in the OST. But they
17 would give you an understanding of -- such as a stated
18 case or such as an incident whereby the findings
19 thereafter led to a change in process or a change in
20 procedure, that we no longer basically put someone face
21 down in a cell van, for example, while conveying them to
22 custody. So it was more about the learning and the
23 shortcomings that had been identified and thereafter how
24 we were moving towards best practice as such.

25 Q. When did you do this research? Was it before preparing

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1 your statement?

2 A. So, no, that was after 2015, after I was involved in the
3 incident within Kirkcaldy.

4 Q. So were you -- you've not really mentioned much about
5 the concerns arising from these cases or Inquiries in
6 relation to the fact that the men were black or concerns
7 about the way the police treated people because they
8 were black. What did you take from these Inquiries in
9 relation to that?

10 A. As I say, I didn't go into them in any detail, I didn't
11 study the cases individually, you know what I mean,
12 I was just looking at what were the outcomes, what were
13 the findings from some of the independent reviews that
14 were done around it as such and just to take any
15 learning I could from it.

16 Q. But not necessarily learning in relation to the factor
17 of race?

18 A. Yeah, if there was race -- if there was finding in
19 respect of race, I would have took that as well. But,
20 as I say, I can't recall in detail the three cases that
21 I've detailed there.

22 Q. All right.

23 You've commented on the Inquiries. Can you help us
24 understand how you reconcile your understanding of these
25 Inquiries and the learning that you've taken from those

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1 when you've also said in your Inquiry statement that
2 race had:

3 "... no basis for considering race as a factor in
4 the circumstances at Hayfield Road."

5 A. So that was to do with my decision-making, that race
6 didn't impact on how I responded to that incident as
7 an SIO.

8 Q. Right.

9 A. There was obviously a wider understanding and
10 appreciation that race was going to be significant in
11 respect of this incident, but I think what I've
12 mentioned in my statement was that in respect of being
13 open, being transparent in my decision-making and my
14 direction round about where the priorities lie was
15 pretty standard for any investigation I've managed in
16 respect of an unexplained death.

17 Q. So in identifying your priorities and your actions, race
18 wasn't a factor in identifying those?

19 A. They are standard priorities that you would deal with
20 for any unexplained death, no matter regarding any
21 ethnicity.

22 Q. And if there are wider implications in relation to black
23 men, for example, are there any standard priority
24 actions where you automatically include race as
25 something to be prioritised and considered?

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1 A. Yeah, and that's why we had the Gold Group structure.
2 So again, the whole aspect of it had been deemed
3 a critical incident because of the death of Mr Bayoh.
4 Also the fact is that the wider aspect of Mr Bayoh being
5 black was discussed at the Gold Group and the wider
6 aspect of the community impact, the media coverage, the
7 public perception. That's why we had that whole
8 Gold Group governance in place. As I say, the pillar
9 I was dealing with was the investigation and I was
10 taking anything from the Gold Group which may cross over
11 in respect of his race or ethnicity.

12 Q. Despite that discussion in the Gold Group, there was
13 nothing said there that actually altered your priority
14 actions in terms of the investigation?

15 A. So there was a wider appreciation of what we were
16 dealing with, and the community impact and the public
17 perception around it. So there were challenges with it,
18 because of that.

19 So in answer to your question, yeah, it did impact
20 on my priorities, it did impact on my approach to the
21 investigation in respect of Mr Bayoh being black, but it
22 was a wider consideration, not just for the
23 investigation but for the complete Gold Group and the
24 Police Scotland response to his death.

25 Q. So you were SIO in relation to the investigation.

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1 A. Yeah.

2 Q. What impact did those wider considerations have in
3 relation to you, your role and your investigation?

4 A. So that impacted very much on the FLO strategy which we
5 began to develop, although it didn't actually move to
6 Police Scotland deployment, but ethnicity, his
7 nationality, his religion, so again it was that wider
8 appreciation of exactly how we could support the family
9 in respect of some of those areas moving forward.

10 Q. Insofar as we're focusing only on the investigation of
11 the events into Sheku Bayoh's death --

12 A. Yes.

13 Q. -- not the family liaison, what impact did race have on
14 the actions you took in investigating the death of
15 Sheku Bayoh?

16 A. So that was just keeping an open mind at all times
17 around it, the hypotheses that may very much well
18 develop over that, it was about putting in place the
19 significant stepping stones, I mean, the base layer to
20 allow us to basically move forward with the
21 investigation, that we'd not missed anything at all as
22 the days and weeks would progress, so my aspect was
23 response, putting in place a framework for the
24 investigation, with the knowledge that it was going very
25 quickly over to PIRC and to the Major Investigation

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1 Teams, but taking cognisance of all the areas I've
2 identified as priority as well as the aspect of race and
3 whether or not there was some racially motivated aspect
4 to that which may come online once we get personal
5 initial accounts or when the further investigation
6 develops.

7 Q. So when you've given evidence that there was nothing
8 that you were able to identify that indicated race had
9 been a factor in those early days of the investigation,
10 and you're also saying, "I'm keeping an open mind", can
11 you reconcile those two things for us?

12 A. Yeah, absolutely. So the structure I put in place was
13 what I would put in place for any major investigation
14 that I respond to round about the priority areas, round
15 about the loci, round about the significant witnesses,
16 round about CCTV, round about house-to-house,
17 door-to-door, round about any potential suspects. So
18 again, all those areas are very familiar and consistent.

19 But again the -- what also is -- the hypotheses
20 which I'm developing over the course of that early
21 morning, one of them being restraint, and filtering from
22 that is why was there excessive restraint if that
23 thereafter basically comes out from the personal initial
24 accounts of some other evidential stream that there has
25 been excessive force utilised due to the fact that it's

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1 been racially motivated.

2 So again, that aspect sits very clearly with that
3 hypothesis round about excessive force and restraint
4 being used around that. So, as well as keeping in place
5 all of the significant powers for the investigation
6 which allows it to basically progress, and as I said
7 earlier on, I think it was last week, the timeline and
8 the movements of Mr Bayoh right from the incident at the
9 home address in Arran Crescent to Hayfield Road, it was
10 quite quickly established what we had, the aspect that
11 we did not have was what occurred at Hayfield Road
12 regarding restraint with the force used by the officers:
13 was it excessive, was it reasonable? And also what was
14 the motivation around that in that respect? So again,
15 there was gaps, as I said before, and I was never going
16 to close those gaps on 3 May.

17 Q. Looking back at the events in May 2015, and thinking
18 about how things could be improved, can you think of any
19 way that, you know, an awareness of the situation and
20 the wider implications, the public concerns about cases
21 such as the ones you mention here in paragraph 47, how
22 can those wider concerns be reflected in the actions
23 that you take in relation to an investigation? So are
24 there any actions that you think could be even
25 automatically included in any investigation into

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1 an unexplained death of a black man that would focus and
2 prioritise the issue of race in that investigation?

3 A. So the media strategy is significant, and again the
4 aspect of the reluctance to basically be more overt with
5 the media strategy on day one, I think had a significant
6 impact on the public perception. Saying very little or
7 nothing at all I don't think assisted that public
8 perception of what we had. The issue around what I seen
9 was a legitimate expectation of my officers providing me
10 with operational statements I believe was also
11 significant, and the public perception of how that would
12 look, the fact that officers working for Police Scotland
13 and involved in the response to a significant incident
14 were refusing at that time to provide operational
15 statements or personal initial accounts, so the public
16 perception around that as well.

17 I think the media, I think it's important that we do
18 get that right round about how we can provide that more
19 transparent overview of what's occurred and that we are
20 taking into account and consideration the aspect of
21 race, and also the response by my own officers on that
22 particular day.

