

Transcript of the Sheku Bayoh Inquiry

Wednesday, 23 November 2022

2 (10.17 am)

3 LORD BRACADALE: Now, Ms Grahame.

4 MS GRAHAME: The next witness will be a former inspector,
5 Mr Stephen Kay.

6 LORD BRACADALE: And he is giving evidence remotely?

7 MS GRAHAME: He is, yes.

8 LORD BRACADALE: Good morning, Mr Kay.

9 A. Good morning.

10 LORD BRACADALE: You can hear me and see me, can you?

11 A. Yes, I certainly can.

12 LORD BRACADALE: Thank you. You're going to be asked some
13 questions by Ms Grahame, Senior Counsel to the Inquiry.
14 Before that I wonder if you would raise your hand and
15 say the words of the oath after me.

16 MR STEPHEN KAY (sworn)

Questions from MS GRAHAME

18 LORD BRACADALE: Now, Ms Grahame.

19 MS GRAHAME: Thank you. Good morning, Mr Kay. Are you able
20 to hear me?

21 A. Yes, I can hear you perfectly.

22 Q. Excellent. You are Stephen Kay and you are a former --

23 A. Yes.

24 Q. -- inspector with Police Scotland?

25 A. Yes.

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1 Q. What age are you?

2 A. 53.

3 Q. And do I understand correctly that you are retired?

4 A. Yes, I left the police in May.

5 Q. How many years in service did you have when you left
6 the police?

7 A. Just short of 26.

8 Q. Thank you. As I understand it, in advance of today you
9 have been sent some paperwork which you can have in
10 front of you as we go through some questions today. Is
11 that correct?

12 A. Yes. Yes, I have it here.

13 Q. And I will go through those quickly just to make sure
14 you have them. There was an operational statement which
15 you had and we can show that on the screen, it's
16 PS00345, and you should also have a hard copy.

17 A. Yes, I've got that.

18 Q. And that's an undated statement that was prepared by
19 you?

20 A. Yes.

21 Q. We can also see it on our screens here in the hearing
22 room, Mr Kay. Can you see that?

23 A. No, I can only see me twice.

24 Q. Right. All right, well, as long as you have the hard
25 copy in front of you --

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1 A. Yes, I've got that.

2 Q. -- that's more important and I noted in your Inquiry
3 statement, which I will come to in a moment, at
4 paragraph 109, that you said you prepared that within
5 a week after the events of 3 May 2015.

6 A. Yes. Obviously it's not documented or articulated, but
7 me being me I would definitely would have done that
8 quite sharp while it was still close to my memory and
9 knowing that I would probably get asked for it.

10 Q. So although it doesn't have a date on it, it was done
11 within a week of the events of 3 May 2015?

12 A. Yes, I could probably say that's almost a guarantee.

13 Q. Thank you. And when you prepared this statement were
14 you doing your best to be as accurate in your
15 recollection and to tell the truth?

16 A. Yes.

17 Q. Thank you. If there's anything in this statement that
18 is different from what you say today -- I understand
19 from your Inquiry statement at paragraphs 109 and 110
20 that you would prefer the Chair to rely on your
21 statement, is that --

22 A. Yes, because probably that -- yes, that would be more --
23 I would think would be more reflective than this one
24 six years later.

25 Q. We have heard other witnesses say because it was closer

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1 to the time and the events the Chair should probably
2 prefer that one.

3 A. Yes.

4 Q. Good. And then we have a second document, a PIRC
5 statement, PIRC 00271. We will see this on our screens
6 in the hearing room, but again you should have a hard
7 copy.

8 A. Yes, I've got that.

9 Q. And that was a statement dated 12 January 2017 at 12.35
10 and if we maybe just move down the screen slightly, and
11 it was taken by a DSI William Little in the presence of
12 SI John McSporran at Cowdenbeath Police Office, so that
13 was nearly two years later. Do you remember giving that
14 statement to the PIRC?

15 A. I can vividly remember that because I was in a moon boot
16 on light duties at my work.

17 Q. So did you go in to give that statement at Cowdenbeath
18 Police Office?

19 A. No, I went back to my work early because I was out of
20 crutches on a moon boot and I was able to facilitate
21 going to Cowdenbeath Police Station as supposed to where
22 I did work and they just made contact and came and seen
23 me then.

24 Q. Thank you. And again when you spoke to the PIRC, did
25 you do your best to be accurate in your recollection and

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1 to tell the truth?

2 A. Yes.

3 Q. You have said in your Inquiry statement, which we will
4 come to in a moment, at paragraph 120, you were
5 surprised at how quick it was -- you say:

6 "I was surprised how quick it was, put it that way."

7 At how quickly the PIRC took this statement. Do you
8 want to add anything else to that comment?

9 A. No, I was just under the impression that other people
10 were in for a fair length of time and I was surprised
11 how quickly they spoke to me about it.

12 Q. All right, thank you.

13 Let's look now at your Inquiry statement. So we
14 will have that on your screen, it's SBPI00036, do you
15 have that in front of you?

16 A. Yes.

17 Q. And am I right in saying that the copy you have has
18 a signature by you on each page?

19 A. Yes, it has.

20 Q. And it is 24 pages long and if you could look at the
21 last page do we see that you signed it on 26 of April
22 this year?

23 A. Yes.

24 Q. And if we look at the last paragraph, 129, it should
25 say:

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1 "I believe the facts stated in this witness
2 statement are true. I understand that this statement
3 may form part of the evidence before the Inquiry and be
4 published on the Inquiry's website."

5 And you understand that?

6 A. Yes, that's correct.

7 Q. And you -- thank you. In addition am I correct in
8 saying that you have been provided with a spreadsheet in
9 A3 format which is the combined audio and visual
10 timeline, SBPI00047? Do you have that as well?

11 A. Yes.

12 Q. Good. And have you had an opportunity to have a look
13 through that and see how it is laid out? You will see
14 timings on the column on the left and descriptions of
15 what was said over the Airwaves and descriptions of
16 what's in the CCTV?

17 A. I had a brief look through it last night, yes.

18 Q. Lovely, thank you. When we come back to that I will
19 take you through the sections I'm interested in. First
20 of all, I would like to ask you some questions about the
21 role of senior officers that were in charge at Kirkcaldy
22 Police Office in May 2015 and if we start at paragraph 7
23 of your Inquiry statement you say that on 3 May you were
24 a temporary inspector in a role as a PIO.

25 A. Yes.

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1 Q. Is that a police incident officer?

2 A. Yes.

3 Q. What did you do in that role?

4 A. In that role basically the PIO would be responsible or
5 run the daily business for the division, make sure
6 resources and every incident was facilitated, obviously
7 grade them -- grading them as appropriate. If any other
8 stations were low on staff you can move people around
9 and go to the incidents, secure it, get evidence, put
10 locus protection on, etc, and thereafter if need be you
11 would then make contact with the specialist resources,
12 but a big part of it was daily business and making sure
13 there was enough resources if you had to change shifts
14 or give annual leave, etc.

15 Q. And were you a temporary inspector at that time?

16 A. Yes, I had been in that role from November. I was
17 currently waiting on an interview to hopefully get
18 promoted.

19 Q. And that was the November 2014?

20 A. Yes.

21 Q. Had you had special training to do the role of PIO?

22 A. You got offered the opportunity to go shadow PIOs.
23 I shadowed two or three, got a flavour of how everyone
24 works, to see whatever suits best to me, but in previous
25 roles as community sergeant I would deputise for the

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1 community inspector, so I had a fair bit of exposure to
2 what the role contained.

3 Q. How long had you been the PIO at Kirkcaldy Police Office
4 by 3 May 2015?

5 A. It would -- I went there in the November. I was
6 originally going to go to Team 1 but then I was moved to
7 Team 4, so I was there in -- that was my base station
8 since November and I had a colleague who worked out of
9 Dunfermline, but we could float around and attend other
10 stations to be visible, but Kirkcaldy was my base
11 station from November.

12 Q. As you have explained you were on a temporary promotion.
13 Who was your senior officer?

14 A. At the station I think it's now Chief Super Shepherd, it
15 was DSI Nicky Shepherd was my immediate boss in the
16 station.

17 Q. Describe what role Chief Inspector Stones had in
18 relation to your work in Kirkcaldy.

19 A. Every weekend you will have an on-call rota, on-call
20 Super, on-call DI for any sort of crime related crime
21 and Chief Inspector Stones, it was obviously his slot
22 for being on the rota to look after the P division, or
23 his level it might have been a bit further for the whole
24 of the east, but he was certainly overseeing anything,
25 if required, that I would need to pass up to him.

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1 Q. So he was there on 3 May 2015 as your senior officer?

2 A. Yes. He worked at the college. As I say, it's on
3 a rota, I don't know what they would do, one in five,
4 one in seven, so it would change every time, but it just
5 so happened that he was on that day.

6 Q. Where was he based on 3 May?

7 A. (overspeaking) He was working out of Tulliallan Police
8 College, so I'm positive I phoned him there and he then
9 he made his way through later.

10 Q. So initially at least the contact you had was over
11 Teams, or was it over the telephone?

12 A. So, after I would get my handover from the night shift
13 I would look at what was happening, what was sort of
14 sensitive, what was requiring immediate attention, speak
15 to my sergeants to get a flavour of what they had to
16 make sure my resources were accurate. I would then
17 phone any chief inspector who was working with me at the
18 time to let them know where I was, my contact number and
19 what was happening and if they had anything they wanted
20 me to concentrate resources on.

21 Q. And so on 3 May the senior officer was CI Stones?

22 A. Yes.

23 Q. Can I ask you to look at paragraph 17 of your Inquiry
24 statement please. You were a senior officer -- you had
25 a station inspector and a community inspector and there

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1 was an inspector on the CID and there was
2 a chief inspector. I'm wondering if you can help me
3 understand all the different roles that were in play
4 that day in Kirkcaldy Police Office.

5 A. So the family tree, if you like, at Kirkcaldy would be
6 chief inspector, you would have a community inspector,
7 you would have me looking after a team or so as PIO and
8 you would have your dedicated divisional inspector for
9 the CID. On that day it was just myself and Colin
10 Robson was on. It must have been his weekend rota shift
11 as well.

12 Q. So we have heard other evidence about Colin Robson. Was
13 he the inspector that day at the CID?

14 A. Yes, he was the on-call DI for the division as well.

15 Q. Right. We have also heard mention of a Samantha
16 Davidson. Do you remember her role that day?

17 A. Yes, she was DS. I can't recall if she was temp DS or
18 DS, but she was certainly on.

19 Q. Thank you. And you were the PIO and who was the station
20 inspector?

21 A. The community inspector at that time was retired as
22 well, Alan Seath. But you would have him -- he would be
23 combined community and station inspector at that time,
24 but he was Monday to Friday.

25 Q. So if someone is referring to the station inspector that

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1 day, it's also the community inspector? It wasn't two
2 separate officers?

3 A. Yes. No.

4 Q. All right. Thank you. And you have said that you were
5 running the daily business, or the -- had charge of the
6 daily resources. What did that actually mean?

7 A. Well, when I come on I get my handovers from the night
8 shift and they hand me a running log and I would check
9 it before I came back and I would make sure I had
10 sufficient resources. I would speak with resource
11 management to see if there was any enquiries from
12 outwith for mutual aid. I would check -- I would check
13 the calls, I would go through the log for the night
14 shift. As I say, if anything was needing attention,
15 anyone was needing relieved at locus protection, or we
16 had priority engagements we had to go and once I was
17 comfortable with all that I would phone round all my
18 sergeants after their sort of morning meetings to ensure
19 that it correlated with what I had.

20 I would phone the CI to give him an update on
21 everything under his umbrella. Then I would get
22 prepared and go to the morning meeting. Then discuss
23 what I have just said to you and allocate appropriate
24 tasking.

25 Q. How many sergeants were you in charge of in May 2015?

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1 A. If everybody was on I think there's six.

2 Q. Did they all cover different teams?

3 A. No, they would be -- Team 4 as a whole would be on
4 throughout P division so you would have one at
5 Levenmouth, you would have one at Cooper or St Andrews,
6 Kirkcaldy, Glenrothes, that's four, and you could have
7 had the west split up into three, so there would be
8 a definite six, potentially seven.

9 Q. Right. Who was the sergeant in charge of Team 4?

10 A. That day was Scott Maxwell.

11 Q. And we have heard that he was an acting police sergeant
12 at that time?

13 A. Yes.

14 Q. How familiar were you with the people within Team 4?

15 A. I didn't know hardly any of them at all. When I went to
16 the Kirkcaldy area I went in blind which at the time
17 I was happy with. Obviously it was a new challenge.
18 I had worked at most stations. I hadn't really worked
19 out of Kirkcaldy, so I just knew people by face, but
20 I hadn't -- I didn't personally know any of them, or
21 I had nae worked with any of them.

22 Q. How familiar were you with their experience? We have
23 heard, for example, that PC Tomlinson and PC Good were
24 probationers and PC McDonough was new in the job?

25 A. Yes, I think PC McDonough had only come in a little over

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1 two or three weeks. PC Good I'm sure joined not long
2 after I went to the team so she could only have had
3 a couple of months. I'm sure PC Tomlinson was almost
4 coming out of his, if not just out and obviously I just
5 checked the profiles and I know that there was a couple
6 of cops with 20 years or around about service, then you
7 would have the in-between.

8 Q. You have described in your statement that you were aware
9 of PC Short. She had only been in the response team for
10 a matter of weeks.

11 A. Yes. When I was Glenrothes sergeant just as I was
12 moving to become custody sergeant, she came to my old
13 team, so I was aware of her within the station.

14 Q. You have said you had been based in Kirkcaldy since the
15 previous November. Had you often sent the Response Team
16 4 out on calls as part of your duties?

17 A. That's the sergeant's job. I oversee the whole
18 division, so the sergeants are trusted to run their own
19 team and to run their own resources as long as it's to
20 the required standard or things are getting done
21 properly, or they are attending in a system that they
22 should be and if that's the case they're allowed to run
23 their teams and I'm there for advice and to oversee
24 things.

25 Q. So Acting Police Sergeant Maxwell was running the team,

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1 but you had oversight at that time?

2 A. Yes, of all areas: north east, east, the west and
3 Kirkcaldy. All sergeants would do their briefing and
4 put out their teams appropriately and I would be the top
5 of the umbrella overseeing everything that was
6 happening.

7 Q. And your duties presumably kept you mainly based in
8 the police office rather than out on the streets?

9 A. Yes. There was opportunities to go out, handover shifts
10 or serious incidents that required me to be visible or
11 experience, but a lot of my role at that time was
12 dealing with police complaints, other memos, other
13 paperwork. You can imagine seven sergeants would be
14 sending you daily requests or memos and also I could
15 watch the calls coming in from the call handling system
16 so it would allow me to make sure if anything was
17 flagged up that the sergeants had a grip of it.

18 Q. So you could see -- could you see the STORM call cards
19 as calls would come in to ACR?

20 A. Yes.

21 Q. And did you have that on a system in front of you,
22 a screen in front of you as you were in the office?

23 A. Yes. I generally had two screens and I would keep the
24 call card up isolated on the one screen at all times.

25 Q. And would that be the call card for all the areas that

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1 you had under your command?

2 A. Yes.

3 Q. We have heard that the duty inspector at ACR, on
4 3 May 2015, was Inspector Stewart. Do you remember him?

5 A. I actually don't recall if it was that certain
6 inspector, but I was one of the few inspectors when
7 I came on I used to phone ACR and let them be aware that
8 it was me on duty for however many days. Maybe their
9 shift system is different to ours. I have certainly
10 worked with him before as has others.

11 Q. Could we look please at paragraph 52 of your Inquiry
12 statement. You say here you phoned the chief
13 inspector -- am I right -- so:

14 "So I phoned Chris Stone. Whilst I was on the phone
15 to him, if I recall, I'm sure the call came in that
16 there was a man with a knife. So I'm speaking to him
17 and I was watching it, I was listening to radio
18 transmissions from Bilston Glen at the time.

19 Bilston Glen is our ACR."

20 A. Yes.

21 Q. So from what you have said this morning you have on your
22 screen the call cards from Bilston Glen on your screen
23 showing the incidents that are coming in and you're on
24 the phone to the chief inspector, Chris Stones, who is
25 your sort of senior officer on that day, he is on duty.

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1 Could you describe to us please what you were discussing
2 at that time with Chief Inspector Stones?

3 A. As previously stated it would be all morning business,
4 what my strategy or tactics for that day would be, who
5 are priority suspects, if we had any missing people, any
6 sudden deaths, just the daily business, ensure he was
7 comfortable with my vision for how the journey of the
8 shift was going to go, or if he knew anything or had any
9 tasking that I wasn't aware of.

10 Q. When you saw the call come in about the man with a knife
11 do you remember what time that was?

12 A. I don't without looking. It would be after the briefing
13 I would imagine between 7.12, 7.20 maybe.

14 Q. Right. Without going to your operational statement if
15 I say to you at that time you estimated it about 7.15 in
16 the morning, would you say that was about right?

17 A. Yes, because I used to start doing my phone calls about
18 20 past 7. I would allow the sergeants to do as they do
19 in the morning, then I would phone round for the
20 catch-up. But in-between that I would phone the chief
21 inspector first to see if he had anything pressing that
22 I could relay to them, so that would be roughly my sort
23 of morning, two times a day shift routine.

24 Q. When the call came in and you saw it on the screen did
25 you speak to Chief Inspector Stones about that call?

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1 A. Yes, I would definitely would have said to him "That's
2 a call card came in alleging a man with a knife", or
3 a knife incident.

4 Q. What do you remember about his response to that?

5 A. I can't recall. I would imagine it would just be
6 professional, "Keep me updated", or there's every chance
7 that he would have linked into it as well because
8 obviously that's high priority. Anything like that he
9 would definitely be having an interest.

10 Q. We have heard other officers call it a high risk
11 incident and we understand that at different points in
12 time calls were graded Grade 1, which we understand is
13 the sort of top grade in terms of immediate risk to
14 life. Do you agree with that?

15 A. Yes.

16 Q. Yes. What went through your head when you saw that
17 incident come in on your screen?

18 A. Well, my initial reaction would be to get the veracity
19 of it, to get the context of it and to find out how it
20 was articulated. A lot of calls that come in with
21 knives or sort of the 90-year old mispers or three- or
22 four-year old mispers some of them are not accurate so
23 I would be listening out for ACR's and the sergeant's
24 grip and I would need more information before I got
25 involved if required.

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1 Q. Now just so people understand what you're saying,
2 a "misper" is a missing person, is that right?