23 So what we've got is the public perception is that
24 they've seen very little coming from the investigation,
25 it's almost a closed shop, for want of a better word,

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1 and the fact is that that, I've no doubt, caused
2 community unrest, caused anxiety and concern with the
3 family -- quite rightly so -- the fact that, obviously
4 the kind of mixed messages that came from the death
5 message as such.

6 So I think there's a few things we could have done
7 better in respect of being more open and transparent
8 round about the wider consideration that race was
9 a potential factor.

10 Q. And can you explain how an enhanced media strategy would
11 assist your investigation into the death of Mr Bayoh?

12 A. Yeah. So I think that being overt with the media around
13 the fact that we are looking for eyewitnesses to the
14 incident, we are looking for anyone with dashcam
15 footage, we are looking for any conversations on
16 social media, for example, areas such as that, but
17 almost that we -- it's a proactive media strategy that's
18 developed other than all we are simply doing is reacting
19 and putting -- and if asked are putting very few lines
20 into the public domain, which I don't think helped,
21 because it did look on reflection that we were
22 potentially holding back information, whereby if we were
23 far more proactive with the media side of things that it
24 may have answered a lot of questions and again we could
25 have involved the family with that as well and how that

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1 would have eventually played out. So I think there was
2 some learning from myself around it as well.

3 Q. You've talked about statements. When you talk about the
4 benefit that would have had to your inquiry, would
5 initial personal accounts have been sufficient to help?

6 A. Yes. Basic facts, initial personal accounts would have
7 been significant in respect of who done what, who was
8 there and what was the use of force. We didn't have
9 that. So you can take the investigation up to a certain
10 extent, but because of the complete refusal of the
11 officers to engage at that stage on 3 May, 4 May and
12 thereafter into the early part of June, what we had was
13 that significant gap in the understanding of PIRC,
14 Police Scotland, regarding what actions the officers
15 done at the scene and during the restraint.

16 Q. If you'd been instructed or ordered on 3 May to
17 investigate race, so not just a hypothesis --

18 A. Yeah.

19 Q. -- you were working on but a specific instruction, how
20 could that have translated into priority actions in your
21 daybook?

22 A. So I think it probably would have come or emerged from
23 a number of the priority actions that had been -- had
24 developed at that particular time. But it was
25 a consideration by me, it was a consideration by -- as

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1 I say, Lesley Boal mentions it in her statement as well.
2 I mean, it was the critical aspect to the incident, it
3 was declared a critical incident at 9.10, the Gold Group
4 structure got put in place, the whole aspect of race was
5 significant and it was paramount throughout the course
6 of the days I was involved in it.

7 Q. Can I ask you about paragraphs 491 and 492 of your
8 Inquiry statement, please. 491 and 492.

9 (Pause)

10 While we're getting that on the screen, I think
11 there's comment in these about the threat level, severe
12 threat level, and you mentioned this last week.

13 A. Yeah.

14 Q. We talked about this, and the perception that -- here we
15 are, 491 -- and you'll see that:

16 "... in a climate where there had been a number of
17 well publicised deaths of black males in custody -
18 particularly in England and the USA - where restraint
19 had been a potential contributory factor."

20 And you talk about Lee Rigby and the threat level
21 raised to severe.

22 Then at 492, again you talk about the threat level,
23 and then 493:

24 "It was the perception that could possibly be taken
25 from the incident in Kirkcaldy that it could be seen as

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1 some perhaps related to a terrorist activity or incident
2 - but we knew it was not."

3 Would it be fair to say that you were focusing there
4 in your statement about maybe the public wrongly
5 assuming that 3 May was a terror incident rather than
6 you having any basis for thinking that?

7 A. Probably about both, you know what I mean, as I've
8 explained before, one of the hypotheses was: was it
9 terror-related? Which we were quite quickly able to
10 eliminate. But because of the climate and the landscape
11 on 2015 with the attacks I've mentioned and the threat
12 level at that level, the media reaction to something
13 such as this undoubtedly would have caused public
14 concern that they were potentially terror-related.
15 Again, that links back into a more proactive media
16 strategy to eliminate that suggestion.

17 Q. Earlier you've mentioned -- it was probably up the
18 screen -- you have mentioned Lee Rigby, we've heard
19 a number of witnesses talk about Lee Rigby in 2013, and
20 we understand he was murdered by extremists who were
21 Muslim and they were black. Did you have any concerns
22 in May 2015 that there might be preconceived ideas about
23 Mr Bayoh, that he was some sort of terrorist extremist?

24 A. No. It was one of the early hypotheses I had that we
25 had to eliminate the potential that it was

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1 terror-related, but we could do -- we've done that
2 fairly quickly, within the first two hours, to be honest
3 with you, you know what I mean, and there was no
4 inference at all that it was terror-related. I think
5 what I was trying to put over in the paragraphs there
6 was it was a completely different landscape then from
7 where we are now with these things, and I think it was
8 also the public perception as well as the perception
9 within law enforcement round about that threat level,
10 round about the anxiety of responding to such as
11 a knife-related incident and how rare this -- something
12 like this was on a Sunday morning within Kirkcaldy.

13 So I've no doubt in the back of the officers' minds
14 that they were attending -- they were probably unsure
15 what they were responding to at that particular time and
16 I daresay they were keeping all options open regarding
17 what we were dealing with.

18 Q. So given what you knew about the threat levels at that
19 time, do you think all officers would be considering
20 possible terrorism for attending a knife incident?

21 A. I can't speak for all officers, but I can -- I mean,
22 when I was made aware of the incident, did I think that
23 this could potentially be terror-related? Yeah, I did,
24 but that was only one of a number of different
25 hypotheses that I had in my head, so I think to not have

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1 that you probably wouldn't be doing your job, I wouldn't
2 be doing my job, because you have to eliminate the
3 potential that this is terror-related which, as I say,
4 we were able to eliminate very, very quickly.

5 Q. Thank you.

6 Can I ask you to look at now paragraph 59. Sorry,
7 I'm going way back to the beginning:

8 "When I got the initial call ..."

9 There we are. If we just go up the page slightly so
10 you can see that. You've got a hard copy of your
11 Inquiry statement if you wish to look at that.

12 A. No, it's okay.

13 Q. This is 59, second paragraph, and it talks here about:

14 " ... I just kept an open mind around what had
15 occurred and began to consider the wider
16 implications ..."

17 Is that what you were talking about shortly -- just
18 a moment ago, about the wider --

19 A. Yeah.

20 Q. And they were being discussed at the Gold Group meeting?

21 A. Yeah.

22 Q. And then, towards the bottom of that paragraph, if we
23 could move down slightly, sorry, and it says:

24 "I had a wider appreciation and open-mindedness
25 about what I was going to face at Kirkcaldy Police

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1 Office before I became actively involved there. Was
2 this an incident triggered by ideology, or was this
3 an incident simply involving the arrest of an individual
4 and that this individual was black."

5 And that's really what you were talking about
6 a moment ago, is it?

7 A. Yeah, I think it was just about keeping that open mind,
8 I think the work I had done prior to attending at
9 Kirkcaldy, I was in a good place around the strategy
10 I had in mind to manage the various hypotheses as we
11 went through the course of the morning, and again the
12 terror aspect and the link to counterterrorism we
13 eliminated very, very quickly.

14 Q. If we can go back up the page, please, do we see that
15 just prior to the bit I read out you talk about you:

16 "... anticipated that due to the circumstances of
17 the incident it might gain significant media interest as
18 well as impact on the local community, particularly on
19 minority groups."