3 A. Yes. Not everything is as seen as per the call card, so
4 like anything I would need more detail, I would need
5 more articulation. I would need to go more
6 comprehensive.

7 Q. You're not listening to the 999 calls as they come in,
8 you're seeing what is on the STORM cards on the screen?

9 A. Yes and sometimes that could come up "Knife incident"
10 and that's it and whilst the call taker is getting more,
11 the call card would get updated as it was going. So, as
12 I say, I would need more information to find out the
13 veracity and a bit more articulation so we can make
14 a risk assessment and a guided judgment.

15 Q. In your operational statement you said that you
16 immediately realised that this was a very serious report
17 and officer safety and public safety was at risk. Do
18 you remember that?

19 A. If I have said that, again without looking, I would
20 imagine it was because there were multiple calls coming
21 in and there would be a reason for that.

22 Q. Well, let's look briefly at the operational statement.
23 This is the one that's not dated and if we can look at
24 page 2 and it is paragraph 7, if I remember rightly.
25 Paragraph 7, so if you count down from the top.

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1 A. Seven from the top? Or not from the start?

2 Q. From the top.

3 A. Yes.

4 Q. "I immediately realised that this was a very serious
5 report of which officer safety and public safety was
6 at risk."

7 Let's look at the immediately preceding paragraph,
8 so paragraph 6, just to put this into context:

9 "I then heard on radio transmissions that more calls
10 had been received regarding this male brandishing
11 a knife at vehicles and was [I think that should say]
12 still walking about the streets (Hayfield Road) armed.

13 At this time I heard [Acting Police Sergeant] Maxwell
14 request an armed response vehicle and dog unit to attend
15 due to the severity of the reports. This request was
16 not acknowledged and it took several attempts to receive
17 an acknowledgement stating contact was made."

18 So just to be clear, you have told us about
19 recognising the knife incident when it came on the
20 screen, you're on the phone to Chief Inspector Stones
21 and here in your operational statement you talk about
22 hearing radio transmissions as well. Are you listening
23 to radio transmissions at the same time?

24 A. Yes, I would be attempting to obviously.

25 Q. And that's the Airwaves transmissions?

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1 A. Yes. My radio would be on always. I would be looking
2 at the screen and I was obviously on the phone at the
3 time.

4 Q. So you're on the phone, your radio -- is that on the
5 desk or on your uniform?

6 A. It would be on the desk at that time. I didn't have my
7 vest on.

8 Q. And you've got two screens I think you said in front of
9 you.

10 A. Yes, one is just email, memos, anywhere else to go;
11 another one would have the call card up.

12 Q. When you realised that this was a very serious report
13 were you still on the phone to Chief Inspector Stones at
14 that time?

15 A. Yes.

16 Q. And you have said in the preceding paragraph,
17 paragraph 6 on your operational statement, you had heard
18 Acting Police Sergeant Maxwell make an Airwaves
19 transmission.

20 A. Yes.

21 Q. Was that the point of time that you realised it was
22 serious, or was it just when you were looking at the
23 screen?

24 A. Well, if we go back, as I have said to you, you need
25 veracity depending on how the call card has been

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1 articulated. A lot of these things are isolated and
2 they have one call card reference number, so if there's
3 multiple calls coming in from the one area and they're
4 almost verbatim or extremely similar, and we can hear
5 things like that, yes, that definitely changes the
6 flavour of the picture and you could almost guarantee
7 that it is serious and we would obviously be reacting to
8 that, even if it was only isolated and malicious or
9 misconstrued, we would still send a unit, but when this
10 is happening then so quick, that definitely changes the
11 landscape.

12 Q. You have talked about multiple or a number of calls
13 coming in which were similar, was your -- what was your
14 impression about the nature of these calls that were
15 coming in? You have said they were similar?

16 A. Yes, just a -- it was obviously a genuine call. There
17 was obviously evidence there to say that this was
18 actually happening.

19 Q. We have heard other evidence that because there were
20 a number of calls from different people, that that led
21 certain officers to take the view that this was
22 a genuine matter and not a malicious call.

23 A. Yes, that's just what I have said, yes.

24 Q. Yes.

25 A. Obviously we attend a lot of things that they are not as

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1 they appear.

2 Q. When you mention that they were similar, can you tell us
3 what the similarities were as they appeared to you? Do
4 you remember?

5 A. Not 100% but I think it was just similar, larger male,
6 white T-shirt, knife. I think I could recall maybe one
7 taxi said that the male sort of lunged at the car, one
8 car had to turn round. It was just a similar vein of
9 nature in the same area.

10 Q. Were you aware of that area in Kirkcaldy?

11 A. Yes, I know it, yes.

12 Q. Thank you. Can we go back to your Inquiry statement
13 please, paragraph 60 and 61. This is a section entitled
14 "Risk assessment". There's a reference there to your
15 operational statement at page 2, it says:

16 "Control allocated ..."

17 That will be ACR:

18 ".... allocated a single unit, crewed by ..."

19 Tomlinson and Short to the call ... Maxwell made himself
20 known on the radio and requested that all available
21 units attended in the immediate area to offer
22 assistance ... [and] on hearing this, I agreed with the
23 rationale and risk assessment made by ... Maxwell."

24 And you were asked at paragraph 61 what you meant by
25 that. You also talked there about thinking about road

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1 blocks, containment, negotiators and anticipating the
2 strategy.

3 Can I ask you to what extent you agreed with the
4 risk assessment made by Maxwell?

5 A. Well, as previously discussed, if the call cards came up
6 initially I would imagine APS Maxwell has sent one unit,
7 or ACR has, to go and see if there's anything in it, if
8 there's any veracity, and back to discussing the
9 multiple calls coming in, he has obviously took the
10 decision that it would be better if there were other
11 units there to -- which I agreed with and obviously you
12 would be looking at firearms because it was a knife
13 incident, or the dog unit would be the best protocol to
14 go. So yes, just because of how these multiple calls
15 were coming in I agreed with him sending more responses.

16 Q. So it would appear that in calling for all units that in
17 your view was that it was a serious matter and the
18 sergeant acting that day, Sergeant Maxwell, was treating
19 the matter seriously?

20 A. Yes.

21 Q. You have said that the dog unit was the best call. What
22 do you mean by that?

23 A. Well, it doesn't work on every occasion, but if you've
24 got a highly agitated male or female and your dog turns
25 up, 99 times out of 100 you have a safe conclusion to

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1 that, they surrender any weapon they have and it
2 deescalates the situation.

3 Q. And why is that?

4 A. Apart from layman's terms having a snarling Alsatian
5 looking at you, I couldn't answer that to be honest.

6 Q. All right, I think we get the picture. Thank you.

7 Can I ask, did you have the authority to instruct
8 things like road blocks and containment and negotiators?

9 A. Yes, that's my role to put these actions into place if
10 the sergeant forgets or they miss it. It was certainly
11 my gift for a better way that I -- as I say, I was
12 running the division, so if I think the sergeant isn't
13 putting enough effective measures in, or maybe just
14 misthought, if he's got two or three things on the go,
15 yes, it's my protocol to make the roads blocked off or
16 secure the area, make it sterile and get any other
17 resources in, mutual aid like dog units or negotiators.

18 Q. So at that time Maxwell is seeking all units to attend,
19 so further support for Tomlinson and Short. Why at that
20 moment in time did you not consider, in your role as
21 overseer, seeking additional support for Tomlinson and
22 Short?

23 A. Well, he had asked for the dog and the ARV, but same
24 again, I didn't have any further information. We didn't
25 know if the male was still at locus, we didn't know any

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1 of these facts, so he is just applying belts and braces
2 which I think is consistent with the volume of calls
3 coming in, but we're still not there, we still don't
4 have a clear picture.

5 Q. Could I ask you to look at the spreadsheet that you have
6 in front of you and we will look at page 2, and you will
7 see towards the left-hand side the time in the second
8 column, 7.17.23.

9 A. Okay.

10 Q. And this should be -- they have transcribed an Airwaves
11 transmission from Acting Police Sergeant Scott Maxwell.
12 Do you see that?

13 A. Yes.

14 Q. And this is the one where he says:

15 "I want all units to attend that bearing in mind
16 officer safety is there an ARV and a dog as well?"

17 A. Yes.

18 Q. So where you are sitting, you thought that that was
19 a reasonable strategy and you agreed with his rationale,
20 I think you said.

21 A. Yes. As I say, we don't know what we're going to face
22 and there's every chance the ARV or the dog unit could
23 be in Edinburgh, Stirling, so as I say it's probably
24 belts and braces. They could be easily cancelled and if
25 they were required at least they would be en route to

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1 the area.

2 Q. So you having -- what you knew about the calls that were
3 coming in from the screen and what you could hear on the
4 transmissions, you agreed with Maxwell that all units
5 should attend and that a dog was the best idea and we
6 have heard other evidence that if an ARV is to be
7 deployed, that that would have to be the duty inspector
8 at the ACR, that he would have the authority to do that,
9 is that correct?

10 A. Yes. Same again, you have to put the request in and (b)
11 we would have to realise or know what's involved, so
12 yes, you would ask to get the wheels in motion to find
13 out if there's actually one on duty and where they were
14 situated. You would draw his attention to the call card
15 if the ACR inspector agreed he would put wheels in
16 motion to send them en route.

17 Q. You have mentioned the dog and that you could have
18 requested that, so if Maxwell hadn't requested the dog,
19 how would you have gone about making that request? Is
20 that something you do yourself, or is it something you
21 do through ACR?

22 A. No, I would ask ACR if there was a dog on duty and just
23 due to the way the calls are articulated then they see
24 if there's one available and same again, put the wheels
25 in motion because there's a lot of these things we go to

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1 and there's nothing in it so the other units would get
2 stood down and we could cancel the dog as well.

3 Q. And is it easier to cancel specialist resources if
4 you've got them en route than it is to get them to leave
5 and be on the route?

6 A. Well, it's not uncommon for me to have a misper and in a
7 wooded area and the dog's maybe the other side of Leith,
8 he's an hour and ten minutes away, so sometimes it's not
9 viable, but yeah, I would say it's a good tactic to at
10 least find out where they are, see if they can start
11 making inroads in.

12 Q. Thank you. When it was happening and you can hear
13 Sergeant Maxwell making this request on the Airwaves
14 transmission, were you still on the phone to
15 Chief Inspector Stones?

16 A. Yes. I was still on the phone. I could remember it
17 kind of escalated quickly and I eventually said to him
18 to keep an eye on the call card, presumably he would be
19 making himself in. I then got kitted up and made my way
20 to locus.

21 Q. I will come on to that in a moment. Did Chief Inspector
22 Stones give you any advice about how to handle this
23 situation?

24 A. Not that I could recall. I think he would have trusted
25 me to do the basics and I would update him when I had

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1 more information.

2 Q. Did you seek any advice from Chief Inspector Stones at
3 all?

4 A. I can't recall to be honest, but I don't think so.

5 Q. At that time were you comfortable with your role and
6 what was happening on the ground?

7 A. Yes, because, as I said, it happened so quickly,
8 I hadn't even had time -- I was still on the phone. By
9 the time I had to get my vest and get kitted up, it had
10 kind of -- it obviously escalated right up and from
11 getting basic information to future shouts, it happened
12 that quick, it was quite unusual.

13 Q. Can I ask you about paragraph 53 before we leave this
14 section of your statement. You say here --

15 A. Just in the --

16 Q. In your Inquiry statement, yes, sorry. It's at the
17 bottom of page 9.

18 A. Okay.

19 Q. "As inspector, everything has got to come through me,
20 anything of a serious note. So I'm keeping the force
21 and the officers safe. I'm thinking about scrutiny, I'm
22 thinking about anything that's going to be coming
23 through, so anything of a serious note, or, in fact, any
24 call that comes in I generally would look at."

25 I'm interested in what you say about you are

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1 "keeping the force and the officers safe" and "I'm
2 thinking about scrutiny"; can you give us a little bit
3 more explanation?

4 A. Well, I think that's just framed different. I think
5 it's previously what I have just said. I was in charge
6 of daily business so any integrity or force reputation,
7 or if Dunfermline only had four staff when they should
8 have seven or eight, I would have to look after their
9 safety and public safety, service delivery. I would
10 have to ensure that everything was as should be, look at
11 mutual aid -- just what I said previously, I just think
12 that's framed differently.

13 Q. All right. Can I ask you to look at paragraph 57. I'm
14 just going to ask you this because I think you might
15 want to change it. You say there:

16 "Then I'm sure the transmissions got a bit more
17 frequent, so it escalated a wee bit, and I think when
18 I asked for the dog and the ARV there maybe wasn't any
19 locally, because sometimes when you phone up the dog
20 might be in Edinburgh, might be in Stirling, depending
21 what it had been deployed to before."

22 Now, I have just asked you to look at the
23 spreadsheet and it was actually Sergeant Maxwell that
24 called for the dog and the ARV and I wondered if maybe
25 you would want to correct your statement insofar as you

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1 suggested you called for the dog and the ARV.

2 A. My gut feeling to that would be, did he get a response
3 from ACR? Because if they didn't I would reiterate the
4 request, or I have maybe missed him in the early mayhem,
5 him saying it, and I would be asking for it, but all my
6 sergeants were -- obviously knew what was expected so
7 one of the two. I'm assuming that ACR maybe not got
8 back and I have tried to push it on again.

9 Q. We have certainly seen on spreadsheet that Maxwell made
10 that request.

11 A. Yes.

12 Q. And I'm going to come on to the other transmissions and
13 you can listen to the other calls you made, but we can
14 come back to this, Mr Kay, if you prefer, but I have not
15 been able to find a call from you asking for the ARV and
16 dog and it really -- it's just a minor matter I just
17 wanted to clarify with you.

18 A. Unless I have spoke to Scott by other means because
19 I think at some stage I asked for no points-to-points,
20 keeping it obviously for transparency, so I will stand
21 corrected if I've got it wrong, but either I have told
22 him to do it through that, or he has not been answered,
23 but if it's not there, I have maybe not done it unless
24 it has been over the phone before I left the office.

25 Q. We will come onto it. At the moment we've got -- we

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1 will come on to the other transmissions in a moment.

2 Tell me about the point-to-point. We have heard some
3 evidence about point-to-point calls where you are
4 essentially speaking to one other officer, but it's not
5 part of the record of Airwaves transmissions that we
6 have available. Were you on point-to-point with anyone
7 that day?

8 A. I couldn't answer that to be honest. I mean maybe --
9 generally if you're at something that's quite high
10 intensity point-to-point is good for -- you're not
11 taking up air space, but at the same time you miss
12 what's happening because it cuts it off, but when this
13 was getting to its more critical stage I asked for no
14 point-to-points so that everything would obviously be in
15 the air and would get transcribed.

16 Q. So you have one radio that --

17 A. Yes.

18 Q. -- you can either hear all the Airwaves transmissions,
19 or you can make a point-to-point call to an individual
20 officer?

21 A. Yes, it's just like a phone call, but if I do that, if
22 I point-to-point you, we can't hear anything else. But
23 as I say, for a sensitive nature, a domestic or
24 something involving drugs maybe, if you do
25 point-to-point (inaudible) checks, there's nobody going

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1 to hear it, so you have not got any of that data
2 protection or anything like that going out.

3 Q. But you don't remember if you were doing point-to-point
4 that morning?

5 A. As I say, normally if things were going to that
6 intensity, I probably would on occasion, but I can't
7 recall. As I said, it's a long time ago and once it
8 sort of ramped up a bit, I obviously asked for no
9 point-to-point.

10 Q. All right. At any stage did you -- either when you were
11 on the call to Chief Inspector Stones, or at that moment
12 in time, did you consider declaring this to be
13 a critical incident?

14 A. That has to come from the super rank, super or chief
15 super and it has to meet a certain criteria, but same
16 again, when I was on the phone to Chief Inspector Stones
17 at that time we didn't have the full picture, so that
18 was definitely not in my thoughts.

19 Q. And would you have had the authority to do that in any
20 event, from what you have just said?

21 A. No. I could declare to ACR I was going to contact the
22 Super that I think this will be a critical and basically
23 what happened when I spoke to Garry McEwan.

24 Q. But that wasn't until later?

25 A. Yes. As I say, it's got to meet a certain criteria

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1 before it becomes a critical. It could be a large-scale
2 community incident, or could be a large-scale incident,
3 but to hit the remit of that it's got to come from Super
4 or above.

5 Q. At any time, at this moment in time when you're at your
6 desk did you consider a PSU?

7 A. No because we asked for the ARV and they would be linked
8 almost certainly to the PSU.

9 Q. Thank you. Could we look at paragraph 71 of your
10 Inquiry statement. This is in relation to what you are
11 seeing on the screen on the STORM cards and it says:

12 "If he's trying to slash vehicles ..."

13 So it's about the man --

14 A. Okay.

15 Q. "If he's trying to slash vehicles on the way past or
16 he's trying to stab them or whatever he's doing, it's
17 not rational behaviour. So you'll be thinking what's
18 the reason behind it."

19 I'm interested in that paragraph. Can you tell us
20 what your thought processes are there?

21 A. Well, as PIO if the officers are attending the scene and
22 I'm asking for an update you're obviously -- that is not
23 rational behaviour in my opinion. You will be thinking
24 are they having a mental health episode, they're under
25 the influence of drink or drugs, have they fell out with

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1 their partner, have they had a bereavement loss? So you
2 would be trying to link something together that might
3 help you reason with the person, might give you advance
4 knowledge for what to do next.

5 Q. Was that going through your head as a possibility just
6 from the information you had on the STORM cards?

7 A. Yes. As I say, that's definitely not normal behaviour.

8 Q. Right. And when you said, "You'll be thinking what's
9 the reason behind it", the reasons include it could be
10 a mental health episode, or he could be under the
11 influence of something?

12 A. Yes.

13 Q. Can I ask you briefly about some training you have had?

14 A. Yes.

15 Q. I think we have your training records and I won't go to
16 them at the moment unless you want to clarify it, but
17 you had had training in June 2013 about critical
18 incident decisions, silver command response, is that
19 right?

20 A. Yes.

21 Q. And was this training that you had had in anticipation
22 of you doing the PIO role?

23 A. No, it was just sort of third level manager courses for
24 inspectors, chief inspectors, but I actually attended
25 them as a sergeant. I just went to try and give me an

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1 insight and help me for future interviews, etc.

2 Q. And was that training about managing incidents, like
3 knife incidents or any incident?

4 A. Yes, it was more modular discussions about stress
5 awareness, etc, yes, it would be things like, "If this
6 happened what would you do?" I think it was the Glasgow
7 incident at the airport that they used and it was just
8 more for learning and what was available to yourself.

9 Q. Thank you. Could I ask you to look at the spreadsheet
10 again please. Now, if we turn to page 3 you will see on
11 the left-hand side, at roughly about 7.20, 7.20.13 to 21
12 seconds, Inspector Stewart is on Airwaves making
13 a transmission.

14 A. Okay.

15 Q. Saying that he's:

16 "Inspector Stewart area control room to the set
17 attending. I'm monitoring this obviously from an ARV
18 perspective. If you get sightings of the male you need
19 to make an initial assessment yourself and feed back
20 through straight away and I will listen out on
21 the channel."

22 Were you able to hear that message from Inspector
23 Stewart?

24 A. Yes, I would imagine so.

25 Q. Right. And then we have heard that shortly before the

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1 conclusion of that message that Walker and Paton arrive
2 in a Transit van at Hayfield Road. That's actually at
3 7.20.23. If you go down the timings you will see it
4 says:

5 "Police van stops at Hayfield Road."

6 Do you see that?

7 A. What time is that at? 7.20 ..?

8 Q. 7.20.23.

9 A. I've got 7.20.06, 7.20.13, 7.20.35. Oh, 23, yes, sorry.

10 Sorry, I'm in the wrong column. Yes, I've got it.

11 Q. No problem. The first column is the time and the second
12 column is if there's an Airwaves transmission that's the
13 precise time.

14 A. Okay.

15 Q. So this is the moment in time where the first two
16 officers arrive at the scene and it's PC Walker and
17 PC Paton.

18 A. Yes.

19 Q. What I would like to do is play a sort of less than
20 three-minute clip of this. It's going to come on the
21 screen and you will see the CCTV at the bottom of the
22 screen and you will also hear the Airwaves transmissions
23 and during this time I think, if all goes well, you
24 should be able to hear yourself making transmissions as
25 well. So we will play roughly three minutes of that.

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1 If you have a difficulty seeing it will you let me know?

2 Will you say? We will put it on the screen now and we
3 will see if you can actually see it.

4 A. Yes, I can see it.

5 Q. Have you got that now? So you will see at the bottom
6 there's the CCTV from the nearby Gallagher's pub?

7 A. Yes.

8 Q. You may have seen some of this already, Mr Kay. We have
9 used this with other witnesses. At the top left-hand
10 corner there's a real time clock which at the moment is
11 on 7.19.37. Do you have that?

12 A. Okay, yes.

13 Q. And then you will see underneath that there's sort of
14 buttons: "101 calls", "999 calls" and a green button
15 that says "Airwaves". So that's on when Airwaves
16 transmissions are being made, but once we play it you
17 will probably be able to hear it.

18 Now, I would like us to go to 7.20 and as close to
19 52.56 as we can get to. That's fine, anywhere there is
20 absolutely fine. So you will have seen that -- you
21 maybe noticed that van coming into the screen.

22 A. Yes.

23 Q. And you see the "Reconstruction" tile on the top of the
24 screen in the middle?

25 A. Yes.

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1 Q. That's a bird's eye view from a 3D model, so we will
2 play this --

3 A. Okay.

4 Q. -- until 7.23.49 and then I will come back and I will
5 ask you questions, but you should be able to hear the
6 audio at the same time. All right?

7 (Video played)

8 Were you able to hear those Airwaves transmissions
9 as we played that segment?

10 A. Yes, yes.

11 Q. Excellent. Can we go back to page 4 of the spreadsheet
12 and I will ask you some questions about your
13 transmissions if I may.

14 A. Yes.

15 Q. So towards the top of page 4 you will see in the second
16 column the time 7.20.56. And it says:

17 "From India 4 control, keep off that, somebody
18 activated the emergency button."

19 A. Yes.

20 Q. How were you able to realise that someone had activated
21 the emergency button? I think if we see -- just on the
22 bottom of page 3 we see that that was PC Alan Paton's
23 emergency button was switched on at 7.20.42 and then you
24 come on at 7.20.56 and essentially acknowledge that an
25 emergency button has been pressed. How could you know

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1 that?

2 A. Your radio vibrates and the button on top goes red and
3 it makes a noise.

4 Q. Right. And then what was going through your head then
5 once you realised that someone had pressed the emergency
6 button?

7 A. Immediately just keep the Airwaves clear so we could get
8 a better update.

9 Q. Can you tell when your radio vibrates whose emergency
10 button has been pressed?

11 A. I don't think the personal radio does, but I think ACR
12 can.

13 Q. But that's not information that's available to you?

14 A. Not that I could recall.

15 Q. That's fine. And then are you carrying on listening to
16 these transmissions as you sit at your desk?

17 A. I would think I would be in motions of trying to go to
18 locus at this time.

19 Q. Well, let's look at the next transmission you make,
20 which I think is on page 5, and you will see 7.21.55.

21 A. Okay.

22 Q. It says:

23 "PS Maxwell [that's Sergeant Maxwell] can you arrive
24 there and give me an update please?"

25 Where were you when you made that transmission?

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1 A. I'm not 100% sure but I would probably guess somewhere
2 in-between getting my kit on and making myself to the
3 back yard for a vehicle if I'm speaking to CI Stones.

4 Q. And then Samantha Davidson responds indicating:

5 "We're just approaching and I'll give you an
6 update."

7 So she appears to be responding to your
8 transmission?

9 A. Yes.

10 Q. And then if we turn to page 6, at 7.23.10 you say:

11 "411 passed the message here, India 4 control, I'm
12 listening."

13 We don't have a clear transcription of that. Do you
14 remember anything else that you said?

15 A. On hearing it there, same again, I don't think he has
16 had a reply to something and I have said, "Pass it
17 here". Control will be listening, they're probably
18 doing other tasks, but whatever it was I would
19 definitely know the details or I would be aware of it.

20 Q. Then at 7.23.30 you make a transmission:

21 "Yes, yes, can I get an update on any injury?"

22 What was going through your head at that time?

23 A. Well, I think they have said that, "There's an officer
24 down and we're still struggling with the male", so
25 I would want to know if there's any injury to any

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1 officers or any member of the public.

2 Q. Oh, right. You're absolutely right, on page 4 at
3 7.21.02 you will see it says:

4 "Officer injured, PC Short, male."

5 A. Yes.

6 Q. And then at the top of page 5 PC Smith has said:

7 "One officer's been punched to the back of the head.
8 No obvious serious injury."

9 A. Yes.

10 Q. So you're then seeking an update on any injuries at that
11 time on page 6, I think I was on, and that was at
12 7.23.30 and then at 7.23.49 you say:

13 "Yes, yes, just continue to stay safe and keep full
14 control. Use all restraints necessary. Control, can
15 you get an ambulance please for PC Short."

16 A. Yes.

17 Q. Why were you asking for an ambulance for PC Short? Why
18 did you have to ask for an ambulance?

19 A. Same again, if somebody has asked and it's not been sort
20 of responded to and I'm positive that I heard that she
21 was maybe going to need one, by Scott Maxwell says
22 before so I have asked for an ambulance for her because
23 she is injured and it has been previously requested and
24 I'm obviously still not aware if there's an injury to
25 anyone else at this stage.

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1 Q. Having heard that PC Short has been struck on the head
2 was that an indication that an ambulance was required?

3 A. Yes, I think I'm just reiterating what Scott Maxwell or
4 DS Davidson has already said. Again I'm presuming in
5 amongst all this intensity that control's not give them
6 sufficient answer.

7 Q. What concerns did you have about the communication from
8 control?

9 A. I cannae comment on that to be honest. It was that long
10 ago and as you can see how quick it's escalated, I think
11 hence one of the things I have come on and asked for
12 radio silence unless it's necessary for brevity reasons.

13 Q. Can I go back to what appears from the spreadsheet
14 certainly to be your first transmission, 7.20.56, page 4
15 of the spreadsheet. This appears to be your first
16 transmission. Would you agree that this is the one
17 where you say:

18 "From India 4, control keep off that, somebody
19 activated the emergency button."

20 Is that the first transmission you made that day in
21 relation to this incident?

22 A. It will be if that's articulated, yes.

23 Q. Can I ask you --

24 A. I mean --

25 Q. Sorry.

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1 A. Yes, because it's only sort of -- we have only just
2 arrived previous to it and as I said previously, we're
3 still not fully aware of the landscape and what's
4 happened and from experience some people get excited and
5 they speak too long and they don't go for accuracy and
6 brevity, so if it's not an immediate succinct sort of
7 update, I would ask to find out why we have sort of
8 pressed the emergency button and just a wee bit more
9 comprehensive update so we could get a better view of
10 what's happened.

11 Q. What information would you -- were you looking for in
12 terms of an update?

13 A. Well, unless I'm reading it wrong and from memory we
14 still don't know fully what's happened.

15 Q. So you would have wanted to know what was happening?

16 A. 100%, yes.

17 Q. And can I ask -- you may have explained this already,
18 but when you used the words "Control keep off", what
19 were you --

20 A. Yes, that's me --

21 Q. What were you hoping to achieve by saying "Control keep
22 off"?

23 A. If we could find out who has pressed their button, why
24 they have pressed their button and same again to get
25 a more formal, better update.

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1 Q. Right. And you will see from having listened to this
2 that up until this point there doesn't appear to have
3 been a message from you seeking any ARV or a dog unit.

4 A. Yes. Because, as I said, Scott's either asked for it,
5 or I have heard it being asked for.

6 Q. So perhaps there's just a simple mistake in your
7 statement where you say that you asked for --

8 A. Yes. As I said before, I will stand corrected on that.
9 I have maybe phoned the ACR before I have left, or
10 I have spoke to Scott at the point when he was en route
11 to say "I will join you". Obviously he is the sergeant,
12 you asked for it so then get it all sorted, I was still
13 doing the phone. But if it is a mistake I will stand
14 corrected, but I would be surprised if I didn't ask for
15 it.

16 Q. Why would you be surprised?

17 A. Because as PIO we have processes for every single
18 incident and due to the volume of calls that was coming
19 in there I would definitely look for these resources to
20 be part of my strategy.

21 Q. Thank you. You -- if we could just briefly look at
22 paragraph 66 of your Inquiry statement, you mention
23 that:

24 "The officers are the eyes and ears. Advice from me
25 or Sergeant Maxwell might not fit the situation. There

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1 might be actually nothing ongoing or there might be two
2 people there might be three, but you go along with the
3 set protocol to make sure you do it professionally and
4 correctly and then that's where you need the sit reps or
5 the updates. Everything's fluid and everything's
6 dynamic and it's forever changing."

7 Could you explain what you mean when you say you go
8 along with a "set protocol", what's that?

9 A. It's back to what I said, if you think it's a firearm
10 incident with a firearm or a knife, the protocol would
11 be go, have a look but stay safe. ACR would get
12 involved, they would take control, then the other
13 tactics would come in. There's other set protocols
14 where you might need a negotiator. There will be other
15 set protocols for bladed weapons, etc, so same again,
16 everything we go to is not as it seems, but we have to
17 get there, trust the officers to dynamically assess
18 what's going on and feed back correctly so you can go
19 into stage 2 or 3 of your planning.

20 Q. Right. And as far as you were concerned in your role,
21 it was the officers who were the eyes and ears and would
22 feed back more information to you?

23 A. Well, obviously I can't make any informed decisions if
24 I'm not there.

25 MS GRAHAME: Yes. Right. I'm conscious of the time. Do

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1 you wish me to carry on since we started late?

2 LORD BRACADEL: I think perhaps we could carry on just now,
3 yes.

4 MS GRAHAME: Can I ask you what your expectations were as
5 PIO in relation to Sergeant Maxwell and any update from
6 him?

7 A. I would expect him to go, be professional. I would have
8 expected him to probably give me more information than
9 required to make sure he didn't miss anything from any
10 incident. I would expect him to give me more than
11 I needed so I can make an informed judgment and I could
12 put -- whatever incident I could put the next stage into
13 plan. Yes, I would expect him basically to do his job
14 professionally and not miss anything.

15 Q. Thank you. When you made the transmission seeking an
16 ambulance for PC Short -- let's just look at that again.
17 It's on page 6 of the spreadsheet and it was at 7.23.49.

18 A. Yes.

19 Q. Was there any reason why you didn't also call for an
20 ambulance for the person who had been restrained,
21 Mr Bayoh?

22 A. Just back to what I said going on the fact that I know
23 that she was injured and somebody had asked for an
24 ambulance, going on DS Davidson, an experienced DS who
25 has told me the male is still under restraint,

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1 I obviously got one ambulance en route. All the
2 information that was gleaned to me, bearing in mind not
3 just the other male involved, there could have been
4 members of the public or other officers injured, but as
5 it stood at that stage we knew there was one injury and
6 there had already been an ambulance requested.

7 Q. Had you known at that time that Mr Bayoh had been struck
8 to the head with a baton would you have considered
9 calling for an ambulance for him as well as PC Short?

10 A. 100%.

11 Q. Why do you say that?

12 A. Because it's a male succumbed to a blow to the head,
13 so -- I mean he's not any different from PC Short. If
14 they both had head blows, they would both need to be
15 checked over.

16 Q. Had you known at that stage that he had been sprayed
17 with CS and PAVA spray, would you have also called for
18 an ambulance for him?

19 A. Yes, that would be protocol for me. We would ask him to
20 walk about and clear itself sufficiently with the wind
21 etc, as a recognised practice, but we would definitely
22 get an ambulance to check him over also.

23 Q. We may have heard that a custody sergeant who receives
24 a prisoner in the police office, if he has heard that
25 someone has been sprayed or batoned, they would

Transcript of the Sheku Bayoh Inquiry

1 automatically want that person to go and be checked over
2 by a doctor. Is that your understanding?

3 A. I have not been in custody for a while, but if I was
4 still a sergeant as I would do, yes, I would definitely
5 follow that process.

6 Q. So even if they're walking about, that's still --
7 medical attention is still something you would look for?

8 A. Yes. You have to think that's like phase 2 or phase 3,
9 he's now our responsibility within the custody division,
10 so I would imagine for a bit of comfort that they would
11 check him out also. If it's not the process now,
12 obviously I have been out a while, but I would be
13 surprised if it was not process, but I would certainly
14 be ensuring that everything was okay and getting one in,
15 or at least the physician, the nurse physician that the
16 force has.

17 Q. Did you have any concerns at that time about the limited
18 information that was being transmitted about the person
19 who was being restrained by officers?

20 A. Yes and no. The no part because I think you're looking
21 at two and a half to three minutes, that escalated so
22 quick and the fact that I still can't make an informed
23 decision, I still don't know the full landscape, but the
24 sergeant's not there, then the DS turns up, we start to
25 get a wee bit more information. Just with how rapid it

Transcript of the Sheku Bayoh Inquiry

1 escalated, and obviously, as you could imagine, I'm not
2 really wanting to come on the radio because I'm trusting
3 who is there because we can hardly hear a lot of the
4 radio as it is.

5 Q. So you said yes and no. Is there anything you want to
6 add to that? You have talked about no because it was
7 all happening very quickly. What was the yes?

8 A. Obviously in normal situations you would get a better
9 update and I could know what I'm reading so because it
10 has happened so quick -- that's the yes part, but no,
11 I understand how dynamic it was that as you can see by
12 the articulation there wasn't any sort of opportunity or
13 chance to feed back into myself.

14 Q. Thank you. Can I go back to you describing leaving
15 Kirkcaldy Police Office, getting your kit and deciding
16 to leave.

17 LORD BRACADELE: Ms Grahame, if you're moving on to
18 something different this could be an opportunity to take
19 a break, so we will take a break now.

20 MS GRAHAME: Yes, thank you.

21 (11.38 am)

22 (Short Break)

23 (12.15 pm)

24 LORD BRACADALE: Yes, Ms Grahame.

25 MS GRAHAME: Thank you.

Transcript of the Sheku Bayoh Inquiry

1 Hello, Mr Kay, I'm back again. Can you hear me?

2 A. Yes, perfectly.

3 Q. Excellent. We were just going to move on to when you
4 left the office but I have been asked to check one thing
5 with you. I think we have you transcribed as saying
6 "The ARV was linked to the PSU" and I want to double
7 check that that's correct, or did you mean maybe the ACR
8 was linked to the PSU, or did you mean the ARV was
9 linked to the PSU?

10 A. Both. You've got an ARV who was linked to -- still
11 doing the Gordon Brown sort of project, but also the PSU
12 could sometimes link in with them, but if you were
13 asking for one, obviously they would contact everybody,
14 if that makes sense.

15 Q. And what was that link? Do you mean a connection or
16 a contact?

17 A. The reason I didn't specifically say PSU at that time
18 was (a) we didn't know what we were facing yet and (b)
19 they're obviously public disorder control and we didn't
20 have that yet either, so until we knew what we were
21 facing it would appear that there was definitely going
22 to be a knife involved, hence the link for the ARV, but
23 generally, an experienced inspector like Mr Stewart
24 would start in the background finding out what else was
25 available.

Transcript of the Sheku Bayoh Inquiry

1 Q. That's lovely, thank you.

2 Can we move on then and discuss you leaving
3 Kirkcaldy Police Office and if we look at paragraph 68
4 of your Inquiry statement you say that -- we will see
5 that on the screen in a moment, 68. "I heard officer
6 down" -- if we could move up the screen slightly. It's
7 the last line:

8 ".... I heard 'officer down' and I left to get up
9 there."

10 So what you have said in your Inquiry statement is
11 once you heard the transmission "Officer down", you
12 basically got up and left Kirkcaldy Police Office; is
13 that correct?

14 A. Where is that about? Did you say 68?

15 Q. You see paragraph 68, it starts at the bottom of
16 page 12, but --

17 A. Yes.

18 Q. -- the part I have read out is actually at the top of
19 page 13.

20 A. Okay.

21 Q. Do you see that?

22 A. Yes, obviously we heard it was escalating and the
23 numbers of calls coming in, I obviously knew it was
24 quite serious then. When I heard "Officer down"
25 obviously I went up there, apart from being visible and

Transcript of the Sheku Bayoh Inquiry

1 show support for the actual incident was to get
2 a clearer understanding of what was happening.

3 Q. Thank you. And by then you knew that an emergency
4 button had been pressed and --

5 A. Yes.

6 Q. -- there's a transmission saying "Officer injured"?

7 A. Yes.

8 Q. And so very quickly after that you got up to leave. Do
9 you remember how long it took you to leave and get to
10 Hayfield Road?

11 A. I would imagine anything from 7 to 8 minutes to 15, it's
12 quite a long walk from my office to the back yard and
13 then to get a vehicle -- sorry?