20 What was it about the incident that made you
21 particularly concerned about the impact on minority
22 groups?

23 A. I think it was just the climate within the UK, the
24 previous incidents involving the death of a black male
25 whilst being restrained or in custody, and, as I say,

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1 you know what I mean, I thought, I knew right away that
2 this was going to be a significant investigation, even
3 at that early stage, and that I didn't delay getting
4 there, I left almost immediately because I knew the
5 challenging nature of what basically I was going to be
6 confronted with. The --

7 Q. So even before attending the Gold Group meeting?

8 A. Yeah.

9 Q. -- where these implications were discussed, you said you
10 realised pretty much immediately --

11 A. Yeah.

12 Q. -- that there would be ..?

13 A. Yeah.

14 Q. You gave evidence last week about doing checks, intel,
15 background checks, that type of thing, and you mentioned
16 that in connection with looking at your daybook. You've
17 talked about the counterterrorism hypotheses. As part
18 of that counterterrorism hypothesis and investigating
19 that as a possibility, as I understand it, the police
20 will carry out certain checks looking for intel --

21 A. Yeah.

22 Q. -- to see if there's any evidence available that would
23 back up --

24 A. Yes.

25 Q. -- that counterterrorism hypothesis. As part of that

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1 investigative strand, would you instruct checks to be
2 carried out on a variety of people involved in the
3 incident?

4 A. So ...

5 Q. Or only the deceased?

6 A. No, I think -- no, I mean, I think I explained it last
7 week, I may not have explained it very well, but we
8 usually have an intelligence cell attached to any major
9 investigation. That -- I mean, that could be literally
10 two people doing all the background checks round about
11 anyone who comes into an investigation.

12 Regarding the CT side of things, or
13 counter-terrorism or terror-linked, I think there's
14 probably two aspects to that. One is the aspect of the
15 background awareness of UK policing, and I include
16 within that the UK CT network around who this individual
17 is and if there's any background that we should be aware
18 of round about ideology, or round about threat.

19 And then there's a second aspect about looking more
20 closely at the individual himself, what we might know
21 about him, such as what we might find in the house what
22 do we find in his property, what's on his mobile phone,
23 what's on his computer system?

24 And I don't just mean that for Mr Bayoh, I mean in
25 general around that, that's what we would normally do.

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1 So again, as well as doing the background intelligence
2 checks nationally, internationally as well, we would
3 also do that whole thorough examination of the
4 background of the individual as well.

5 Q. You've talked about doing those checks in relation to
6 Mr Bayoh; what about his family?

7 A. No. Unless there was something that came up and it was
8 highlighted through the work we were doing round about
9 the background of Mr Bayoh, we would not naturally go
10 through the full family unit in respect of that.

11 Q. What about friends who may be witnesses?

12 A. So friends that came into the investigation, I can't
13 confirm, but unlikely for CT, it would mainly just be
14 background checks on our normal police systems that
15 we've access to. So, as I say, it would not be that
16 more thorough examination of the wider aspect of any
17 sensitive information that may be held on some our
18 partner systems as such.

19 Q. Would the intel cell or unit be part of those checks if
20 they weren't specifically CT checks?

21 A. Yeah, so they would deal with general checks across the
22 investigation as it progresses, they would be there from
23 day one right through to complete, and they would do the
24 background checks of any individual of note who came
25 into the investigation round about did we need to

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1 approach them, was there a threat from the individual,
2 was there background that we needed to know?

3 So that would all be done with that. The reference
4 to the wider aspect of the CT side would be through the
5 National Intelligence Bureau and into the wider UK CT
6 network, that we would do the more sensitive checks
7 around was there anything at all indicating that this
8 was going to take place on 3 May in Kirkcaldy,
9 for example.

10 Q. You said you've ruled out CT very quickly. What
11 involvement did you have in engaging with the intel cell
12 who were carrying out these checks?

13 A. I had no involvement.

14 Q. So who did?

15 A. So that would have been done through the investigation,
16 I think it was done initially with Colin Robson into the
17 intel side, or Graeme Dursley, and thereafter the second
18 day we had the intelligence structure coming in from the
19 MIT side, the Major Investigation Team, they would have
20 come in on day two.

21 Q. So from day two, 4 May, checks in relation to intel or
22 through the intel cell would be sort of led by MIT?

23 A. MIT, yeah, obviously under the guidance of PIRC.

24 Q. Under the guidance of PIRC, and from 4 May you've said
25 that was Billy Little?

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1 A. Yes.

2 Q. And in what circumstances would you anticipate it being
3 of assistance to your inquiry to conduct checks on
4 a person's legal representatives?

5 A. (Pause). I wouldn't imagine we would require to do
6 that.

7 Q. Is that something you had any involvement in, in
8 relation to these events?

9 A. Absolutely not.

10 Q. Can you see anything in your own investigation and the
11 hypotheses and the strategies you were developing where
12 information or intel about a person's legal
13 representatives would have assisted you?

14 A. No, I had no involvement in any aspect of that.

15 Q. And can you see any way that that intel might have
16 assisted your investigation in any way, the
17 investigation into the death of Mr Bayoh?

18 A. No.

19 Q. And once you ruled out counterterrorism very quickly,
20 can you explain to us why further intel checks may have
21 been required in relation to your investigation?

22 A. It does take a bit of time sometimes to run some of
23 these checks through, but the information I was getting
24 back was that there was nothing of any -- any concern
25 that we could see around any -- that's been triggered,

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1 as I say in my statement, by any ideology. There was no
2 CT aspect to it whatsoever. But again, we would run
3 through the necessary checks, and as I've said they do
4 take a bit of time sometimes if we are looking at some
5 of the international checks that we need to carry out.
6 So -- and I mean, I think it was mentioned at one of the
7 Gold Groups that we'd kind of almost wholly eliminated
8 the aspect of CT.

9 Q. And from the way you're describing it I think the focus
10 for you as part of the investigation was more about
11 Mr Bayoh's potential ideology, that's what you were
12 interested in, if that existed?

13 A. Yeah, that was one of the early hypotheses, as
14 I indicated, you know what I mean, it was only one of
15 those which again that was one that we could almost
16 eliminate very, very quickly. And again, the other
17 hypotheses thereafter remained open as 3 and 4 May
18 progressed.

19 Q. Thank you.

20 Can I ask you to look at another paragraph in your
21 Inquiry statement, please, 488:

22 "I have been asked to what extent Sheku Bayoh's race
23 was a factor in my actions and decisions in this
24 enquiry. None whatsoever."

25 I think you've expanded on that today.

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1 A. Yes.

2 Q. "I have never made any decisions throughout my service,
3 and also in my personal life, based on someone's race or
4 ethnicity, or religion. The wider post-mortem
5 considerations and the management of the remains of
6 Sheku, that was not to do with race as such but more to
7 do with his religion. Nothing I did, and no decisions
8 I made, were influenced negatively in any way by race.
9 It was positive that we had an understanding of family
10 concerns in areas surrounding that issue. In the time
11 I was involved in the investigation, race was never
12 a factor in my outlook, decision-making or in any of the
13 investigative strategies which I put in place. I had,
14 and have, no negative preconceptions regarding race.
15 I would say that I am anti-racist. Racism from my
16 personal perspective is utterly deplorable and has no
17 place either in policing or in society at large."

18 This expression "anti-racist", is that your
19 expression?

20 A. No. However, it's something that I'm fully behind.
21 I think it was raised by the Chief Constable in one of
22 his bulletins to Police Scotland as such, indicating
23 that we have to be proactively anti-racist, which I did
24 agree with 100%.

25 Q. It may have been said at an opening statement in this

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1 Inquiry as well.