14 Q. No, I was going to say did you walk, but I thought you
15 had taken the car or a vehicle?

16 A. Yes. It would have probably taken me, I would imagine,
17 a minute to two minutes to actually get to the back yard
18 where the car is, then obviously manoeuvre and manage
19 the traffic, so again, without checking, I would imagine
20 7, 8 minutes to 12, 15.

21 Q. At paragraph 74 of your statement you say that -- if we
22 can just look at that.

23 A. Yes.

24 Q. "The CID pretty much just beat me to the locus."
25 And that was DI Robson and we have heard about

Transcript of the Sheku Bayoh Inquiry

1 Samantha Davidson as well.

2 A. Yes. I heard Samantha's obviously update she would get
3 back to me. Then obviously when Colin Robson
4 (inaudible) it gave me some comfort that we would
5 probably have full control of the incident and the
6 locus.

7 Q. So when you're en route you're still listening to the
8 transmissions over the radio?

9 A. Yes, it would be on my car set.

10 Q. If you look at page 6 of the spreadsheet and if we look
11 at 7.23.10, we have looked at this in relation to your
12 transmission, but on the CCTV we have heard evidence
13 that a vehicle approached at this time and arrived at
14 Hayfield Road and this was the sixth vehicle and it
15 contained Samantha Davidson and DS, I think, Connell.
16 So that included Samantha Davidson who is in the CID.

17 A. Yes.

18 Q. Was she there before you arrived?

19 A. Yes, I believe so, yes.

20 Q. And then you will see at 7.24, if we look at the entry
21 relating to what can be seen in the CCTV, it says:

22 "A seventh police vehicle arrives. A dark coloured
23 vehicle approaches the roundabout from south Hendry Road
24 and appears to have some flashing lights at the rear
25 window."

Transcript of the Sheku Bayoh Inquiry

1 And if we look at 7.23 on the evidence video
2 timeline I wonder if you can tell us -- we will play
3 that, 7.23 maybe from 57 seconds or thereabouts, and
4 I will ask you to look at the video timeline, Mr Kay,
5 and maybe see if you recognise the vehicle, so this is
6 a dark coloured vehicle approaching the roundabout from
7 south Hendry Road with flashing lights in the rear
8 window, so I will ask that that be played for just a few
9 seconds to see this vehicle.

10 (Video played)

11 You see the vehicle arriving, lights in the back
12 window. If we can just stop there. Did you recognise
13 that vehicle?

14 A. No. There's every chance it could be an unmarked CID
15 vehicle, but not known to me.

16 Q. What vehicle did you arrive in?

17 A. I would imagine I would have had a marked car from the
18 office.

19 Q. What would that look like?

20 A. Well, beat panda car, response vehicle.

21 Q. Would it have Police Scotland markings on the side?

22 A. Yes, it would have full livery on the sides.

23 Q. But roughly about seven minutes from leaving Kirkcaldy
24 Police Office to getting to Hayfield Road, I think you
25 said?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes, if you were driving fast it would probably be three
2 to five minutes, but by the time I walked down, got in
3 the vehicle and negotiated the traffic, it would be
4 a bit longer, I think.

5 Q. Right. So once you arrived at Hayfield Road, who was
6 present?

7 A. I think initially I spoke with Sammy Davidson and
8 PS Maxwell.

9 Q. Who was the senior --

10 A. I'm sure --

11 Q. Oh, sorry. Who was --

12 A. I think Colin Robson was away, so it would be both
13 sergeants, and I'm sure one of the ambulances was away;
14 so it would be the DS and the sergeants being both equal
15 rank, just different areas of work.

16 Q. So we have heard evidence previously of when the
17 ambulance arrived and if you look at page 13 of the
18 spreadsheet towards the top of that page, you will see
19 that the ambulance arrived and was seen on the CCTV at
20 7.33.46, 35 to 46, it says "Ambulance arrives at
21 Hayfield Road". That's page 13 of the combined audio
22 and video timeline.

23 A. Yes. I can see it, yes.

24 Q. Do you see that?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. So 7.33.35, the ambulance arrives, and then at 7.37 on
2 page 14, it says -- Samantha Davidson says:

3 "That's the male on the stretcher and he's going to
4 be going to the hospital."

5 So when you arrived, was -- the ambulance had
6 actually left Hayfield Road?

7 A. I actually think the ambulance with the officer had left
8 and the second one was just in the process of leaving.

9 Q. We have heard that in fact Nicole Short travelled to the
10 hospital herself with another colleague and wasn't taken
11 in an ambulance?

12 A. Okay. Yes, we would arrange transport and we would have
13 officers go with both, probably not connected to the
14 initial attendance.

15 Q. So let's have a look at page 13 again, or page 12 first
16 of all. Page 12 you will see that there's an Airwaves
17 transmission from you at 7.33.14 and it says:

18 "India 4 to DS Davidson."

19 And then you have --

20 A. Yes.

21 Q. -- a discussion with DS Davidson:

22 "Sammy, are you needing a hand from road policing or
23 any other units? Do we need roads closed off?"

24 A. Yes.

25 Q. And then Samantha Davidson has said:

Transcript of the Sheku Bayoh Inquiry

1 "Position at the moment we're doing the road
2 closure, ambulance is just approaching locus, is getting
3 him put in situ."

4 Where were you when that conversation was going on?

5 A. I would imagine I would have been not far away.

6 I obviously can't answer, I think, where identically
7 I was.

8 Q. But you weren't at the scene at that time?

9 A. No.

10 Q. Because you were on --

11 A. (Inaudible - overspeaking).

12 Q. -- that conversation was on the radio.

13 A. Yes.

14 Q. And then on the following page, page 13 --

15 A. Yes.

16 Q. -- DI Robson makes contact with you at 7.33, do you see
17 towards the top of the page?

18 A. Yes.

19 Q. "Inspector Kay from DI Robson".

20 And you say "Go ahead". And then Robson says:

21 "I'm just going to attend here, I'm going to
22 initiate locus protection measures, the natural
23 boundaries, traffic management, that type of thing."

24 Then Maxwell at 7.34 says, "Ambulance at locus."

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Who was the senior officer in charge of the scene prior
2 to your arrival?

3 A. Well, going by rank, it would be Colin Robson, bearing
4 in mind this kind of incident would be handed over to
5 the crime division anyway, so he would be as per process
6 the highest ranking there. Then it would be the two
7 DSSs, the two sergeants, so Colin Robson at that time.

8 Q. Colin Robson would be the most senior officer in terms
9 of rank?

10 A. Yes.

11 Q. And then DS Davidson and Acting Police Sergeant Maxwell?

12 A. Yes.

13 Q. And would Davidson have more seniority than Maxwell
14 because Maxwell was an acting police sergeant?

15 A. Not necessarily. I mean, she has got a different
16 expertise with being in the crime division, but Scott
17 was just as capable of doing anything that Sammy could
18 do. If it was going down more specialised crime-related
19 then she would have more experience, but at the time
20 I don't think she would have been in any better position
21 than Scott.

22 Q. Right, and if we look at page 14, do we actually see at
23 7.37.09 that you have an Airwaves transmission:
24 "I will be there in about two minutes."

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. Then for completeness, at 7.40.54, which is on page 15
2 of the spreadsheet, that's you saying:

3 "Yes, yes, that's me just arrived."

4 A. Yes.

5 Q. So you're there -- you have heard "Officer injured" at
6 7.20 on page 4 of the spreadsheet, at 7.21.02, and
7 that's you arriving at 7.40.

8 A. Yes.

9 Q. Sorry, 7 ... let me just be clear. That's you arriving
10 at 7.40.54, which we see on page 15.

11 A. Yes.

12 Q. Once you arrive, who is the most senior officer at the
13 scene?

14 A. It's role-by-role specific. Once I got there, it would
15 be my responsibility to secure the locus, get the
16 boundaries in place, get extra staff, and remove staff
17 and then I would obviously speak with the CID about
18 moving forward and obviously by the way it was going, it
19 would get handed over to them or the MIT or
20 the specialised department.

21 Q. So do you take over when you arrive in terms of managing
22 the scene and what's happening there?

23 A. Yes, but if Colin Robson has got things in place --
24 I mean, he's a very good officer and extremely capable,
25 now a chief inspector, so if he has done the basics and

Transcript of the Sheku Bayoh Inquiry

1 got everything, I would just be fluid and take on from
2 there.

3 Q. What do you mean by the basics?

4 A. Well, if he's put on the locus protection -- I mean
5 that's a main arterial route towards the hospital, so if
6 he has kind of blocked it off to preserve the integrity
7 of locus or the scene and he has made sure that
8 everything's under control as best could be, I would
9 thereafter look at what was happening and the next
10 stages.

11 Q. Right. We can take the evidence video timeline off the
12 screen.

13 So at the time you arrive, can we look at your
14 operational statement, this is the undated statement at
15 page 3, and this is PS000345, page 3.

16 A. Yes.

17 Q. And you say that you were briefed by Davidson and
18 Maxwell on arrival at the locus. That's -- if we can
19 call it paragraph 3.

20 A. Okay.

21 Q. And are they briefing you because of your role as PIO?

22 A. Yes.

23 Q. Right. And you were then further briefed by
24 Sergeant Maxwell and can you tell us what was happening
25 at the time you arrived in relation to the restraint of

Transcript of the Sheku Bayoh Inquiry

1 Mr Bayoh?

2 A. That was all finished by the time I got there.

3 Q. So the ambulance had removed Mr Bayoh by the time you
4 got there?

5 A. No. I'm sure he was in the ambulance and the paramedics
6 were doing what they do and I'm sure -- I'm more than
7 positive that was the case, and I got briefed on their
8 version of what happened.

9 Q. Right. Can I ask you -- staying at page 3 of your
10 operational statement, it's around halfway down,
11 paragraph 4, maybe paragraph 5, but it starts:

12 "PCs Smith, Walker, McDonough, Good, Paton and
13 Gibson were initially involved in trying to restrain the
14 male."

15 Is this the briefing that Sergeant Maxwell gave you?

16 A. Yes. He is -- obviously when I've got there, him and
17 Sammy's made me aware that obviously PC Short and the
18 male were obviously having to be conveyed to hospital in
19 separate vehicles. CID had went with one of them. They
20 had put the locus on common approach path, sorted,
21 barriers, etc. Then obviously I'm presuming Sammy would
22 do her own thing. Then Scott who is obviously -- I'm
23 his boss on the day, so I have said to him what's
24 probably happened then, and he has probably given me a
25 further -- a wee bit more detailed about what the

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1 officers' involvement was.

2 MS GRAHAME: I'm sorry, Mr Kay, I was going to move on, but
3 I have been asked if we may pause proceedings at this
4 moment. Certain people are having difficulty accessing
5 the correct document, the operational statement, and
6 I wonder if we could just have a moment to --

7 LORD BRACADEL: Do you want me to adjourn?

8 MS GRAHAME: If possible, yes.

9 LORD BRACADEL: Mr Kay, I think your feed will be cut off
10 briefly, but don't go away, because we will come back to
11 you.

12 A. That's fine.

13 (12.35 pm)

14 (Short Break)

15 (12.46 pm)

16 LORD BRACADEL: Ms Grahame.

17 MS GRAHAME: Thank you. I hadn't appreciated that because
18 the witness is giving evidence remotely that the large
19 screens did not show the documents that I was referring
20 to, they only appear on the smaller screens, so I will
21 make sure that I explain what's in the document, if
22 I may.

23 LORD BRACADEL: Thank you.

24 MS GRAHAME: So let's go back, Mr Kay, to the statement, the
25 undated operational statement. We were on page 3, and

Transcript of the Sheku Bayoh Inquiry

1 we were looking at the briefing that was given to you by
2 Sergeant Maxwell. Do you have that in front of you?

3 A. Yes.

4 Q. It is roughly paragraph 4 and I will read this out. You
5 were further briefed by Acting Police Sergeant Maxwell
6 that:

7 "PCs Smith, Walker, McDonough, Good, Paton and
8 Gibson were initially involved in trying to restrain the
9 male. This involved the officers holding the male down
10 by asserting their body weight onto the male at various
11 points which is a recognised method of gaining control.
12 PC Paton appeared to be suffering from shock and after
13 effects of the PAVA and CS spray deployed."

14 You told us earlier this morning that you prepared
15 this statement within a week of the events of
16 3 May 2015.

17 A. Yes.

18 Q. Looking at this paragraph now, do you recall if this is
19 the wording that was used by Acting Police Sergeant
20 Maxwell when he briefed you that day?

21 A. I couldn't answer that, sorry.

22 Q. Right. Do you have any recollection of whether it is an
23 estimation of the briefing you were given or whether
24 that is your interpretation of the briefing you were
25 given?

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1 A. It will be my interpretation, but I'd be confident it
2 will be as close to what he has described to me.

3 Q. Thank you. You then say that:

4 "[Acting Police Sergeant] Maxwell further informed
5 me that the male ran at officers and was given the
6 command to stop and get back! After a similar command
7 and the male refusing officers deployed their PAVA and
8 CS Spray, but the male displayed no effects and did not
9 stop and kicked PC Short to the ground by swiping her
10 legs, thereafter kicking her to the head. The male was
11 restrained with handcuffs and leg restraints were
12 applied."

13 Again, can I ask you if that is the wording that was
14 used by Acting Police Sergeant Maxwell, or it is
15 a summary of what your understanding of the briefing
16 was?

17 A. Yes, same answer. My form of words from the framework
18 he has given me, but I would expect it to be 100%
19 accurate if I have committed it to paper.

20 Q. Right, so in terms of 100% accurate, you mean that what
21 you have recorded is what you were told?

22 A. Yes, so what I believe has happened, I would have
23 written down, or I wouldn't have writ it.

24 Q. And your belief in that regard is not because you
25 witnessed any of this, but because that's what you have

Transcript of the Sheku Bayoh Inquiry

1 been told by Acting Police Sergeant Maxwell?

2 A. Yes.

3 Q. I should say, Mr Kay, that we have heard that this
4 summary would not be an accurate version of what we have
5 heard evidence about actually happened.

6 A. Yes, I wouldnae dispute that. Emotions were running
7 high and it was seven and a half years ago, but if
8 I have committed that to paper in my statement, that
9 would be me -- I would believe that's what he said to
10 me. If that's changed, I mean, that doesn't affect what
11 I have written down, in my opinion.

12 Q. And were you doing your best to write down what you had
13 been told that day when you arrived at the scene?

14 A. Yes, because I used to deal with complaints, as
15 I touched on before, so I know me personally, having
16 a wee bit of pride, I would always try and do any form
17 of statement close to the event, so things wouldn't get
18 lost.

19 Q. Thank you. Moving on to the next paragraph, you say:
20 "He also stated [so again this refers to Maxwell]
21 that officers were aware of the dangers of positional
22 asphyxia, especially PC Smith who is an officer safety
23 instructor. The male was placed within the recovery
24 position. [Acting Police Sergeant] Maxwell also stated
25 that PC Tomlinson claimed he may have struck the male on

Transcript of the Sheku Bayoh Inquiry

1 the head with his police issue baton."

2 So you were briefed at that time by Maxwell about
3 the actions of PC Tomlinson and that he may have struck
4 the male on the head with his baton; is that correct?

5 A. Yes.

6 Q. And again, is that what you were told by Maxwell?

7 A. Yes.

8 Q. Could I ask you to look briefly at the spreadsheet
9 again. Let's look at page 8, please, and I would like
10 you to look at the 7.26.52 seconds entry. 7.26.52 on
11 page 8 of the spreadsheet. And again, I will read this
12 out, although you will also be able to see it on the
13 screen -- sorry, on the hard copy you have in front of
14 you. It says -- it's an Airwaves transmission by
15 Scott Maxwell:

16 "Just for the log, the initial on attendance, this
17 male's attacked PC Short quite violently, as a result he
18 was sprayed with CS and PAVA and batoned. There may be
19 a suggestion that he has been batoned to the head area,
20 4-1 over."

21 From what you have told us earlier, at 7.26 you were
22 en route to Hayfield Road?

23 A. Yes.

24 Q. You left at 7.21 when you heard "Officer injured", and
25 you arrived at 7.40, so you were en route to

Transcript of the Sheku Bayoh Inquiry

1 Hayfield Road at that time. When you were en route, did
2 you hear the Airwaves transmission by Maxwell that the
3 man may have been batoned to the head area?

4 A. I couldn't answer that, sorry.

5 Q. Do you have any recollection of hearing that as you were
6 heading to the scene?

7 A. No, no.

8 Q. When you arrived, you were briefed by Maxwell that
9 Tomlinson claimed he may have struck the male on the
10 head with his police issue baton, so at the latest by
11 the time you arrived and were briefed by Maxwell, you
12 knew about the man being -- possibly having been struck
13 to the head.

14 A. Yes.

15 Q. Why did you not call for an ambulance for the man at
16 that point?

17 A. Well, if he has briefed me then, the male would be in
18 the ambulance or en route to the hospital, so it would
19 be too late.

20 Q. So by the time you arrived you had -- the ambulance had
21 left the scene, so he was -- Mr Bayoh was being dealt
22 with by medics at that time --

23 A. Yes, so --

24 Q. -- as far as you were aware?

25 A. -- that would be retrospective and it wouldn't fit the

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1 timeline.

2 Q. Thank you. Can I ask you now about locus protection.

3 A. Yes.

4 Q. What is the purpose of locus protection?

5 A. Well, obviously that was on the main arterial route to
6 the hospital, so it is busy, so keep members of the
7 public out, keep members of the public safe and also to
8 protect the integrity of the scene, to recover any
9 evidence required or for cross-contamination.

10 Q. Who was in charge of locus protection?

11 A. The CID initially put it on for me to get there, but
12 once that kind of was in place it would then pass over
13 to me and when I removed officers from the locus, I got
14 supplementary officers unconnected to the inquiry to
15 come in and do it.

16 Q. Was that something that you organised personally?

17 A. Yes, so that's part of my initial role, as I said to
18 you, for the day-to-day business, so I would bring in
19 other officers from within the area and thereafter it
20 would be the other sergeant who would look after locus
21 as well.

22 Q. When you were at the scene, were you aware of any
23 officers doing point-to-point?

24 A. No.

25 Q. Can we look at your Inquiry statement again, please, and

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1 look at paragraph 89. You say here that:

2 "I thereafter got them to restrict the call card.

3 I would do that anyway. But also basically for third
4 party trauma, because there was a few officers that were
5 working that day that their partners were in the police
6 or were probably or possibly even working."

7 What do you mean you restricted the call card?

8 A. If I restrict a call card, I give certain individuals
9 access to it. It means any officer could go into the
10 STORM and look at all call cards, and as they can do
11 from other areas, they just put in the demographic sort
12 of point for that area, so obviously because of the
13 seriousness of the incident, I restricted it, but also
14 for third party trauma, because I'm sure two or three of
15 the officers on duty at that time, their partners were
16 working elsewhere in the division and some had parents
17 who were in the police, so obviously I wasn't wanting
18 that to be made aware at that time.

19 Q. When you restricted the call card, who does that limit
20 access to the call card to?

21 A. Whoever I give it to. Obviously the ACR can see it,
22 then I would give it to DI Robson. I would have gave
23 Garry McEwan it to start with, and it would have allowed
24 Nicola Shepherd to view it the next time she came back
25 on duty with it being her area.

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1 Q. So is that restricted to more senior officers?

2 A. Yes, definitely.

3 Q. Do you remember when you restricted the call card?

4 A. So again, not 100% accurate, but I would like to think
5 at locus, or maybe as soon as I got back to the office.

6 Q. How long were you at Hayfield Road?

7 A. I couldn't answer that to be honest. No, I couldn't
8 give you a timeframe for that.

9 Q. I would like to move on to ask you about arrangements
10 for the officers going back to Kirkcaldy Police Office.

11 A. Yes.

12 LORD BRACADE: Ms Grahame, it is now just coming up to
13 1 o'clock. I think perhaps we should stick to the
14 lunchtime arrangements.

15 Mr Kay, we're going to stop for lunch now and we
16 will be starting again at 2 o'clock, so if you're
17 available to come back on screen at 2 o'clock, please.

18 A. Okay.

19 (12.59 pm)

20 (The luncheon adjournment)

21 (2.06 pm)

22 LORD BRACADE: Yes, Ms Grahame.

23 MS GRAHAME: Is Mr Kay back on the screen?

24 A. Yes, I'm here.

25 Q. Hello there, that's lovely.

Transcript of the Sheku Bayoh Inquiry

1 I think we were about to go back to -- you were at
2 the scene at Hayfield Road and you have told us about
3 that and I wanted to move on to ask you about the
4 arrangements you made for moving the officers back to
5 Kirkcaldy Police Office. Do you remember what you were
6 thinking at that time about arrangements to move the
7 officers who had attended the scene and move them back
8 to Kirkcaldy?

9 A. Yes, I think Colin Robson kind of had the ball rolling,
10 but when I turned up and kind of was made mention from
11 APS Maxwell of their involvement, I knew that I had to
12 remove them from the locus, as I say, and get other
13 resources in to secure the locus for later. We would
14 have to bring the officers back for their own
15 welfare/wellbeing and to protect the inquiry, because
16 I presumed that once the MIT or CID were involved they
17 would probably be looking for statements and their
18 clothing, etc.

19 Q. Now, at the moment, Mr Kay, I think that's quite quiet.
20 Can I just check that the -- I think it might be helpful
21 if it's possible for the magicians to put the sound up
22 slightly.

23 A. I could try it on mine --

24 Q. Everything's okay --

25 A. -- is that better?

Transcript of the Sheku Bayoh Inquiry

1 Q. That sounds -- that's lovely, thank you. Sorry,
2 I didn't catch everything you said about the
3 arrangements that you were making. You said that
4 DI Robson had things in hand when you arrived but then
5 you were thinking about -- can you tell us again what
6 arrangements you made?

7 A. I would need to secure other officers from around the
8 division if not outwith, to come and take over
9 thereafter, as I say, to protect the integrity of the
10 inquiry and for the officers involved, they would need
11 to come back to the station where I presumed the MIT or
12 the CID would get involved for statements and probably
13 recovery of their clothing etc.

14 Q. So for the officers who were involved at Hayfield Road
15 with the events --

16 A. Yes.

17 Q. -- what was the plan in your mind as to what would
18 happen with them?

19 A. Well, in my mind we would go back and create a sterile
20 area for cross-contamination and to make it private for
21 them, so there was no conjecture or speculation outwith
22 and obviously, as I say, I was quite firm in my mind
23 this would go critical and the MIT would get involved
24 and I knew that they would like to speak to them
25 separately and probably remove their clothing, and we

Transcript of the Sheku Bayoh Inquiry

1 would need to contact the Federation.

2 Q. Right. So let me just take you through that. You say
3 you were thinking about a sterile area; what's a sterile
4 area?

5 A. Well, obviously if they're going to take their clothing,
6 we're not wanting them mixing with other officers or
7 we're not wanting obviously the conjecture and the
8 speculation to be rising as well, and also to make sure
9 that obviously nobody was getting, obviously, panicking
10 or things like that, they could get a bit of privacy
11 with the Federation rep and whoever would be dealing
12 with it moving forward.

13 Q. What -- for the members of the public that might be
14 listening to evidence, can you explain to them why is it
15 important that the officers shouldn't be mixing with
16 other officers. The officers who had been at the scene,
17 why was it important that they not be mixing with
18 others?

19 A. Well, if the officers were lying on top of the male and
20 there's any accusations of footprints or DNA or blood or
21 saliva, etc, we don't want that in -- the other officers
22 have been dealing with something in their daily
23 business, you're not wanting that coming together and
24 also it was at a time where I didn't think the other
25 officers should be totally left alone within the station

Transcript of the Sheku Bayoh Inquiry

1 speaking to others about what happened. I thought it
2 was better to contain them and go through the
3 appropriate people.

4 Q. Why is it important that the officers don't speak to
5 other people in the station?

6 A. Well, already you said to me that some of my statement
7 differs from others. It's obviously, as I say, you've
8 got conjecture, you've got speculation, it would soon
9 hit the media, it would soon be on social media and
10 obviously we're still, in my mind, I had a rough idea of
11 what personally or maybe happened, but I still didn't
12 know the full out of it. As I say, it was going to go
13 critical and the MIT would now be running the inquiry
14 with Garry McEwan, so I had to get things in place to
15 let them decide on the next moves, and the Federation
16 would want to come in and get involved and give their
17 appropriate advice.

18 Q. Garry McEwan, who -- you have mentioned his name. Who
19 did you think would be in charge when the officers got
20 back to Kirkcaldy Police Office, in charge of the
21 situation?

22 A. Once we went back to there, obviously Colin Robson and
23 myself could speak to them, but definitely the inquiry
24 were removed to the MIT and away from myself because
25 I was still dealing with daily business.

Transcript of the Sheku Bayoh Inquiry

1 Q. So who would take over command or control, or be in
2 charge of handling the matter once officers were back at
3 Kirkcaldy?

4 A. Yes, once it was back and settled, Garry McEwan would be
5 overseeing the full thing with being the on call super,
6 maybe even chief super at the time, but then it would be
7 a MIT-led inquiry, so he would allow them in tandem with
8 him to run it from there.

9 Q. And when you use the phrase "MIT-led", is that the Major
10 Incident Team?

11 A. Yes.

12 Q. Thank you. And you said the words "Go critical"; is
13 that critical incident being declared?

14 A. Yes. As I said before, that's super and above level,
15 that's not for me.

16 Q. We may have heard that Garry McEwan did subsequently
17 declare a critical incident at 9.10 in the morning. Is
18 that what you mean when you said "Go critical"?

19 A. Yes.

20 Q. And when that's declared, do certain protocols have to
21 be followed?

22 A. Yes, there are certain protocols that have to be in
23 place for it to be a critical incident in the first
24 place, so when that happens, my role as PIO would be
25 diluted and it would be over to them.

Transcript of the Sheku Bayoh Inquiry

1 Q. And you have talked about, before you have even left the
2 scene at Hayfield Road, you were thinking about maybe
3 having to remove the clothing of the officers. What was
4 the purpose of that?

5 A. Yes, that's just my experience, thinking we have
6 obviously got a death in custody, so for the
7 contamination, etc, and any evidence moving forward that
8 the MIT team would probably want everything to hand.

9 Q. When did you become aware that Mr Bayoh had died?

10 A. Couldn't recall the exact moment, but I would imagine
11 the CID has probably passed that to me at the time I got
12 back to the station. I knew it wasn't sort of looking
13 well for Mr Bayoh in that circumstance, but I cannae
14 recall the exact time.

15 Q. But you weren't aware of him passing away when you were
16 at Hayfield Road?

17 A. No.

18 Q. And then you have mentioned the SPF; what involvement
19 would they have?

20 A. Well, any sort of out of the normal thing at the weekend
21 we would always contact the Federation, and there is
22 Amanda Givan, she was back at the station by the time
23 I was there. She would be there to offer advice and
24 support, and obviously, if they took their clothing, she
25 would supply them with basic clothes and food and drink,

Transcript of the Sheku Bayoh Inquiry

1 etc.

2 Q. We have heard from Amanda Givan. She was a Police
3 Federation rep.

4 A. Yes.

5 Q. Thanks. And then you have also talked about speculation
6 and the officers having privacy: was their wellbeing
7 something that you considered?

8 A. Yes. I spoke to Amanda about obviously replenishing of
9 clothes and obviously looking after them food and
10 drink-wise. She said that she would be doing that
11 through Federation funds. I'm sure Colin Robson spoke
12 to them as well. As I say, by that time I was still
13 doing other stuff and then it became a MIT-led inquiry
14 and I just obviously made it aware that I was there for
15 any support or any chat, etc, but it would be MIT-led
16 inquiry now and as I say, I would be diluted from the
17 actual involvement in it.

18 Q. When did you become aware that it was going to become
19 a MIT-led inquiry from the Major Incident Team?

20 A. Well, if I'm being honest, I knew as soon as I got the
21 information that he had passed that it would go that
22 way. But I would ask obviously -- we had asked the
23 control room to inform the on-call super about what
24 would happen and I would imagine Colin Robson would do
25 the same for the CID side of things, so it would have

Transcript of the Sheku Bayoh Inquiry

1 happened quite quick, but I knew obviously just through
2 experience that it would go that way.

3 Q. Thank you. So can you tell us what instructions you
4 gave before the officers left Hayfield Road? You have
5 told us about the things you had in mind, so what
6 instructions did you give out to officers in order to
7 start preparing them for the return to Kirkcaldy Police
8 Office?

9 A. I can't recall 100%, but I would have said to
10 Scott Maxwell -- and I don't know if it's articulated --
11 probably I would have said over the radio that we would
12 be removing them and I would bring other officers in to
13 take their place.

14 Q. We have heard evidence from Sergeant Maxwell in June and
15 he says that you gave him information and instructions
16 basically to attend back at the police station in the
17 canteen, to regroup, to just get everyone there and make
18 sure everyone is safe and well and not to obviously
19 discuss in specifics what's going on. Would you agree
20 with that summary?

21 A. Yes, that would be accurate. I would have asked him to
22 remove himself as well because he was involved, but also
23 he could act as a conduit with being a supervisor and be
24 visible back at the station as well.

25 Q. What instructions, if any, did you give about creating

Transcript of the Sheku Bayoh Inquiry

1 a sterile area in the canteen?

2 A. Same again, I couldn't give you 100% articulation, but
3 it would be to keep them there, keep them sterile and
4 not allow anybody else in. We would create a second
5 canteen if need be. As I say, for the reasons I spoke
6 about before, for any cross-contamination and any media
7 aware or conjecture, just basically to keep it tight
8 until the MIT came and took control.

9 Q. What contact did you have with any of your senior
10 officers or supervisors in relation to bringing the MIT
11 team, the MIT-led team into the situation?

12 A. I will have spoke to Garry McEwan as the -- he was
13 on call then after that, he would have contacted the MIT
14 and ran the show from that side of things. Other
15 officers I then contacted was the resources for high
16 visibility teams and door-to-door etc for the next two
17 or three days, but outwith that I didn't speak to them
18 regarding the incident as well because, as I say, I was
19 actually still being PIO for the rest of the division.

20 Q. Right. When did you first speak to Garry McEwan?

21 A. I would imagine within five or ten minutes back at the
22 station when I went through to see him in the CID part
23 of the building.

24 Q. So that was after you had left Hayfield Road?

25 A. Yes, he was never at locus, as far as I can recollect.

Transcript of the Sheku Bayoh Inquiry

1 Q. Before we move on to events in Kirkcaldy Police Station,
2 can I ask you, we have also heard evidence from
3 PC Kayleigh Good who remembers speaking to you at
4 Hayfield Road and she says you told her to put on her
5 hat and her yellow jacket:

6 ".... even though she had her hi-vis vest on, and it
7 may have been because it was then raining and windy and
8 I was shivering."

9 Do you remember having a conversation with
10 Kayleigh Good?

11 A. I don't, sorry.

12 Q. Do you remember what the weather was like that day?

13 A. Yes, I think it was -- I don't think it was raining
14 raining, I think it was -- it wasn't the best morning.
15 I think it was quite of dull, overcast, maybe rain
16 blowing through, if I can correctly remember.

17 Q. What temperature was it?

18 A. Anything from 10 to 12, 7 to 14 maybe. It certainly
19 wasnae freezing, but it wasn't hot either.

20 Q. Were you wearing a jacket?

21 A. I couldnae answer that. I would probably say no.

22 I probably had my T-shirt or fleece and my hi-vis vest
23 on.

24 Q. Thanks. Moving on to your return to Kirkcaldy Police
25 Office, you have talked about the sterile area. Perhaps

Transcript of the Sheku Bayoh Inquiry

1 we could look at your Inquiry statement at paragraph 93.

2 Now, you will have a copy of this in front of you and
3 what I will do is I will read out part of this, or all
4 of this paragraph, so this is where it says "Return to
5 Kirkcaldy Police Station". 93:

6 "Then I went back to the station to the canteen.

7 Amanda Givan from the Federation was there. DI Robson
8 was there. We made the canteen sterile and a separate
9 eating area for everybody."

10 94:

11 "I asked them to stay in the canteen. You're not
12 wanting the cross contamination/transference of
13 anything, so I asked them to stay."

14 Can I ask you about those matters. What was it that
15 you did to make the canteen sterile?

16 A. Nothing special. Sterile just within the framework of
17 nobody in and nobody out, nothing to do with the
18 inquiry, apart from elected members of staff from the
19 MIT.

20 Q. We have heard from someone that says there were notices
21 put up on the door. Was that something that you did, or
22 were involved in?

23 A. No, I cannae comment on that to be honest.

24 Q. So what steps did you take to make it sterile?

25 A. I don't know if that seems more fanciful than it means.

Transcript of the Sheku Bayoh Inquiry

1 It just basically means nobody has to leave because
2 there was facilities there, then went out and when Scott
3 was in and we brought another sergeant in and other cops
4 in to facilitate the calls to just say that the canteen
5 was a no-go area and we had made a secondary canteen
6 elsewhere, and Garry McEwan would be aware of that and
7 he would pass it to the MIT and there would be a select
8 few from the MIT that would go in and have to do what
9 they would do. Colin Robson would also be involved, a
10 conduit for the MIT, and Amanda was there. I think then
11 after that I actually never went back to the canteen.

12 Q. How long did you spend in the canteen after you went
13 back to Kirkcaldy Police Office?

14 A. Not long, five/ten minutes, because Colin and
15 Amanda Givan were already there, and I think I had
16 liaised with Jane Combe who was another inspector.
17 I asked her to come from the Cowdenbeath area to act as
18 a conduit for the inquiry to everybody that was involved
19 to allow me to go back to the daily business.

20 Q. Was Jane Combe in the canteen when you were there?

21 A. No.

22 Q. When you said you made a secondary canteen elsewhere,
23 was that elsewhere in Kirkcaldy Police Office?

24 A. Yes. As I say, nothing fanciful. It would just be
25 somewhere where they can go and have a breakaway area if

Transcript of the Sheku Bayoh Inquiry

1 required.

2 Q. So whose responsibility was it to disseminate
3 information that the canteen was a no-go area?

4 A. I would do it, Scott Maxwell could do it, DI Robson can
5 do it. I mean --

6 Q. And who actually did it?

7 A. -- it was a Sunday morning -- it was a Sunday morning,
8 it wouldnae be difficult to convey that message out.

9 Q. Who actually did that, or did you all do it?

10 A. I would say all. I definitely would have told the
11 incoming cops who were taking over frontline duties and
12 they would have dealt with the crime side of things.

13 Q. Was that the replacement officers that you gathered in
14 from other areas?

15 A. Yes, because obviously the full shift was there and
16 there were still calls coming into Kirkcaldy.

17 Q. We have heard some evidence that people were walking in
18 and out of the canteen. Do you have any comment about
19 that?

20 A. I wasnae aware of that, sorry.

21 Q. And we have heard that, as you say in 94, paragraph 94:
22 "I asked them to stay in the canteen."

23 We have heard evidence that two officers left the
24 canteen to go and get white paper cups and had
25 conversations with the custody officer at the time. Do

Transcript of the Sheku Bayoh Inquiry

1 you have any comment about that?

2 A. Same again, that's news to me. As I say, I have left
3 them in the presence of an inspector, a sergeant,
4 a Federation rep, a chief super and a full MIT
5 investigation team. Anything that went on after that,
6 as I say, I'm not aware.

7 Q. Thank you. You talked about before you left
8 Hayfield Road you were thinking about recovering
9 equipment from the officers. Do you know what
10 arrangements, if any, were made about recovering
11 equipment from the officers? Were you involved with
12 that in any way?

13 A. No. As I said, that would be over to the MIT team.

14 Q. So you had no involvement in that decision or when that
15 was done?

16 A. No.

17 Q. Thank you. Can I look at paragraph 95. You say:
18 "I remember having a chat with the officers. Myself
19 and DI Robson spoke to the officers to say that they
20 were probably going to have to give up their clothing
21 and their boots for evidence, and this didn't mean to
22 say that they were victims or guilty, it was just
23 protocol, transparency, and that would be the way
24 forward. We made sure their wellbeing was fine."

25 You say you had that conversation with the officers.

Transcript of the Sheku Bayoh Inquiry

1 Can we move down, please, on the screen, if that's
2 possible and then it says:

3 "They were probably thinking 'Am I getting sacked?
4 Have I done anything wrong? Have I done anything
5 right?' I've got young cops saying to me 'why are you
6 taking my stuff?' I was just saying to them that we've
7 got a death in custody and yous have come into contact.
8 Common sense says we're going to take your clothing.
9 It's just protocol. It's the proper thing to do for
10 transparency. I was saying they were not under
11 suspicion for any offences bearing in mind I've got
12 probationers there who had maybe been in the job
13 6 weeks."

14 And can I ask you, what was the importance, as far
15 as you were concerned, of the fact that some of them
16 were probationers?