2 A. Was it? Oh, sorry. It is certainly on the force
3 intranet as something the Chief has said.

4 Q. So in relation to the Chief Constable making those
5 comments, has that influenced you --

6 A. I thought it was really accurate. I think that's the
7 perception I have regarding it. It's just a total zero
8 tolerance approach to it as such.

9 Q. Can you explain from your own perspective what the
10 difference is for you between being anti-racist and
11 simply being -- acting in a way that's
12 non-discriminatory?

13 A. I'll do my best. I think anti-racist is that you
14 proactively drive some of the aspects of discrimination
15 you may see. So I'll give you an example, and sorry,
16 it's not in my statement, but in 2019 two officers I had
17 deployed down south for an investigation were involved
18 in an incident involving two officers from a force down
19 south and an Asian taxi driver, and basically what it
20 was was the two officers from the force down south had
21 made a racist remark to the taxi driver which caused the
22 taxi driver to stop the vehicle and ask all occupants to
23 remove themselves from it, and there was further racial
24 remarks made at that time by the two officers from down
25 south.

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1 Now, that wasn't reported at the time by the taxi
2 driver but it was reported to me when the officers
3 returned by one of the officers who confided in me and
4 said this is what she had encountered and she just
5 couldn't let it go. So, rather than simply just saying,
6 "Okay, let's take a learning from that", what we did do
7 was -- and again, this probably comes round about the
8 aspect of being anti-racist and being proactive around
9 it, so statements from both of the officers from
10 Police Scotland, I contacted the force down south in
11 respect of that, we produced a report, and asked them to
12 fully investigate, which they did do. The taxi driver
13 had CCTV footage within the taxi, and again we
14 thereafter put the full report down south to the force
15 and thereafter asked them to investigate in respect of
16 criminality and any misconduct in respect of the two
17 officers involved in it.

18 So it was just that aspect of although it's not
19 reported, although it's happened elsewhere, the fact is
20 there should be that more proactive approach to these
21 aspects, and I think -- I don't know if that maybe
22 underlines exactly what I mean about being anti-racist,
23 about being proactive around it.

24 Q. You mentioned that the female, you said she couldn't let
25 it go --

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1 A. Yes.

2 Q. -- is there a culture encouraging officers to let things
3 go?

4 A. No, I don't -- certainly not now.

5 Q. Was this a while ago?

6 A. No, this was in 2019. So I think aspects of -- now I'm
7 going back 25 years, you know what I mean, aspects of
8 some conduct by police officers in respect of kind of
9 sexist remarks and misogyny or even sectarianism and
10 bigotry was probably more commonplace 25 years ago than
11 it is now, thankfully.

12 As I say, the journey we've come on, the journey
13 I've come on, since that particular time to where we are
14 now, it's completely turned out thankfully. So, as
15 I say, I wouldn't have expected her to let it go, and
16 certainly I wasn't going to let it go in respect of
17 that.

18 Q. I appreciate your own views on this, you've obviously
19 got a number of officers working with you as part of
20 your investigative team in May 2015. You've described
21 how many of these officers you'd never necessarily
22 worked with.

23 A. Yeah.

24 Q. You'd not met before. How do you, as a leader, share
25 your own views about being anti-racist and being

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1 proactive in these matters with a team, with your team?

2 A. Yeah. So it's difficult to do when you're on call and
3 you're responding to an incident such as this because
4 you can only really do that at any briefing you have
5 with the officers when you can obviously detail what
6 your thoughts and what your concerns are, and obviously
7 the approach that should be taken around it.

8 It's more -- it's probably easier to do in your
9 day-to-day role whereby you have a distinct divisional
10 team of officers whereby you can put forward that
11 message, messaging, that you can inform that culture on
12 a more informed basis because you are almost working
13 daily with the officers concerned. A lot of that comes
14 from some of the work that we do round about what we
15 call a people board within specialist crime division,
16 round about that whole aspect to equality and diversity,
17 inclusion and some of the work that is ongoing across
18 the force just now around that.

19 So it's easier to do -- I think my answer to your
20 question is easier to do with your day-to-day activities
21 as a leader within the organisation. It's more
22 challenging and more difficult to do when you're maybe
23 only there one or two days, you know what I mean, and
24 you can only really do that at the briefing in the
25 morning or the briefing at close of play, and again

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1 it's -- you are thereafter looking for, such as in this
2 instance, for the PIRC and for the MIT to take on that
3 longer term assessment and information to the
4 investigative team round about any considerations that
5 they may have.

6 MS GRAHAME: Right.

7 I do have one or two further questions but I'm
8 conscious of the time. This might be an appropriate --

9 LORD BRACADALE: We need to have a break for the
10 stenographer of 15 minutes.

11 (2.58 pm)

12 (A short break)

13 (3.21 pm)

14 MS GRAHAME: Is unconscious bias something that you're aware
15 of?

16 A. Yes.

17 Q. Have you had any training in unconscious bias?

18 A. Yes, I have.

19 Q. We heard evidence from Conrad Trickett about unconscious
20 bias and his understanding of the position. If you've
21 also had training in unconscious bias, have you held
22 a mirror up to yourself to identify any?

23 A. I don't think I'll be as eloquent as Conrad was in my
24 description of it. Yeah, it's the thread going through
25 all our training that we're involved in just now across

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1 Police Scotland. The most recent one I done was
2 February this year, I think it is detailed in my SCoPE
3 record, which was the new Moodle training for EDI, where
4 there's a whole aspect on unconscious bias.

5 So again it's, I think it's -- to me it's a pretty
6 challenging concept around the aspect of that lifetime
7 of experiences which subconsciously impact on your
8 decision-making, and again how you reflect on that and
9 ensure that any stereotypes or anything at all,
10 preconceptions, don't ultimately impact on your
11 decision-making. So that's the way -- what I took from
12 the learning of it.

13 Regarding holding the mirror up, that was -- it
14 wasn't part of the last training I'd done online, but it
15 was a previous course I'd done, which was in person at
16 the force training centre at Jackton, was around that as
17 well, and a similar course where -- selection panel
18 training, where the aspect of, I think they called it
19 affinity bias at the time, round about you almost
20 attempt to recruit or promote people with similar
21 characteristics and attributes as yourself.

22 So I think it's something certainly within the force
23 now, within Police Scotland, we're all very much aware
24 of and take into cognisance round about our
25 decision-making.

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1 Q. How comfortable or confident do you feel in identifying
2 your own unconscious bias?

3 A. I don't think you're comfortable with it, I think it's
4 something you have to do as a leader in the
5 organisation, I think it's appropriate that you do do
6 it. So, as I say, it's something that you do have to
7 look pretty deep and detailed around your subconscious,
8 your decision-making, your -- the stereotypes you have
9 in your life. I mean, this hasn't just come from the
10 27 years I've been in the police, this is obviously all
11 tucked in -- all impacted on my subconscious over the
12 last 50 years of my life.

13 So, as I say, I think it's something that is,
14 it's -- I think it's pretty significant, it's good to
15 have that realisation exactly what it is and how it does
16 impact on your own -- your own leadership attributes and
17 about how you can ensure that it doesn't negatively
18 impact on your decision-making, particularly at
19 a strategic level.

20 Q. Of the training you've had so far from Police Scotland
21 into the concept of affinity bias or unconscious bias --

22 A. Yeah.

23 Q. -- do you feel that's provided you with any strategies
24 that would allow you to identify unconscious bias either
25 in yourself or in other officers?

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1 A. I think it does, yeah. There is that greater awareness
2 now across the force around it. It's nothing that you
3 try to hide or basically do not take into account. So
4 the affinity bias aspect round about selection panel
5 interview, I can see that, I potentially was involved in
6 some of that, to be honest, round about the fact, that
7 preconception round about you've worked with that
8 individual, you know how good that individual is so you
9 want that individual as part of your team.

10 And again, it's only once you have that training
11 around it you begin to actually understand, well, there
12 has to be a more open and transparent approach to this
13 in respect -- and that's just an example now about
14 selection interviewing and such. So, as I say, it's
15 something that -- very much accepted, any aspect of
16 decision-making, that there undoubtedly will be some
17 aspect of unconscious bias that you have to consider,
18 not just maybe with yourself but with the team and with
19 the individuals that are around you at that stage.

20 Q. And do you feel any of the training has given you tools
21 or strategies that you could use in your day-to-day work
22 that would help you to flush out any unconscious bias or
23 identify unconscious bias?

24 A. Yeah, I think it comes back to stereotypes, you know
25 what I mean, it's round about -- I know Conrad spoke

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1 about the pilot being a male and round about the HGV
2 driver reversing the truck, that you automatically
3 think -- that aspect -- it's a man that's driving the
4 vehicle. But I think there's a kind of wider aspect to
5 that, and I think it's about -- with the individuals
6 that you're leading or directing or are part of your
7 team at that stage, it's about having that confidence to
8 basically flush out what some of the biases are at that
9 stage and thereafter basically address them head-on, and
10 thereafter -- therefore you can ensure that it doesn't
11 impact negatively on your decision-making because you
12 have went through that whole thorough, transparent
13 process of bringing out some of these inherent biases
14 that exist within us all.

15 Q. And do you feel it's allowed you not just to identify
16 biases but to actually guard against them, not just
17 simply tick a box saying, "That's a bias", but to
18 actually alter your behaviour or the behaviour of
19 others, having recognised a bias?

20 A. Yeah, I think it does. And I think it's something you
21 need to be really strong with as well. So it's having
22 that confidence that if you do recognise a bias and --
23 I mean, I can think of one or two I've been involved in
24 -- but I think it's how you thereafter communicate with
25 your team round about the fact that we have to bring

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1 this out into the open, this can't be a consideration in
2 respect of the kind of stereotypical attitude you may
3 have towards some ethnic group or so on and so forth,
4 and thereafter to bring that out into the open and
5 thereafter address it, as I say, kind of head-on as
6 such.

7 Q. Can I ask you if the term racial threat theory means
8 anything to you?

9 A. I don't think I picked that up through the training, no.

10 Q. What about the idea or preconceived idea that black men
11 are more likely to be dangerous?

12 A. No.

13 Q. Are you aware of racial stereotypes in relation to black
14 men, in relation to policing and crime? For example,
15 we've heard some examples that may be classed that way
16 of Mr Bayoh being the size of a house, having superhuman
17 strength, there may be other racial stereotypes of black
18 men being more engaged in criminality, perhaps being
19 members of gangs, or as I've said being more likely to
20 be violent, dangerous.

21 A. Yeah.

22 Q. Have you heard of these?

23 A. Yeah.

24 Q. And what steps -- in your role as SIO in May 2015, what
25 steps did you take to investigate whether any of the

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1 officers in their actions in Hayfield Road were
2 influenced by racial stereotypes or negative perceptions
3 about Mr Bayoh as a black man?

4 A. That would be something that would have to be considered
5 through the course of the investigation. As I say,
6 responding on day one to this with the actions of
7 personal initial accounts was something that was going
8 to be very difficult to do within that first 24 hours of
9 the investigation, but that would be something that
10 would have to be obviously taken into account once we
11 began to get some sort of operational statement or more
12 developed statement from them round about that whole
13 aspect of, as you describe, some of the stereotypes that
14 you've detailed there.

15 But on that first day, whilst responding to
16 a critical incident, in the absence of engagement with
17 the officers concerned, that was extremely difficult to
18 engage with them around that aspect. Difficult to
19 engage with them around the submission of a statement or
20 a personal initial account, never mind anything else at
21 that point. But that would obviously be something that
22 I would suggest would come from the more detailed
23 investigation as it progresses.

24 Q. And when you talk about paperwork, would that include
25 the use of force forms or the use of spray forms that

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1 weren't completed?

2 A. Yes, absolutely, yeah.

3 Q. What about Airwaves, we've heard evidence about Airwaves
4 calls and discussions that took place and were recorded;
5 we understand that point-to-point aren't recorded, but
6 Airwaves communications amongst the team, did you take
7 steps to recover those?

8 A. It's one of the actions at that early stage was round
9 about the recovery of all the transmissions around that.
10 So again, that would be something that we would
11 basically ... other than a general assessment in the
12 first couple of days of it, I mean, the aspect of
13 seizing it and thereafter looking at basically getting
14 it, getting some statement around it would follow
15 through the course of the general investigation, but
16 it's significant to any investigation, a 999 call from
17 any distressed individual, for example for a homicide,
18 that would be significant and we would listen to
19 immediately.

20 Q. So you would recover 999 calls, Airwaves?

21 A. Yeah.

22 Q. You talked about call cards, STORM cards, previously;
23 you looked at those on the morning of the 3rd?

24 A. Correct.

25 Q. Does your daybook detail the Airwaves messages?

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- 1 A. No.
- 2 Q. No? Is there anything in your policy file?
- 3 A. No. As I say, it's more a kind of general action around
4 Airwaves, it would be -- someone would be given the
5 aspect of: go and basically detail everything on
6 Airwaves, secure from the control room through
7 3C Division around everything at all linked to this
8 incident we're investigating, and plus transcription of
9 all the recordings so we can thereafter begin to drill
10 down and examine them in detail.
- 11 Q. Who would be tasked with that type of role?
- 12 A. It would be part of the investigation team, so you'd
13 have two detectives actioned around that and they would
14 have that whole aspect to go and basically engage with
15 3C Division, which is the command and control aspect of
16 it, to obtain -- as well as the details from STORM, the
17 call cards, but also the Airwave traffic to inform the
18 various individuals involved in the investigation.
- 19 Q. Is that something you instructed on 3 May?
- 20 A. No, it wasn't, no.
- 21 Q. Why not?
- 22 A. It was an action, it was an ancillary action that would
23 have been progressed through the course of the first few
24 days, but at that time with the resources we had there
25 was far more significant actions to basically be

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1 progressed, with the finite resources we had at that
2 time.

3 Q. Did you have concern about the finite resources you had?

4 A. On day one, we were quickly supported by MIT in the
5 afternoon, and on day two the MIT basically came in with
6 quite significant numbers, which was ideal. A Sunday
7 morning in Police Scotland, you don't have significant
8 resources on in general, particularly within the CID or
9 detectives as such, so it usually is quite a challenging
10 period, particularly during the changeover of shift as
11 well, between that 6, 7 o'clock in the morning period.

12 So we did -- well, I did my best to bring resources
13 from around the force together for to carry out the
14 investigation and the first day, as I say, we had great
15 support across the force. But you never have enough
16 resources, as you can imagine.

17 Q. Yes.

18 And then finally, one of the things we discussed
19 with Colin Robson was whether he would have had access
20 in 2015 to disciplinary records or misconduct records in
21 relation to the officers who had attended Hayfield Road.

22 Is that something you considered recovering as part
23 of your investigation?

24 A. On day one and day two it wasn't, but we would have
25 access to them and we'd have an out of access contact

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1 for that, so Craig Blackhall was PSD on-call, he was
2 a superintendent, so if we did require anything from
3 Craig, I'm sure he would have facilitated that for us.
4 But, as I say, in that initial response to such
5 a critical incident, it wasn't an immediate priority,
6 although obviously the subsequent investigation around
7 that would bring that with it. But on that initial 12,
8 24 hours, it wasn't an initial priority for me.