17 A. Well, when I went into the canteen, if I can recall,
18 I think Colin had already been speaking, or speaking, so
19 I'm of the mind another -- personal nature -- I wasnae
20 going to speak for the sake of it just to hear my own
21 voice, so I spoke which I thought was relevant in making
22 them aware, as I say, we had some cops who had been in
23 the job six weeks, maybe less than that, I think
24 McDonough, I think Good was three or four months, so any
25 contact they have had with the public they have been

Transcript of the Sheku Bayoh Inquiry

1 taking their clothes, they have been -- obviously
2 because we think or we've got evidence to think they
3 have done something wrong, so all of a sudden in
4 layman's terms the tables have turned on them. So I was
5 just reassuring them to be transparent and to be
6 professional and to do the right thing it would be good
7 for us to take everybody's clothing and keep it sort of
8 fluid that way and that, as I said, at that time it's
9 not saying they have done anything wrong, it's not
10 saying they have done anything right but just everyone
11 together we would be uniform and we would take
12 everything away.

13 Q. Right. And do you know who would determine the status
14 of the officers? You talk in paragraph 95 "It didn't
15 mean they were victims, it didn't mean they were
16 guilty". Who was it that would determine what the
17 status of the officers would be?

18 A. That's with my control. As I say, I'm trying to answer
19 these the best I can and some to you might appear vague,
20 but with the PIO role -- it's actually a good thing --
21 if we had a fatality for road policing or if it's
22 anything serious, anything that involves proper serious,
23 once we do the basics and secure it, specialised units
24 come in and then we go away and go on to the next job,
25 if you like, so anything along these lines or when

Transcript of the Sheku Bayoh Inquiry

1 I have left the canteen, that was probably me only
2 getting involved through the odd welfare check or
3 Garry McEwan tasking me for something, but as I say,
4 I have had the rest of the division to run and it was
5 now getting a MIT-led inquiry, so there was actually no
6 requirement for me to be there.

7 Q. Thank you. Can I ask you about forms. We have heard
8 some evidence about forms and when they should be
9 completed. We heard evidence yesterday that use of
10 spray forms should have been completed and sent to the
11 PIRC within 24 hours and if the officer is not
12 available, a sergeant can send those forms. Did you
13 give any instructions or commands in relation to the
14 completion of use of spray forms?

15 A. I can't recall, but any sergeant of mine and
16 Scott Maxwell would know I like them in for the end of
17 that shift, if possible, and if not, generally document
18 a good reason why. With this inquiry I don't know with
19 the MIT becoming involved it's maybe got -- clouded the
20 waters or there's been a delay. I couldn't answer that
21 but best practice, end of the shift before we all go
22 home.

23 Q. And what about use of force forms? What's --

24 A. (Inaudible - overspeaking).

25 Q. -- what's your practice in relation to them?

Transcript of the Sheku Bayoh Inquiry

1 A. Same again, end of the shift.

2 Q. What about the completion of notebooks for officers who
3 have used force during a shift?

4 A. That's a personal preference but I would expect the
5 sergeants to be getting them to document it, if not at
6 the time, as soon as reasonably possible. Same again,
7 best practice.

8 Q. Did you have any discussions about the completion of
9 paperwork, or issue any instructions before you went on
10 to get on with your other work?

11 A. I can't recall but I would also be astonished if
12 I hadn't said to Scott to make sure that that was in as
13 per normal.

14 Q. And that's Scott Maxwell?

15 A. Yes.

16 Q. And what is your view on completion of operational
17 statements? You have told us about your own operational
18 statement which you completed within one week of the
19 events. What would your expectation have been in
20 relation to the officers who were involved?

21 A. Well, that depends, it's a personal preference. I like
22 to do mine, (a) keep it fresh and (b), I knew it was
23 coming through my experience. At that time I had seven
24 or eight police complaints so I generally send an email
25 out to the officer and the sergeant with a rough

Transcript of the Sheku Bayoh Inquiry

1 description of what the complaint is, and ask them to
2 give me my operational statement generally within a week
3 of me getting it because I've got a timeline but, as
4 I say, that's a personal preference and for these young
5 officers, they wouldn't be aware they would probably
6 have to do it and because of the day, it maybe slipped
7 some of their minds, but also they don't have to do it,
8 I suppose, until they get requested.

9 Q. And who would be the person that would be making
10 a request in your experience? Would it only be if there
11 was a complaint?

12 A. Yes, if you've got a complaint in and it comes to PSD,
13 we've got a central collection point at B Division, who
14 would then, if it was my area, send it out to me, or if
15 it was coming in through the channels, send it to
16 different inspectors for fairness, and then if it was
17 mine, I would thereafter request it, but if it was
18 a PIRC or the MIT or PSD, that would be their gift to
19 decide when they started requesting these statements in.

20 Q. And can I just be clear, PSD is that the Professional
21 Standards Department in Police Scotland?

22 A. Yes.

23 Q. Can I ask you about threats at the time about -- you
24 were asked about this and gave some comment in your
25 operational statement, so if we look at paragraph 121 of

Transcript of the Sheku Bayoh Inquiry

1 your Inquiry statement, you will see that you were asked
2 under reference to your PIRC statement at page 2:

3 "I also cannot recall any briefing being given
4 regarding a threat to a female officer."

5 We have heard some evidence about this at an earlier
6 hearing.

7 A. Yes, that's not --

8 Q. In your role --

9 A. Sorry.

10 Q. No, sorry, I was going to ask, in your role at the time
11 of these events in May 2015, would you have been aware
12 of briefings given to officers about threats and threat
13 levels?

14 A. If the sergeants were doing it locally, if I wasn't in
15 attendance at these briefings, I would definitely be
16 aware because that was recorded on the daily log I would
17 think, or there would be some form of correspondence
18 I would have seen, unless it was previous and I was on
19 holiday or not aware, etc, but certainly there wasnae
20 any briefing that I can recall within the Kirkcaldy
21 Police Station.

22 Q. Thank you. We have heard some evidence from a former
23 constable, Alan Paton, in June regarding his
24 recollection and let me just summarise what it was that
25 he said: There was a strong rumour going about in

Transcript of the Sheku Bayoh Inquiry

1 Kirkcaldy Police Station that a female officer was going
2 to get injured by a lone wolf and he was aware that
3 Nicole Short was going to Hayfield Road on 3 May. He
4 raised it:

5 "Being a senior sort of member on the team I raised
6 it with Inspector Stephen Kay at muster asking if he
7 could get in touch with intelligence department and also
8 perhaps Special Branch to find out if there was anything
9 in it and nothing came back. I raised it only days
10 before this [that is 3 May] so this was a Sunday."

11 And I asked him if it would have been the week prior
12 to that that he raised it with Inspector Kay and he said
13 "I believe so", and he confirmed that the intelligence
14 department at the time he thought were based in
15 headquarters at Glenrothes, but Special Branch were more
16 of a national organisation rather than Fife-based.

17 Can I ask you if you have a recollection of
18 a discussion with former constable Alan Paton about
19 a threat to a female officer?

20 A. I have no recollection of that at all. I would have
21 documented such a statement from an officer and
22 a previous life in the police, I've got quite an
23 extensive intelligence background, so I definitely
24 cannae recall that.

25 Q. So if you had been approached by a constable at muster

Transcript of the Sheku Bayoh Inquiry

1 and asked to carry out some further investigations
2 regarding the intelligence department or to approach
3 Special Branch, what would you have done?

4 A. I would ask him to articulate it on an email or a memo
5 and send it to myself and ask him to do some basic
6 checks on SID(?), etc, whatever other place he can and
7 once he gathered me that small intel package, I would
8 have forwarded it on to the intel department and copied
9 Nicola Shepherd in and probably operations super, at
10 minimum.

11 Q. Do you have any recollection of doing anything like that
12 at all, just shortly prior to --

13 A. No.

14 Q. -- 3 May?

15 A. That's a total surprise, to be honest.

16 Q. Can I ask you about a phone call that you had with
17 Inspector Stewart. Now, there's a transcript of this
18 call at SBPI00113. I don't know if you have that,
19 Mr Kay, but we've got a recording of this.

20 A. Is it on the spreadsheet?

21 Q. No, it's not on the spreadsheet. What we will do is
22 play this phone call and you will be able to hear it as
23 we play it and then I will ask you one or two questions
24 at the end, all right?

25 A. Okay.

Transcript of the Sheku Bayoh Inquiry

1 Q. And if you can't hear it at any point please just speak
2 up and we will try and fix that. Thank you.

3 A. Okay.

4 (Audio played)

5 Q. Did you hear that, Mr Kay?

6 A. Yes.

7 Q. And did you recognis

8 A. Yes, that's me, yes.

9 Q. We have heard evidence already that this was a telephone

10 conversation between you and Inspector Stewart who was

11 the ACR duty inspector, and that it was at 9.12 on

12 3 May 2015. Do you remember this call?

13 A. Yes, now that I heard it I do remember it, yes.

14 Q. You -- when this call was made, were you back at
15 Kirkcaldy Police Office?

16 A. Yes, it seems like I'm just back at the desk.

17 Q. I would like to ask you about an expression that you use
18 during the call. It says:

"He's basically -- he's the size of a house."

20 And then you say afterwards:

21 "He just ran at them. If they werenae there,

I dread to think what would have happened. He ran at them with a knife. Dynamics-wise there was nae time."

When you used the expression "He's the size of a house", can you tell us why you used that expression?

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1 A. Yes, that's not terminology I would use, so I would have
2 took that from the briefing from PS Maxwell, I would
3 believe, but I know where it would stem from, if he is
4 describing him to me, I would describe him as being well
5 built, he is a unit, in sports times, he is muscley,
6 powerful, athletic. That's what I would take from that.

7 Q. So in using the expression "He's the size of a house",
8 you have -- are you suggesting that those are words that
9 Maxwell used when he gave you the briefing?

10 A. Yes, that's not my terminology but I get it, in sports
11 language he would be a unit, he would be powerful, he
12 would be athletic, certainly muscular.

13 Q. And also when you said "He ran at them with a knife",
14 where did that information come from? I know that by
15 the time you arrived at Hayfield Road, Mr Bayoh was away
16 in the ambulance, so when you say he ran at them with
17 a knife, where was that from?

18 A. Same again, when we went back to the briefing I got from
19 PS Maxwell, was that not covered in that? Same again,
20 I don't know if it's the whispers game at Christmas and
21 by the time I've got it, it's not quite as it is, but
22 I would only be repeating what I have been informed
23 by -- because obviously even the ACR doesn't know, so
24 I would only be regurgitating what's been passed to me.

25 Q. Looking at that expression now, "He's the size of

Transcript of the Sheku Bayoh Inquiry

1 a house", do you have any views about whether that was
2 an expression that was used because Mr Bayoh was black?

3 A. I don't follow, I don't know how that correlates into
4 the colour of his skin.

5 Q. Are you aware of racial stereotypes and language that is
6 used to reinforce those racial stereotypes that black
7 men are perhaps bigger, stronger, more aggressive, more
8 violent?

9 A. No, that's something I couldn't say I have been aware of
10 or could recall. I'm quite healthily into sports,
11 various sports and I never knew that to be mentioned or
12 being portrayed.

13 Q. We have heard that Mr Bayoh in fact was 5 foot 10 and 12
14 stone 10 pounds. Is that a size and height that you
15 would consider to be the size of a house?

16 A. No, I would disagree with that phrase, but I also
17 wouldn't disagree if I was getting told he was a unit or
18 powerful.

19 Q. Right. Can I ask you about diversity training that you
20 have had in your career. We have seen some of your
21 training records and we can put these on the screen,
22 PS18496. We can see that on 14 February 2001, there we
23 are, a third to half of the way down the page, "E&D",
24 perhaps equality and diversity, "Diversity awareness
25 (FC), 14 February to 15 February 2001", that you had

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1 diversity awareness training, which seems to perhaps
2 have spanned those dates.

3 Apart from that what training have you had on
4 equality and diversity over the years of your service?

5 A. None that I recall with the extent to a two-day course
6 like that.

7 Q. Do you remember this course --

8 A. No --

9 Q. -- in 2001?

10 A. -- I knew I had the training but I didn't realise it was
11 22 years ago.

12 Q. Since that date, have you ever undergone any diversity
13 training, either compulsory or voluntary?

14 A. I have touched on it on personal football coaching
15 badges, I have touched on diversity and mental health,
16 but not specifically for that, but I have certainly come
17 across it.

18 Q. Is that external to the Police Service?

19 A. Yes.

20 Q. Right.

21 A. Yes.

22 Q. And do you remember anything about the training you had
23 in 2001?

24 A. No.

25 Q. When you think about your involvement with the community

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1 in your job, either in your role as PIO in 2015, or
2 prior to that before your promotions, had you dealt with
3 a number of people of different ethnicities, different
4 nationalities?

5 A. Yes. I was a custody sergeant, so I would be booking in
6 all nationalities and dealing with a whole host of
7 people.

8 Q. Had you been given any diversity awareness training when
9 you became a custody sergeant?

10 A. I can't back this up, but I'm tempted to say yes, for
11 being culturally aware and diets and sort of events in
12 the year, etc, but I don't know if that would be
13 documented anywhere, but I certainly could remember
14 that, 10, 12 years ago.

15 Q. When you say "culturally aware", is this your own
16 general cultural awareness rather than specific training
17 that you were provided?

18 A. No, I'm sure, as I say, depending on what nationality
19 got locked up for their diet, what they can and cannot
20 eat and obviously their beliefs on praying, etc. I'm
21 almost certain we got some form of input on that, even
22 if it was just maybe email correspondence to self-read
23 but I can recall getting some of that, probably a long
24 time ago to be fair.

25 Q. Do you remember anything about that other than what you

Transcript of the Sheku Bayoh Inquiry

1 have just told us?

2 A. No, I can't, to be fair.

3 Q. Can I ask you to look at your Inquiry statement again
4 please, paragraph 41.

5 And this paragraph reads:

6 "The demographics and the people you're dealing with
7 are different so the policing style might be different
8 to others. I didn't deal with it enough to put my slant
9 on it. I was only in or out for certain instances in
10 the Drug Enforcement Team, so my clientele were drug
11 abusers, so I couldn't speak about the rest."

12 Let's look at the preceding paragraph as well,
13 please, where you mention that you were in the Drug
14 Enforcement Team and worked from various stations. You
15 knew Kirkcaldy, you were in Methil and you said:

16 "... the crime rate will be different, it's going to
17 be higher in Kirkcaldy than it is in St Andrews."

18 Can I ask you what did you mean in paragraph 41
19 about the policing style being different to others
20 depending on the demographics and the people you were
21 dealing with?

22 A. Obviously I'm trying to look back on to when I got asked
23 this question. They have obviously asked me if I knew
24 Kirkcaldy Police Station prior to me going there and
25 I have said yes with dipping in and out with the Drug

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1 Enforcement Team. He has obviously asked me another
2 question going back that -- the demographics, to answer
3 that, that's pretty much common sense. Urban and rural,
4 you have different crime, you have different people, so
5 you deal with people different. If you're in a busy
6 town like Kirkcaldy, it's a different clientele to
7 St Andrews, that's an affluent area, Dalgety Bay's
8 different, Inverkeithing and it's only 2 miles, so
9 I would expect a good cop to deliver their service
10 delivery to suit who they're dealing with because as
11 I say if you're out urban, it will be different to what
12 it is in the town or if you're in the school, that's all
13 that is.

14 Q. Do the differences include the ethnicity of the public
15 in these areas?

16 A. No.

17 Q. Can I ask you another question about when you went back
18 to the Kirkcaldy Police Office. Did anyone raise
19 concerns at that time about potential allegations of
20 racism being raised in relation to the events at
21 Hayfield Road?

22 A. No, not that I'm aware of.

23 Q. Was there any discussion at that time about the fact
24 that Mr Bayoh was black?

25 A. No, not that I'm aware of.

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1 Q. Thank you. Can you just give me a moment, please,
2 Mr Kay?

3 A. Yes.

4 (Pause).

5 MS GRAHAME: Thank you very much, Mr Kay. That completes my
6 questions.

7 LORD BRACADEL: Thank you.

8 A. Okay, thank you.

9 Questions from LORD BRACADEL

10 LORD BRACADEL: Mr Kay, I wonder if you could help me with
11 something.

12 A. Of course, sir.

13 LORD BRACADEL: Can I take you back to the beginning of the
14 police involvement in this incident.

15 A. Yes.

16 Q. We know from the evidence that the controller in the ACR
17 dispatched Constables Short and Tomlinson to the
18 incident.

19 A. Yes.

20 LORD BRACADEL: And we know that Sergeant Maxwell told all
21 units to attend and asked for an AVR and a dog.

22 A. Yes.

23 LORD BRACADEL: And you told us you were the PIO for the
24 division and you were in the station in Kirkcaldy and
25 you were watching the STORM log and you were listening

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1 to the Airwave.

2 A. Yes.

3 LORD BRACADALE: And I think you also said you were on the
4 phone to Chief Inspector Stones. We also know that
5 Inspector Stewart came on the Airwave and asked --
6 instructed feedback from the first set attending --

7 A. Yes.

8 LORD BRACADALE: -- and then we know that there was contact
9 between these officers and Sheku Bayoh and it all led
10 into the restraint. Now, during that period that I have
11 covered in that analysis, who was in command of the
12 police response to the incident?

13 A. Well, to put it this way, sir, when that came up, due to
14 the fact they've only sent one unit, I would imagine the
15 call-taker has put up a knife incident, male, etc, etc,
16 where they have sent one unit, which is pretty much
17 protocol, because as I say, a lot of these things we go
18 to and they're not actually there, it's not actually
19 happening, so I don't think I'm being remiss in saying
20 that's quite comfortable, but the previous three or four
21 rapid calls and the escalation, Sergeant Maxwell has
22 obviously sent other officers to go. That's still good.
23 If I chose to step in, it would be once we further got
24 all the information, but as soon as the knife is
25 mentioned, then it's ACR who take control, they take

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1 supremacy over everything else because that's policy and
2 that's protocol, so as soon as the knife is confirmed,
3 it would go to them, but upwith to that, because it was
4 so fast-paced, PC Maxwell is not doing anything wrong.
5 If it was a bit slower I would have stepped in and done
6 all these commands, but same again, as soon as the knife
7 is confirmed and there, it's a firearm incident and
8 carte blanche goes to the ACR.

9 LORD BRACADALE: Could you just explain that a little bit
10 more for me. My question is who was in command of the
11 police response as it developed? Was there an
12 individual in command?

13 A. Yes, that's Scott Maxwell, that's his team and his area,
14 so he is in charge until myself or the ACR would take
15 control.