9 Q. Could you just give me one moment, please?

10 A. Okay.

11 (Pause)

12 MS GRAHAME: Thank you very much. I have no further
13 questions.

14 LORD BRACADALE: Thank you.

15 I'll come to Mr Macleod in a moment under Rule 9.2.
16 Are there any other Rule 9 applications?

17 Mr Campbell, would you mind withdrawing to the
18 witness room, please.

19 (In the absence of the witness)

20 LORD BRACADALE: Yes, Ms Mitchell.

21 Rule 9 Application by MS MITCHELL

22 MS MITCHELL: Again, I'm obliged to my learned friend who's
23 incorporated many of the questions that we put in our
24 Rule 9.

25 The first issue that I'd like to raise with this

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1 witness is in relation to his interactions with PIRC and
2 Officer Harrower. What I would like to explore with him
3 is whether or not PIRC actually expressed the view,
4 anyone in PIRC, to him directly that they did not have
5 enough resources and as a result they would need to use
6 resources from Police Scotland. The issue of resources
7 is dealt with broadly, but what I'm looking for was: was
8 there an actual discussion where perhaps the
9 Officer Harrower said, "I don't have enough staff to
10 cover this"? And also in relation to handover to PIRC,
11 when the handover happened, were the hypotheses that had
12 been ruled in and ruled out discussed as part of the
13 handover?

14 Moving then on, it's a discrete issue, and it is in
15 relation to Collette and her mum. This officer said,
16 I think yesterday -- sorry, not yesterday,
17 Friday(sic) -- that:

18 "Answer: I wasn't aware, and it would probably
19 beneficial if her mother could maybe have taken her
20 child, but I appreciate she was breastfeeding and that's
21 obviously more difficult."

22 The Inquiry will remember that Collette's very
23 strong memory of events was that there was such
24 a request in fact for the mum and the baby not to come
25 to the police station, and it's just to explore a little

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1 more with this witness why he says that it would be
2 better if the witness had not come, as it may be
3 an issue which will allow the Inquiry to come to the
4 view that Collette's recollection in this matter is to
5 be preferred.

6 The next matter is in relation to Zahid Saeed's
7 sister and the search that was conducted of the family
8 home. Now, Zahid Saeed's sister came to give evidence,
9 and as I understand it, she may wish to give further
10 evidence, particularly in relation to the fact that she
11 was searched bodily, like at the airport, by a female
12 officer, that she had her bag searched, and the officer
13 searched her car, including moving the car seats back
14 and forward and checking the boot.

15 So, as it was put to this witness in the
16 hypothetical about Martyn Dick and whether or not he
17 considered that appropriate, I would just like to put it
18 to this witness as well whether or not, given the fact
19 that this isn't even a witness but a sister of a witness
20 in a case, whether or not that was appropriate.

21 The next again discrete point arises from the
22 Gold Group meeting at 20.18 on 3 May -- that's, for
23 records, PS03139 -- and it is discussing the description
24 of Zahid Saeed, when he is described as an associate of
25 Mr Bayoh's, and I want to explore with this witness

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1 whether or not the word "associate" in the context of
2 police language or discussion has any connotation.

3 Next, family concerns in relation to post-mortem
4 arrangements. We've heard evidence that this witness
5 spoke to Dave Green who said in effect, "This is when
6 the post-mortem is happening because that's the only
7 availability we have". What I would like to explore
8 with this witness is when he was told that and simply
9 why wasn't the family told that as the position? He
10 must have known that relatively early on, given his
11 handover to PIRC, and I would like to explore that if he
12 knew that and he knew that the PM was going to be taking
13 place at this time, why wasn't there simply a line of
14 communication to explain that to the family?

15 Next, moving on to the issue of what I've described
16 here as the default position that police were acting
17 legitimately. My learned friend has taken this witness
18 through in some detail the fact that there was a gap in
19 his knowledge and that gap related to what happened
20 during the course of events in Hayfield Road in relation
21 to force and in relation to what happened, and in
22 fairness to this witness he repeatedly makes reference
23 to the fact that he doesn't have this information.

24 What I would like for him to consider is
25 paragraph 140 of his statement. If I might just read

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1 this out, it says:

2 "From the information that I had at that time,
3 Sheku Bayoh was in possession of a knife a very short
4 time prior to the altercation with the police on
5 Hayfield Road. The actions and use of force from what
6 I had established from an early stage led me to conclude
7 that the force used would be necessary and proportionate
8 to restrain Sheku and there was nothing else to the
9 contrary based on the information that I had."

10 So what I would like to investigate with this
11 particular officer is: first of all, he didn't have any
12 information on the use of force, never mind indeed
13 whether or not it was necessary and proportionate, and
14 whether or not in effect it appears that he has taken
15 a default position that, unless something came to his
16 attention, the use of force was necessary and
17 proportionate, whilst he was still involved in
18 the enquiry.

19 Lastly in relation to race, the officer gave
20 evidence saying that there was a wider aspect to the
21 issue of flushing out racism, and he said:

22 "Answer: It's about -- with the individuals that
23 you're leading or directing or are part of your team at
24 that stage, it's about having that confidence to
25 basically flush out what some of the biases are at that

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1 stage and thereafter basically address them head-on, and
2 thereafter -- therefore you can ensure that it doesn't
3 impact negatively on your decision-making ..."

4 What I would like to ask the witness is whether or
5 not he has in fact put that into practice and whether or
6 not he has addressed issues relating to race head-on and
7 made any progress in respect of bringing out the
8 inherent biases that exist within us all.

9 Those are my questions.

10 LORD BRACADALE: Thank you. I'll rise to consider these
11 submissions.

12 Before I do so, Mr Macleod, leaving aside any
13 questions that I allow Ms Mitchell to ask, do you
14 anticipate any broader Rule 9.2 application?

15 MR MACLEOD: No, sir.

16 LORD BRACADALE: Thank you. Right, I'll rise to consider
17 this.

18 (3.44 pm)

19 (A short break)

20 (4.01 pm)

21 LORD BRACADALE: I shall allow Ms Mitchell to ask questions
22 about whether Mr Harrower expressed views about the
23 resources of PIRC and whether the specific hypotheses
24 were discussed.

25 In relation to the issue of whether the mother of

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1 Collette could have taken the baby away, I do not
2 consider that I would be assisted by further exploration
3 of that with this witness, so I shall not allow that to
4 be explored.

5 In relation to the additional information from
6 Saadia Rashid, the sister of Zahid Saeed, the way to
7 approach this, in my view, is for additional
8 investigation to be carried out by the Inquiry in
9 relation to any additional information that she wishes
10 to advance, and until that is done it would not be
11 appropriate to explore this on a hypothetical basis with
12 this witness. So I shall not allow that.

13 In relation to the meaning of the word "associate",
14 I don't think I would be assisted by any explanation of
15 that.

16 I shall allow the proposed questioning in relation
17 to telling the family about the post-mortem
18 arrangements.

19 As to the default position expressed in
20 paragraph 140 of the statement, I have to consider that
21 in the light of the whole evidence of the witness, and
22 when I come to do that I do not think I shall be
23 assisted by any further exploration of the issue.

24 In relation to the last issue in relation to race,
25 I consider that the issue of race has been sufficiently

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1 explored with this witness, so I shall not allow
2 questioning on that either.

3 So, on that restricted basis, I shall allow you to
4 ask questions, Ms Mitchell.

5 Can we have the witness back.

6 (In the presence of the witness)

7 Questions from MS MITCHELL

8 LORD BRACADALE: Mr Campbell, Ms Mitchell KC, who acts for
9 the Bayoh families, Sheku Bayoh's families, is going to
10 ask some questions.

11 MS MITCHELL: You've explained to the Inquiry about the
12 finite resources that Police Scotland has, and
13 particularly at that time on a Sunday morning, and
14 you've also explained to the Inquiry that it was clear
15 to you that PIRC wouldn't be able to simply come in and
16 take the entire case over simply because of the manpower
17 that they had at that time.

18 Was there any expression by Keith Harrower about
19 needing manpower and how that was to be dealt with?

20 A. No, there wasn't any detailed discussion around it,
21 other than Keith had indicated that -- with some of the
22 other conversations -- that it would be the Monday
23 before they would be able to deploy any significant PIRC
24 resources, but that would be unlikely to happen on the
25 Sunday 3 May. And with that it meant we had discussions

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1 around, as I mentioned last week, around the joint
2 deployment of certain specific or specialist posts such
3 as crime scene managers or production officers or family
4 liaison officers. But there was no detail -- I wasn't
5 aware of what that significant resource would look like
6 as such.

7 Q. What I was hoping to understand or hoping to assist the
8 Inquiry with understanding was: how was it that you came
9 to know -- other than being told that, "We won't have
10 many folk til tomorrow" -- who to put where?

11 A. So at 13.30 PIRC in its entirety turned up at Kirkcaldy
12 Office, which was roughly I think five officers
13 I counted, that was the extent of what we had, and it
14 wasn't until late in the evening of 3 May, I think we
15 managed to get -- or Keith managed to get an additional
16 two out at that stage. I think we managed to obtain two
17 FLOs at that particular stage, which was late in the
18 evening of 3 May. But it was very clear round about
19 capacity that it was very, very limited with PIRC, I was
20 aware of that from the discussion, we weren't going to
21 get 20 PIRC resources at that time, and any significant
22 resources coming from PIRC would probably be the
23 following day, as the enquiry obviously progressed.

24 Q. So can the Inquiry take it that rather than having
25 specific conversation between you and Keith Harrower

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1 about not having enough resources, it was simply obvious
2 from the fact that they turned up and there was only
3 five of them, with perhaps two to come, that that would
4 simply be insufficient for the job?

5 A. Yeah. No, it's clear it was insufficient for the job on
6 3 May, and that's why from a Police Scotland perspective
7 we'd significant resources pulled from all over the
8 country, as well as from the Major Investigation Teams,
9 to support the PIRC in respect of the investigation.

10 Q. I'd like to move on, please, to talk about the
11 post-mortem, and in particular you gave evidence to the
12 Inquiry that you relatively early on had a conversation
13 with Dave Green, who also gave you information about the
14 availability of a pathologist to conduct the
15 post-mortem, and would it be fair to say he made it
16 clear that the post-mortem would only be going ahead at
17 that certain time due to the restrictions that they had?

18 A. That's correct.

19 Q. Can you recall approximately what time that was you had
20 that conversation?

21 A. So I spoke to Keith -- sorry, I spoke to Dave Green
22 I think two or three times on 3 May, once round about
23 lunchtime, which I think was the discussion around the
24 post-mortem. Later on in the late afternoon I had
25 a further discussion, and that was round about

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1 potentially having to look towards other aspects of
2 identification, which I touched on as well, if the next
3 of kin or the family did not attend. But I think it was
4 round about the lunchtime conversation I had that
5 discussion round about the availability of -- of the
6 pathologists and the constraints about on that. The
7 information that was passed to me by Dave Green at the
8 time was he was looking for identification to take place
9 1 o'clock, at 1300 hours on the 4th, with the
10 post-mortem taking place at 1400 hours, so that was the
11 information I was passed at that time.

12 Q. And that was, as it were, set in stone?

13 A. It's purely within the jurisdiction of Crown Office,
14 it's absolutely nothing to do with Police Scotland.

15 Q. Having that information and knowing that was going to be
16 the case --

17 A. Yeah.

18 Q. -- that there weren't, as it were, other options, did
19 you consider informing the family of that situation?

20 A. So that information was passed to PIRC as the lead
21 investigator for the -- for this incident. So, as
22 I say, that information was passed to Keith as they
23 thereafter, through the course of the afternoon and into
24 the early evening, became the sole link into the family
25 because of some of the challenges that Police Scotland

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1 probably had brung on themselves with the deployment or
2 the lack of deployment of family liaison officers.

3 So, as I say, it was mainly the PIRC that had that
4 aspect of the investigation, to liaise with the family,
5 to make arrangements for their attendance for
6 identification as the day and the evening progressed.

7 Q. So you had the conversation about noon with
8 Dave Green --

9 A. It was later than that.

10 Q. -- or thereabouts?

11 A. It was later than that, I think it was about 1 o'clock
12 or thereabouts.

13 Q. Okay.

14 A. Yeah.

15 Q. And then PIRC arrive at 1.30?

16 A. Yes.

17 Q. And they take over that part of the enquiry?

18 A. So that -- there was an investigative, not handover but
19 an investigative update to PIRC between myself, my team
20 and PIRC round about 1400 hours, prior to the second
21 Gold Group, which was almost in its entirety handing
22 over to PIRC round about where we were with it, although
23 obviously they had the lead from very early on that day.
24 But that aspect was discussed with PIRC at that time
25 round about -- and I believe that Keith had already --

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1 Keith had also spoke to Dave Green through the course of
2 the early morning around the various aspects and what
3 the likelihood of the post-mortem occurring the next day
4 would be.

5 Q. So if we want to know exactly why that information
6 wasn't passed on to the family, that this is when the
7 post-mortem would be taking place --

8 A. Yeah.

9 Q. -- we would have to ask Keith Harrower about that?

10 A. Yeah, so Keith thereafter had the engagement with the
11 family around that and the deployment of PIRC FLOs.

12 Q. You've discussed the handover, as you've described it,
13 in relation to PIRC, and we understand from your
14 evidence that was effectively a staged process --

15 A. Yeah.

16 Q. -- where some things were handed over at an earlier
17 stage than others. When you were handing over the
18 reins, as it were, to Keith Harrower, did you discuss
19 the various hypotheses that you had?

20 A. Yeah, so they were discussed at the investigative
21 meeting at 2 o'clock with PIRC around the progression of
22 the various aspects of the investigation that were being
23 considered at that time. Regarding the handover, as you
24 say, it was a more kind of staged and phased approach
25 which thereafter carried on into the evening of the 3rd

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1 and even into the morning of 4 May as well, just because
2 of the change of investigator or senior investigator
3 from PIRC, as I described, with Keith stepping down or
4 stepping back and Billy Little coming on at that time.

5 Q. When you discussed the various hypotheses, what
6 hypotheses did you discuss?

7 A. So the five I detailed earlier on in my evidence round
8 about: was it CT ideology? Was there some aspect of
9 counterterrorism we had to consider? Was it through
10 an earlier assault which had led to the death of
11 Mr Bayoh? But that obviously had only occurred through
12 the incident at Hayfield. Was it through to -- was it
13 through alcohol, drink intoxication? Was there
14 an underlying medical condition? So there was a number
15 of hypotheses that we were keeping an open mind around
16 as such.

17 Q. Was one of the hypotheses that you were keeping an open
18 mind around, and did you pass this on to Keith Harrower,
19 that a black man had died after restraint --

20 A. Yeah.

21 Q. -- and that was one of the things that had to be
22 considered?

23 A. Absolutely. I mean, that was discussed at the 10.22
24 phone call with Keith round about what we had --

25 Q. And was race highlighted in that --

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1 A. It was.