16 LORD BRACADALE: In what circumstances would you take
17 control?

18 A. When there was more -- there was more information, if
19 the knife was confirmed before ACR, if it got more
20 complex, or if Sergeant Maxwell was there and it was
21 heating up when he was there, I would take
22 responsibility off him because at the end of the day it
23 would come to me anyway, I would step in if need be, but
24 as we heard, I was on the phone to Chris Stones and
25 another sergeant, but initially it is his to own until

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1 it hits a certain level, then it would come to me or the
2 ACR inspector, but because it was so fast-paced, that
3 was still PS Maxwell's because we didn't have any
4 information.

5 LORD BRACADEL: At the beginning of the reporting this was
6 graded as a grade 1 level incident in the ACR involving
7 a knife.

8 A. Yes.

9 LORD BRACADEL: We've got --

10 A. That's ACR's then --

11 LORD BRACADEL: Just hold on --

12 A. (Inaudible - overspeaking) knife, that's ACR's.

13 LORD BRACADEL: So you've got an inspector in the ACR and
14 you've got you as the inspector and the PIO in the
15 division.

16 A. Yes.

17 LORD BRACADEL: As between the two of you, in a grade 1
18 incident with the ACR receiving and grading it involving
19 a knife, who is going to be in command of that
20 situation?

21 A. ACR. They take control because it would be deemed
22 a firearms incident.

23 LORD BRACADEL: Thank you. If you just hold on a moment,
24 Mr Kay.

25 Are there any Rule 9 applications? Ms McCall.

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1 Mr Kay, I'm going to ask them to cut the link to you
2 briefly while I hear a submission and then I will come
3 back to you. All right?

4 A. Okay.

5 (The witness withdrew)

6 LORD BRACADALE: Now, Ms McCall.

7 (Pause) .

8 Application by MS MCCALL

9 MS MCCALL: There are three matters I would like to raise
10 and they all relate to this witness's evidence about
11 discussions he had with Acting Sergeant Maxwell. The
12 first relates to a passage of evidence at [draft]
13 page 88, lines 2 to 7, and this was about discussions
14 about the completion of paperwork and the witness said
15 he couldn't recall --

16 LORD BRACADALE: Sorry, just give me a moment to find this.

17 Page 88?

18 MS MCCALL: 88, line 2. It was a question about any
19 discussions about the completion of paperwork or issuing
20 any instructions before he went on to his other work and
21 he said:

22 "Answer: I can't recall but I would also be
23 astonished if I hadn't said to Scott [that's
24 Sergeant Maxwell] to make sure this was in as per
25 normal."

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1 What I wanted to put to him, given his answer
2 "I can't recall", was Sergeant Maxwell's position about
3 that, which is answer 80 in his Rule 8 statement in
4 which he says Inspector Kay stood him down from any
5 supervisory duties. That's the first issue.

6 The next matter relates to -- it's two matters
7 arising out of the phone call to Inspector Stewart and
8 it is [draft] page 93, line 10 onwards, and it is the
9 series of questions and answers about this expression
10 "size of a house" which the witness now attributes to
11 Sergeant Maxwell, that, as the Chair is aware, is
12 disputed by Sergeant Maxwell, so it was to put to him
13 that it's not recorded in any of his statements, it's
14 not recorded as any briefing that Sergeant Maxwell gave
15 him, it's an expression that's never been used by
16 Sergeant Maxwell in any statement or his evidence and it
17 is to clarify whether the witness might be mistaken in
18 his recollection of the source of that. And the same
19 issue arises on [draft] page 94 at line 5 in relation to
20 his attribution of the phrase "He ran at them with
21 a knife" to Sergeant Maxwell. Again, it's not in the
22 briefing recorded from Sergeant Maxwell,
23 Sergeant Maxwell has never said it in a statement or in
24 evidence, it's not in the radio transmissions and, as
25 you know, sir, it's not the account of any officer at

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1 this Inquiry or in any statement that at any time
2 Mr Bayoh ran at them with a knife. So it's to clarify
3 whether he could be mistaken about that phrase being
4 used by Sergeant Maxwell.

Ruling

6 LORD BRACADELE: Yes, well, I shall allow you to ask these
7 questions.

8 I don't know, technically if Ms McCall just remains
9 in that seat that would work? Will you be able to see,
10 is there a screen --

11 MS MCCALL: I can't see him.

12 LORD BRACADALE: No, I think you will have to move to see
13 a screen.

14 MS MCCALL: I will swap with Ms Grahame, my Lord.

15 LORD BRACADALE: Yes, thank you.

16 So we can open up the link again, please.

17 (The witness returned)

18 MR STEPHEN KAY (continued)

19 Mr Kay --

20 A. Yes, sir.

21 LORD BRACADE: You're going to be asked some questions by
22 Ms McCall who is the senior counsel for
23 Sergeant Maxwell. Do you understand?

24 A. Yes.

25 LORD BRACADALE: Ms McCall.

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1

Questions from MS MCCALL

2 MS MCCALL: Inspector Kay, can you hear me all right?

3 A. Yes, I can.

4 Q. Thank you. I want to take you back to a question that
5 you were asked by Ms Grahame and the question you were
6 asked in relation to the completion of paperwork
7 including statements and use of force and spray forms,
8 she asked you:

9 "Question: Did you have any discussions about the
10 completion of paperwork or issue any instructions before
11 you went to get on with your other work?"

12 And your answer was:

13 "Answer: I can't recall, but I would also be
14 astonished if I hadn't said to Scott to make sure that
15 that was in as per normal."

16 And you confirmed that the reference to Scott was
17 a reference to Acting Sergeant Maxwell.

18 What I want to do is tell you what
19 Sergeant Maxwell's evidence before the Inquiry is in
20 relation to his interaction with you on his return to
21 the police office. What he said in being asked about
22 whether he received any advice or instruction from any
23 senior officer, he said:

24 "I was told by Inspector Kay that afternoon that as
25 I had been present at and involved in the incident

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1 concerning Mr Bayoh, which was now going to be subject
2 of an inquiry, I was relieved of all managerial and
3 supervisory duties relating to the incident concerning
4 Mr Bayoh. I was instructed that my continuing role as
5 a sergeant was limited to monitoring the welfare of
6 those who were in my team and that had attended the
7 incident. On the day, Chief Inspector Conrad Trickett
8 took over the role of post-incident manager for the
9 incident involving Mr Bayoh. This role included having
10 oversight of the officers' completion of operational
11 statements and relevant documentation such as use of
12 force forms."

13 So I recognise, Inspector Kay, that you said you
14 couldn't exactly recall and you indicated what you
15 thought you had done. Do you dispute what
16 Sergeant Maxwell says about the instruction you gave
17 him?

18 A. No, not at all. As I said, I can't recall, but I know
19 the relationship I had with all my sergeants, especially
20 Scott, the same station, he is very thorough, pragmatic.
21 I actually worked with him for nine months after that.
22 I gave him a job as Aside me later, such was his
23 thoroughness, so I can stand corrected, but, as I say,
24 I was diluted. Due to the fact we had some form of
25 conversation was just due to the fact that I tried to

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1 make my standards his, so if he has been instructed for
2 that, or I have said that, then fair enough, I will
3 stand corrected, but, as I said, in my defence,
4 I couldn't recall it, but I knew there would be some
5 form and if I have been advised to say that to him, then
6 fair enough.

7 Q. All right, so I take it from that that you accept what
8 Sergeant Maxwell says and you do stand corrected; is
9 that right?

10 A. Well, I'm certainly not going to say he is lying and
11 I can't recall, so yes.

12 Q. All right, thank you. Can I ask you then two questions
13 arising out of the phone call that you listened to
14 between yourself and Inspector Stewart, and you were
15 asked about a reference that you made in that phone call
16 referring to Mr Bayoh as "the size of a house", and you
17 say that is not terminology that you would use and you
18 would have:

19 "... took that from the briefing from DS Maxwell
20 [I think PS Maxwell], I would believe, but from if he is
21 describing it to me, I would describe him as being well
22 built ..."

23 And so on.

24 So you attributed that remark, "size of a house", to
25 Acting Sergeant Maxwell.

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1 A. Yes.

2 Q. Inspector Kay, that expression, "size of a house", is
3 not recorded in any of your statements as having been
4 said by Sergeant Maxwell, there's no reference in your
5 operational statement to Sergeant Maxwell even giving
6 you a physical description of the man. The expression
7 doesn't appear in any of Sergeant Maxwell's statements
8 or his evidence sworn before this Inquiry. Would you
9 accept you might be mistaken that Sergeant Maxwell was
10 the source of that expression?

11 A. Same again, I'm not going to call him a liar. It's not
12 terminology I use, and he was the only one that gave me
13 a full briefing, so obviously I can't 100% articulate it
14 but I stand by that in my opinion it came from him.

15 Q. I think just to clarify you also indicated you had
16 a briefing from DS Davidson, is that right, at the
17 scene?

18 A. Yes, I was speaking to both of them at the same time as
19 per my statement.

20 Q. Right. Let me ask you then about another expression
21 which you were asked about from that same phone call and
22 that was that "he ran at them with a knife". That
23 expression is not recorded in any of your statements to
24 this Inquiry, it's not recorded in the briefing that you
25 noted from Sergeant Maxwell in your operational

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1 statement, it's not in any of Sergeant Maxwell's
2 statements, it's not in the radio transmissions and, let
3 me be clear, it is not the account of any officer who
4 was at the scene in their evidence to this Inquiry or in
5 any statement they have given at any time. Do you
6 accept that you could be mistaken in saying that
7 Sergeant Maxwell said to you "He ran at them with
8 a knife"?

9 A. Yes, I can see I've got my statement in the form he ran
10 at them. Possibly with time to go back to the station,
11 when things had calmed down it was a bit more clearer,
12 hence it is not mentioned in my statement.

13 Q. What I'm asking is whether you could be mistaken that
14 Sergeant Maxwell at any time said to you "He ran at them
15 with a knife", given that's never been his position or
16 the position of any officer who attended the incident?

17 A. Yes, it could be mistaken, but I also can't 100% be
18 sure.

19 MS MCCALL: All right.

20 Thank you, sir.

21 LORD BRACADEL: Mr Kay, thank you very much for giving
22 evidence to the Inquiry. The link will now be cut and
23 you will be free to go about your own business.

24 A. Okay, thank you.

25 LORD BRACADEL: Now, Ms Grahame, shall we make a start on

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1 Constable Masterton? I will adjourn briefly to allow
2 him to be introduced.

3 MS GRAHAME: Thank you.

4 (3.12 pm)

5 (Short Break)

6 (3.20 pm)

7 LORD BRACADEALE: Good afternoon, Mr Masterton. I'm sorry
8 you have been kept waiting. Would you say the words of
9 the affirmation after me, please?

10 MR SCOTT MASTERTON (affirmed)

11 Questions from MS GRAHAME

12 LORD BRACADALE: Ms Grahame.

13 MS GRAHAME: Thank you.

14 Good afternoon, Mr Masterton. You are
15 Scott Masterton?

16 A. Yes.

17 Q. And what age are you?

18 A. 57.

19 Q. And you are formerly a police constable with
20 Police Scotland?

21 A. Yes.

22 Q. And you have retired?

23 A. Yes.

24 Q. How many years' service did you have when you retired?

25 A. 30.

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1 Q. And when did you retire?

2 A. December 2017.

3 Q. Right. You will see in front of you that there is
4 a folder and please feel free to open it. It should
5 contain hard copies of the statements and documents that
6 you have prepared for the Inquiry and some other
7 statements. If you want to look through that at any
8 time, please feel free to do so. When I refer you to
9 something it will come up on the screen but if you think
10 there's something else that's important, please let me
11 know and we can have that on the screen too.

12 Look first at the first document which should be
13 a PIRC document, a statement given by you to PIRC on
14 6 July 2015, and you will see that on the screen now but
15 you should also have a copy in your folder and it is
16 6 July 2015 at 14.40 and it was taken by DSI
17 Edward Miles within the ACR at Bilston Glen in
18 Edinburgh. Do you see that?

19 A. Yes.

20 Q. Do you remember giving this statement to the PIRC?

21 A. Yes.

22 Q. Did you do your best, when you spoke to the PIRC, to be
23 as accurate as you could in your recollection and to
24 tell the truth?

25 A. Yes.

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1 Q. Thank you. And can we look at your first Inquiry
2 statement, SBPI00067, again, you will see a copy in your
3 folder. This is a statement given to the Inquiry and
4 taken on 11 March this year. Do you recognise that?

5 A. Yes.

6 Q. And if we look at the final page, you will see that it
7 was signed on 2 May this year. Now, although we can't
8 see your signature on the screen, there should be
9 a signature from you appended to every page on the hard
10 copy.

11 A. Yes.

12 Q. And if we can look at the last paragraph on that,
13 paragraph 34, it was said:

14 "I believe the facts stated in this witness
15 statement are true. I understand that this statement
16 may form part of the evidence before the Inquiry and be
17 published on the Inquiry's website."

18 And that was your understanding at the time?

19 A. Yes.

20 Q. And then can we look at a second Inquiry statement,
21 SBPI00194, taken on 9 November and again, do you
22 recognise that as your supplementary statement?

23 A. Yes.

24 Q. And on the final page at paragraph 22, I believe, we see
25 again you have signed it on 16 November and on your own

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1 hard copy of this statement, you will see that you have
2 signed every page.

3 A. Yes.

4 Q. And again, the final paragraph is in the same terms,
5 paragraph 22, and again, you believe the facts to be
6 true and you understood it would form part of the
7 evidence for the Inquiry and be published on our
8 website.

9 A. Yes.

10 Q. Thank you. And then can I also ask you to look briefly
11 at something we call a combined audio and visual
12 timeline. It's a spreadsheet. You should have a hard
13 copy of that, it's A3 size. I don't know if you have
14 looked at any of the other evidence, Mr Masterton, but
15 it is a timeline. On the left you will see columns
16 showing the times of events, you will see just left of
17 centre, transcripts of Airwaves transmissions by
18 the police and others at ACR, and on the right is the
19 CCTV, a thumbnail sketch. Do you see that?

20 A. (Nods).

21 Q. I may be referring you to passages in that but I will
22 explain as we go through.

23 You worked at Bilston Glen ACR as a controller, am
24 I right, for about 16 months as at May 2015?

25 A. Yes.

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1 Q. And I would like to just briefly get a picture of the
2 ACR and your role at the ACR at that time. So a 999
3 call would come in from a member of the public; who was
4 the first port of call for that? Who would take that
5 call? Who would handle that call as it came in?

6 A. What we called the call-takers, so they received the
7 calls from the public and they would initiate a job on
8 our command and control system.

9 Q. And when you say initiate a job, do you mean they would
10 put something into a -- onto the computer? We have
11 heard mention of STORM and call cards and incidents;
12 would that be the sort of thing they would create?

13 A. Yes. If it was a job that needed that. Sometimes it
14 might be a job that would be passed to the Council or
15 other agencies, but if it was a police job, they would
16 start up an incident, yes.

17 Q. So of course, the 999 call could come in, but it might
18 be for the fire service or some are coastguard,
19 something along those lines?

20 A. That's probably filtered out before it gets to
21 the police by the BT operator that takes the 999 call,
22 so they would ask "Do you want police, fire, ambulance,
23 or what emergency service do you want?"

24 Q. So the call comes into the ACR from a member of the
25 public, the call-taker picks it up and then puts

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1 something onto the system?

2 A. Yes.

3 Q. And I think you said in your statement that there's
4 a process called grading of the calls?

5 A. Yes.

6 Q. Can you give us a brief explanation of what the
7 different grades are?

8 A. I will be struggling now, but I think there was five
9 grades, a grade 1 being the most serious and grade 5
10 I think was no police involvement. Grade 1 calls were
11 essentially classed as a risk to life; a grade 2 call
12 would be something that requires police resources
13 in fairly quick order, and grade 3 and 4, obviously
14 further down the line, so when resources become free.
15 Grade 1 and 2 are the more serious ones.

16 Q. And of those, grade 1 is the most serious?

17 A. Yes.

18 Q. We have heard others say that would classify an
19 immediate threat to life; would you agree with that now?

20 A. That's generally what I would consider a grade 1 call to
21 be, yes.

22 Q. If they were dealing with a knife incident, so
23 an allegation that someone had a knife, would that
24 always be a grade 1 call, or would it sometimes be
25 a grade 2 call?

Transcript of the Sheku Bayoh Inquiry

1 A. I think it would pretty much always be a grade 1 call if
2 they were using a knife in any kind of threatening
3 manner, a grade 1 call certainly.

4 Q. How many calls would you get, say, in a week that
5 involved an allegation that someone had a knife? How
6 common was it?

7 A. It was relatively common. I generally worked on the
8 Leith desk in Edinburgh city, so it was fairly common.
9 I would think -- there will be statistics somewhere, but
10 I would have guessed one or two a week.

11 Q. Right. For the call-takers, how long would they take to
12 answer a call from a member of the public and then input
13 something into the computer system?

14 A. It's pretty quick. I would have thought less than
15 a minute to get that initial job on and across to me, so
16 for a grade 1 call, they would put the barest of details
17 on very, very quickly and transfer that job immediately
18 across and then they would continue to talk to the
19 person who had phoned in and get further information, so
20 the job would come across to me, I would immediately see
21 it was a grade 1 call but there would be the barest of
22 details on it and then I would know that they would be
23 continuing to talk to the caller and they would put
24 further information on as that -- as they got it, but
25 it's to give me as much opportunity as possible to get

Transcript of the Sheku Bayoh Inquiry

1 someone to respond as quickly as possible.

2 Q. Was the priority to get information to you as
3 a controller as soon as possible?

4 A. Yes.

5 Q. I was going to ask you if the call-taker is putting
6 things into the computer as they're still on the call,
7 or do they wait for the call to finish and then do
8 the --

9 A. No, they would be doing it as they speak.

10 Q. So it's in real time, if you like --

11 A. Yes.

12 Q. -- they're inputting things into the computer system?

13 A. Yes.

14 Q. And that's an ongoing process as the call continues?

15 A. Yes.

16 Q. And they're doing that, they have graded the calls and
17 then you as a controller receive -- start to receive
18 information on the system.

19 A. Yes.

20 Q. So let's just think first of all about the set-up. You
21 have said in your statements that at the ACR there are
22 four pods, or there were at that time, and they had six
23 controllers in each pod?