2 Q. -- conversation?

3 A. I mean, it was clear through all the Gold Group meetings
4 as well that race was front and centre around the
5 investigation. I mean, it was a consideration with
6 everything we'd done around it. A conversation with
7 Keith very early on was round about one of the
8 hypotheses was: had death come as a result of restraint
9 and by police action? And, again, that was very clear,
10 and the aspect to that was, subsequent to that, was it
11 racially motivated or was there some aspect of that
12 racial aggravation which had brought about the aspect of
13 force being excessive as such? So again that was all
14 discussed, and we were keeping an open and transparent
15 mind around all that.

16 LORD BRACADALE: Ms Mitchell, in the light of that evidence,
17 I shall allow you to explore the issue in paragraph 140
18 of the statement.

19 MS MITCHELL: I wonder if we could have paragraph 140 of the
20 statement available.

21 Throughout the course of you -- if we can just leave
22 it for a moment, and then I'll ask about it, thank you,
23 just have it available.

24 Throughout the course of your giving of evidence and
25 also in relation to your statement, I think it's fair to

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1 say that you make it clear throughout that you had
2 insufficient evidence to conclude your enquiries by the
3 time you handed them over?

4 A. Yes.

5 Q. And the gap in your understanding was very specifically
6 related to what happened at Hayfield Road between the
7 officers and Mr Bayoh?

8 A. Yes.

9 Q. And I think you make it clear repeatedly that that gap
10 meant that you simply did not know various factors.
11 For example, you did not know about the use of force and
12 how it was carried out; you didn't know, we heard in
13 evidence, the fact that it was alleged that PC Tomlinson
14 had truncheoned Mr Bayoh to the head; you didn't know
15 that when Sheku Bayoh was intercepted by the police he
16 didn't have a knife and was holding his hands face up.
17 All these things weren't known to you at that time; is
18 that correct?

19 A. So the aspect of the knife, I was aware that he wasn't
20 in possession of the knife during the restraint because
21 of where the knife was discarded.

22 Q. When --

23 A. The other aspects that you're mentioning were as
24 accurate -- the Tomlinson thing, I had no knowledge of
25 that at all because we did not have any personal initial

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1 accounts.

2 Q. So it would be fair to say, in those circumstances, that
3 you couldn't make an assessment whether or not the use
4 of force was proportionate or was necessary in the
5 circumstance?

6 A. Yes, that's accurate.

7 Q. I wonder in the circumstances if we can look at 140,
8 paragraph 140. Now, do we see at paragraph 140 you've
9 written here:

10 "From the information that I had at the time,
11 Sheku Bayoh was in possession of a knife for a very
12 short time prior to the altercation with the police on
13 Hayfield Road. The actions and use of force from what
14 I had established, from an early stage, led me to
15 conclude that the force used would be necessary and
16 proportionate to restrain Sheku and there was nothing
17 else to the contrary based on the information that
18 I had."

19 Now, given what you've just told the Inquiry, could
20 I ask you to reflect upon this, and in fact would it be
21 fairer to say that from the evidence that you've given
22 you ought not to have made a conclusion that the force
23 used would be necessary and proportionate?

24 A. I think the word "conclude" there is probably
25 inaccurate. The information I had at the material time

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1 was that there was nothing to indicate that there was
2 a disproportionate use of force, on the information
3 I had round about the earlier precursor incidents
4 leading up to that, with Mr Bayoh in possession of
5 a knife, acting erratically, three independent members
6 of the public, the fact that he appears under the
7 influence at that stage as well, which is coming
8 independently. So this information I did have.

9 So what I didn't have was what --

10 Q. The gap?

11 A. -- what aspect of the restraint and the use of force
12 was. So that what I'm -- what I've put down there is
13 accurate, as the fact is that I was -- there was nothing
14 to indicate that it was disproportionate, the use of
15 force. I think the word "conclude" -- because what
16 I have is what I have at that particular stage, but
17 that's not basically to say that that will not change as
18 personal initial accounts, as more detailed statements,
19 as eyewitness accounts, as CCTV footage comes into the
20 investigation, but at that -- at that time, when I'm
21 basically dealing with the incident at Hayfield Road,
22 that's what I'm basically dealing with.

23 Q. So can I be clear that what you're saying is that "the
24 actions and use of force from what I had established" in
25 fact doesn't relate to the use of force, but it relates

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- 1 to the information you had before the police interact
2 with him, namely where he was, what he was doing?
- 3 A. So the response by the officers concerned, on their
4 officer safety training and what would be deemed to be
5 necessary and proportionate to deal with the threat
6 posed to them at that particular time, on the basis of
7 the information I had, there was nothing to say that
8 that was disproportionate at that time. I don't know if
9 that makes sense to you.
- 10 Q. I suppose the question is: did you have any evidence
11 that it was proportionate?
- 12 A. No, I didn't have evidence one way or other, but what --
13 as I say, I didn't have anything at all around the fact
14 that it was disproportionate and the circumstances
15 indicating the spontaneous response of police officers
16 to an incident that they could not have perceived what
17 they were going to basically face as they turned up, and
18 at that particular time, and thereafter if you look at
19 the other side from the actions of Mr Bayoh as he
20 approaches Hayfield Road and thereafter the coming
21 together, what I had at that stage was there was nothing
22 to indicate, evidentially wise or through witness
23 statements, that there was any disproportionate use of
24 force. But I do take your point around that.
- 25 Q. I mean, the question really for you is: in those

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1 circumstances, was there any evidence you had in
2 relation to the force at all?

3 A. No. Other than we had obviously recovered items
4 within -- on Hayfield Road and the aftermath of that,
5 obviously batons, CS had been recovered, and the knife
6 had obviously been recovered as well.

7 Q. So you were able to ascertain that that had happened?

8 A. Yes.

9 Q. But in relation to how many officers engaged with
10 Sheku Bayoh, how long he was held down, in what way he
11 was held down, whether or not that was done
12 appropriately, you didn't have any of that information?

13 A. Other than the number of officers we knew that were at
14 the scene.

15 Q. And would you agree in those circumstances that what
16 you've done is effectively assumed or presumed that what
17 the officers had done was necessary and proportionate,
18 rather than looked at the evidence and ascertained that
19 it was necessary or proportionate?

20 A. So the evidence I had at the time was -- it was from my
21 perception at that morning on 3 May -- was that I had
22 details of the early movements of Mr Bayoh which led him
23 to Hayfield Road, and the independent witnesses from the
24 motorists whereby we have a male with a knife running at
25 cars. So we had that information, I had that

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1 information, just -- and obviously what I had thereafter
2 was the officers coming out from the canteen muster area
3 of Kirkcaldy Police Office, reacting to a spontaneous
4 incident, and thereafter the coming together of Mr Bayoh
5 with the officers who thereafter restrained him.

6 So from what I had -- and again I think we're
7 probably coming at this in different angles -- but it
8 was -- nothing could -- nothing I had indicated that it
9 was disproportionate regarding their response. It
10 wasn't premeditated, it was a spontaneous response to
11 an incident which was developing at that time of the
12 morning in Kirkcaldy.

13 Q. But you would agree that nothing you had either one way
14 or the other would allow you to say whether or not the
15 force used had been necessary and had been
16 proportionate?

17 A. The identified actions of each individual officer I did
18 not know, and what force was used.

19 LORD BRACADALE: Mr Macleod, anything arising?

20 MR MACLEOD: No, thank you, sir.

21 LORD BRACADALE: Detective Chief Superintendent Campbell,
22 thank you very much for coming to give evidence to the
23 Inquiry. We shall be raising in a moment for the day
24 and you will then be free to go.

25 THE WITNESS: Thank you, sir.

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1 (The witness withdrew)

2 LORD BRACADALE: 10 o'clock tomorrow morning.

3 (4.22 pm)

4 (The hearing adjourned until 10 am

5 on Wednesday, 15 March 2023)

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