24 A. I think technically it should have six.

25 Q. It should have six?

Transcript of the Sheku Bayoh Inquiry

1 A. I don't think I ever saw that, no.

2 Q. All right, so sometimes they might be short-staffed?

3 A. Yes.

4 Q. But in theory there were four pods and this is for the
5 East Division, is that right?

6 A. Yes.

7 Q. Four pods -- sorry, I'm interrupting.

8 A. Sorry, I can't quite remember the area we covered.

9 I think it was Lothians, the Borders, Fife was where we
10 covered, yes.

11 Q. And each pod related to a different area?

12 A. Yes.

13 Q. And within the pod, the controllers themselves, how was
14 the work allocated to each controller? Was that
15 geographical?

16 A. Yes, you would cover a geographical area.

17 Q. So each of the up to six controllers would have
18 a different area to cover?

19 A. Well, for example, in the pod that I worked generally in
20 Leith you would have three controllers which covered
21 three geographical areas and you would have one person
22 who -- well, hopefully you would have one person who was
23 like a spare and would do other things while you were
24 managing jobs, so they would maybe phone ambulance, do
25 other bits and pieces of background information,

Transcript of the Sheku Bayoh Inquiry

1 checking computers for intelligence and things like that
2 and covering you when you went for a break, so if you
3 went to lunch or the toilet or anything like that, they
4 would cover for you.

5 Q. So your computer screen wasn't left unattended --

6 A. No.

7 Q. -- if you had a break for any reason?

8 A. Well, it could be, because generally we didn't have that
9 extra person, so one of the other controllers would have
10 to also take over command of your area and so they would
11 be covering two geographical areas at a time.

12 Q. Right. And on 3 May 2015, am I right in saying that the
13 pod you were working in was Fife?

14 A. Yes.

15 Q. And the area that you were covering as a controller was
16 Kirkcaldy?

17 A. Yes.

18 Q. Now, as I understand it, each pod has a supervisor?

19 A. Yes.

20 Q. And was that a sergeant?

21 A. Yes.

22 Q. So on 3 May 2015, who was your supervisor, who was your
23 sergeant?

24 A. Sergeant Steven Bisset --

25 Q. Bissett?

Transcript of the Sheku Bayoh Inquiry

1 A. -- I think.

2 Q. Where were they located when everyone was there in the
3 pod? Were they nearby or were they in a separate area?

4 A. No, there's a -- the pods are in a big circle and the
5 supervisors' area is a raised bit in the centre of the
6 circle.

7 Q. So they can be present when the calls are coming to the
8 controller?

9 A. Yes.

10 Q. What does the sergeant see in relation to -- obviously
11 you've got up to six controllers in that pod. What can
12 the sergeant see at the same time as yourself?

13 A. Exactly the same as us.

14 Q. Do they have a screen in front of them the same as you?

15 A. Yes.

16 Q. And do you also have a radio at the same time as
17 watching the screen?

18 A. Yes.

19 Q. And does that allow you to hear Airwaves
20 transmissions --

21 A. (Nods).

22 Q. -- but also to see the STORM cards or the incident cards
23 coming up on the screen?

24 A. Yes.

25 Q. Thank you. And what was the role of the sergeant

Transcript of the Sheku Bayoh Inquiry

1 supervisor in relation to each pod?

2 A. Basically an oversight of the jobs that were coming in,
3 an oversight of us to make sure we were doing our job
4 and on top of the jobs, on top of the resources.

5 Q. Can you seek advice from them if necessary?

6 A. Yes.

7 Q. What -- who was the supervisor of the sergeant? Who was
8 the overall supervisor?

9 A. That's the control room inspector.

10 Q. We have heard evidence that on 3 May 2015 the duty
11 inspector was Inspector Stewart?

12 A. Yes.

13 Q. Do you remember that? Was he the most senior person in
14 the -- he had overview of the ACR?

15 A. Yes.

16 Q. Was there any other person in that chain that I have
17 missed out? We have talked about the call-takers, the
18 controller which was your role, the sergeant and the
19 duty inspector?

20 A. No, that's it.

21 Q. Is that it? When a grade 1 call came in, so it has come
22 in to the call-taker, they have graded it a grade 1
23 call, highest grade, tell us what that looks like when
24 it comes onto your screen as a controller?

25 A. It's a while ago so I can't remember exactly what comes

Transcript of the Sheku Bayoh Inquiry

1 on screen, but there's some kind of job pops up on the
2 screen, with a description of the job, where it is and
3 for a grade 1 call there's a flashing red icon,
4 something just to give you that extra bit of prompt that
5 this is a grade 1, an emergency.

6 Q. Does that attract your attention --

7 A. Yes.

8 Q. -- the flashing red. What does the sergeant see when
9 a grade 1 call comes in?

10 A. The same.

11 Q. The same. Tell us about the inspector: what comes on
12 his screen when a grade 1 call comes in?

13 A. The same.

14 Q. The same. And do they come up on all three of those
15 screens at the same time or is there a time delay?

16 A. No, they would come up on all three at the same time.

17 Q. Were there any targets, as far as you remember, of the
18 time it would take you to deal with a grade 1 call?

19 A. There were, but I can't remember what they were.

20 I think minutes, you know.

21 Q. Minutes, not seconds, minutes?

22 A. To actually pick up the call or resource the call?

23 Q. To pick up the call and make a decision about the call.

24 A. I can't honestly remember, but --

25 Q. Maybe another witness will be able to help us with that.

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. So let's look at your Inquiry statement, paragraphs 14,
3 15 and 16, and -- yes, it's this one, this is the second
4 statement so you will see as we go through this -- line
5 6:

6 "For a grade 1 call, in particular, there's no
7 consideration, it's all hands [on] deck. The only real
8 consideration is who's nearest to it the location of the
9 call. Basically for a grade 1 call everybody is
10 cancelled from whatever they're doing to go to this call
11 until we've found out exactly what's happening and until
12 we know we're in control of it."

13 And then at paragraph 15 of the statement I think
14 you say:

15 "... every[one] goes as fast as they can."

16 And then at paragraph 16 you say:

17 "A grade 1 call is a threat to life. So it's an
18 urgent call, it is the most serious kind of call;
19 everyone drops everything and goes."

20 So is a grade 1 call always treated with urgency?

21 A. Yes.

22 Q. You have said in paragraph 16 and if we could maybe go
23 down the page slightly -- sorry, it is spanning two
24 pages. If we could just go up again, sorry about that.

25 It says -- we're talking about grade 1 call:

Transcript of the Sheku Bayoh Inquiry

1 "You know, we don't have many of them. You can go
2 many days without a grade 1 call. On a Friday/Saturday
3 night sometimes you'll get two or three a night, sort of
4 thing, but they're not a particularly common thing. And
5 at particular times of day as well. So, it's very, very
6 rare to get a grade 1 call at 7 o'clock in [the]
7 morning. For a grade 1 [call], I should be on top of
8 it, my supervisor should be on top of it, his
9 supervisors should be on top of it. Because,
10 for instance, if it's a firearms thing then the duty
11 inspector in the ACR has to then start getting firearms
12 officers geared up to attend."

13 I would like to just go through that paragraph in
14 a little bit more detail. You have said that it's very,
15 very rare to get a grade 1 call at 7.00 in the morning.
16 What do you mean by "very, very rare"?

17 A. Grade 1 calls are usually in the latter half of the day,
18 quite often Friday/Saturday evenings, weekends, sort of
19 thing. It's just unusual to get a grade 1 call of that
20 nature at that time, I think it was a Sunday morning.

21 Q. After 7.00 in the morning on Sunday 3 May 2015.

22 A. Yes.

23 Q. So is that -- do you remember in your 18 months at the
24 ACR had you had any grade 1 calls, knife calls at that
25 sort of time on a Sunday morning?

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1 A. I couldn't swear 100%, but not to my recollection, no.

2 Q. Right. When you said the supervisor should be on top of
3 it and his supervisor should be on top of it, what did
4 you mean by that?

5 A. Well, we have all seen a grade 1 call has come in, so
6 I need to be thinking about resourcing it and because
7 there probably wouldn't have been another grade 1 call
8 at that time anywhere else in the whole area that we're
9 covering, the sergeant and the inspector I would expect
10 to see that and be looking at it straight away to see if
11 it was something -- for example, is it a firearms job,
12 the inspector would need to know immediately so he
13 should be looking at that immediately to assess whether
14 he's got to consider firearms.

15 Q. Could you explain to us -- you have received this
16 grade 1 call after 7.00 in the morning on a Sunday, you
17 think that's probably the only one in Fife, the area,
18 and it's flashing red and tell us about the process, the
19 thought process that you're going through as you receive
20 that call?

21 A. I have a quick look at the job to see what the nature of
22 it is and then I'm basically looking to see what
23 resources I have that I can send to that job and I will
24 call up on the radio and start allocating units to that
25 job.

Transcript of the Sheku Bayoh Inquiry

1 Q. And when you say "start allocating units to that job",
2 what does that mean?

3 A. I will call them up on the radio, tell them details
4 about the job, and then on the computer I will allocate
5 them to the job.

6 Q. So is a unit like a response team in a police station
7 somewhere?

8 A. Yes.

9 Q. And will you be picking the best located team to respond
10 to that particular incident?

11 A. Initially, but for something like this, it is a case of
12 once I've got that first unit, it's everybody. I would
13 be concentrating on getting a radio message out, but
14 I know that everybody out there is going to hear that
15 radio message, so I will concentrate on getting one
16 allocated unit en route to it. I don't really need to
17 probably go through every single resource and say "Go"
18 because I know that they're all going to be running out
19 the door en route to this job, so I can start to look at
20 other information that's coming in about the job to pass
21 that out.

22 Q. As far as you are aware, will other police officers
23 understand a grade 1 call is a high priority?

24 A. Yes.

25 Q. Are you doing a risk assessment at that moment when

Transcript of the Sheku Bayoh Inquiry

1 you're deciding what units to send out?

2 A. Very, very basic, but it's a grade 1 call. Members of
3 the public have called in describing what seems to be
4 a serious incident and it's the police's job to go to it
5 and find out what's actually going on, so yes, it's
6 already been graded as a grade 1 by the system. It
7 needs police action and attendance, so there's not
8 really too much in the way of risk assessment, no.

9 Q. And at that time, is any part of your thought process
10 considering whether to send one unit, perhaps with two
11 officers, or all units?

12 A. For a job like this, it would be every single unit I can
13 get my hands on, yes.

14 Q. Right. And you will do that as quickly as possible?

15 A. Yes.

16 Q. Right. Is any part of that process considering the
17 experience of the officers that you're deploying, or
18 their gender, or their physical characteristics in any
19 way?

20 A. No. I -- as I said, I generally worked on the Leith pod
21 in Edinburgh. I had some knowledge of the officers
22 involved there, but for that area in Kirkcaldy, I had no
23 idea of the officers' length of service, their gender or
24 anything. We all put on the uniform and we go to the
25 jobs.

Transcript of the Sheku Bayoh Inquiry

1 Q. And all of the police officers are expected to attend?

2 A. Yes.

3 Q. And at that time, the person deploying the officers and
4 making those decisions is you as the controller?

5 A. Yes.

6 Q. And was there ever any occasion where that
7 responsibility was removed from you, or the sergeant or
8 the inspector interfered in that part of the process
9 with you?

10 A. On this incident or in general?

11 Q. Just in general.

12 A. Not really, no. Occasionally if there was a shortage in
13 other areas the sergeant might come on and take some of
14 my resources away somewhere else, that kind of thing,
15 but other than that, no, not really.

16 Q. So you are responsible as controller for taking the
17 initial decisions to deploy officers?

18 A. Yes.

19 Q. And to then arrange for that deployment over the radio?

20 A. Yes.

21 Q. Thank you. Can I ask you to look at the spreadsheet.
22 I said a moment ago we would come on to this. You will
23 see that -- if we start at 7.16, so page 1, really, of
24 the spreadsheet, you will see on the left-hand side that
25 we have timings down in the left-hand column and then in

Transcript of the Sheku Bayoh Inquiry

1 the second column it's audio timings. Do you see that?

2 A. Yes.

3 Q. And you see at 7.16.22 -- do you have that?

4 A. Yes.

5 Q. It says:

6 "Con 1, control for 4-1 Charlie."

7 Ashley Tomlinson then says "Go ahead", and then at

8 7.16.32 it says:

9 "Con 1, I need you to divert to Hendry Road,

10 a disturbance ongoing, male armed with a knife,

11 African-looking male chasing someone, maybe carrying

12 a knife. Described as big with muscles, about 6 foot

13 tall wearing a white t-shirt and dark-coloured jeans.

14 There's another job coming in about it, stand by."

15 Con 1, we have heard it suggested that that's you;

16 is that correct?

17 A. I -- yes.

18 Q. And so if we see Con 1 in this transcript, that will be

19 you --

20 A. Yes.

21 Q. -- transmitting. We will also see later that there's

22 someone called Con 2 and we have heard it suggested that

23 that was Michelle Hutchison; do you remember her?

24 A. Yes.

25 Q. Who was Michelle Hutchison?

Transcript of the Sheku Bayoh Inquiry

1 A. She works as an assistant to the inspector in the --
2 what we called East Overview.

3 Q. And was she working in the Fife pod that day or was she
4 in a separate area?

5 A. She is in a separate area.

6 Q. So not part of your pod?

7 A. No.

8 Q. Not part of Fife. We will come on to her later. So
9 Con 1, you are making that transmission and we see, as
10 far as I'm aware, this is the first transmission that
11 you make and at that stage you are diverting -- "I need
12 you to divert to Hendry Road", and it was
13 Ashley Tomlinson that responded and said "Go ahead". As
14 I understand it, Ashley Tomlinson and an officer called
15 Nicole Short were together that day, partnering each
16 other, and they were initially deployed to
17 Hayfield Road. Do you have any recollection of that?

18 A. No.

19 Q. So it would appear that on that day there was one unit
20 sent initially and then you will see on page 2 at
21 7.17 -- sorry, at 7.16 but at the top of page 2, 7.16.59
22 PC Tomlinson says:

23 "That's received, control, is there other units that
24 can assist us?"

So there was a request within a matter of seconds

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1 from Ashley Tomlinson for other units that could assist
2 and did you respond to that?

3 A. I don't think I have responded to that. Essentially
4 I would say that is a message both to me but also to
5 their colleagues letting them know that "Can anyone else
6 out there come and help us". I'm busy reading the jobs
7 that are coming in so I think -- I don't know how
8 quickly the other job comes in but there's also other
9 information coming in on the job, so I probably did not
10 respond to that as this is essentially a -- I'm seeing
11 it as yes, a call to me if I can answer it, but if not
12 it's a call going out to her colleagues or his -- is
13 it -- sorry, is it a he or a she?

14 Q. Ashley Tomlinson is a man.

15 A. It's a call going out to his colleagues, "Can anyone
16 else that's free come and help us".

17 Q. Would it have been possible for you at that point to say
18 immediately, "All units to Hayfield Road"?

19 A. Yes.

20 Q. But you didn't think that was necessary at that time?

21 A. No.

22 Q. Was there a reason for that or?

23 A. Just because I'm so busy reading the job. I know from
24 27/28 years of experience that every police officer in
25 the building will be running out of the building,

Transcript of the Sheku Bayoh Inquiry

1 getting into a car and en route to that job.

2 Q. So will they all know that it's a grade 1 call?

3 A. Yes.

4 Q. How do they know it?

5 A. Did I not say that?

6 Q. Well, if we look at 7.16.32, you say, "I need you to
7 divert to Hendry Road and there's a disturbance ongoing,
8 a male armed with a knife", but there's nothing there
9 about it being a grade 1 call.

10 A. No. Quite often we would say a grade 1 call but
11 I haven't said it on that instance, but they would know
12 from the nature that it's a male armed with a knife that
13 it's a grade 1 call.

14 Q. Right. So they would know from the nature of the
15 content?

16 A. Yes.

17 Q. So anyone listening to the radio would recognise --

18 A. Yes.

19 Q. -- the threat level?

20 A. Yes.

21 Q. And then very quickly at 7.17.04 you come back on the
22 Airwaves again and you say:

23 "There's another grade 1 call coming in for the
24 Victoria Road Kirkcaldy."

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. "Male armed with a knife. Male in possession of a large
2 knife. Black male wearing white T-shirt and jacket
3 walking along the street with a large knife in his
4 right-hand, about a 9-inch blade."

5 A. Yes.

6 Q. So by the time this call, this Airwaves transmission is
7 made, so within a matter of seconds, you have made it
8 clear that's another grade 1 call coming in.

9 A. Yes.

10 Q. And you have emphasised the reference here to a knife,
11 a large knife, a large knife and a 9-inch blade?

12 A. Yes.

13 Q. And what's your understanding of how officers will
14 interpret that message?

15 A. That we've got a serious incident ongoing.

16 Q. Right. I would --

17 A. I suppose also that this is now a second call from the
18 public and so there's something a wee bit more,
19 you know. If it's just one call from the public, but
20 once you start getting two or three or four calls in
21 rapid succession, there's something a bit more going on.

22 Q. Is it -- does it have more -- we have heard some
23 evidence that people took that as corroboration, or it
24 gave the calls more credibility because there were
25 multiple calls coming in --

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1 A. Yes.

2 Q. -- from different members of the public --

3 A. Yes.

4 Q. -- about a similar situation?

5 A. Yes.

6 Q. And so is that something that you would agree with if
7 officers have told us that they gave more emphasis to
8 the multiple number of calls that were coming in?

9 A. Yes, I would say so and it's probably quite indicative
10 as well that it is taking place in the public's view,
11 you know, it's not in a house, it's not in a building or
12 an enclosed space, it's out in view of the public
13 somewhere and a number of people are witnessing this and
14 feeling "Okay, I need to phone the police".

15 Q. And is that indicating an increased level of risk or
16 threat?

17 A. I would say so, yes.

18 Q. And then we see further down that page, page 2 of the
19 spreadsheet, that at 7.17.23, Acting Police Sergeant
20 Scott Maxwell makes an Airwaves transmission:

21 "Control from 411, I want all units to attend,
22 bearing in mind officer safety is there an ARV and a dog
23 as well please."

24 A. Yes.

25 Q. So this appears to be the first mention of all units

Transcript of the Sheku Bayoh Inquiry

1 being called. We have heard that Acting Police Sergeant
2 Maxwell was the sergeant in charge of the Response
3 Team 4?

4 A. Yes.

5 Q. Which included PCs Tomlinson and Short and he is calling
6 for all units and he is making a request for an ARV and
7 a dog.

8 A. Yes.

9 Q. So again, in terms of the seriousness with which these
10 calls are being treated, does that emphasise the
11 importance of this call?

12 A. Yes.

13 Q. And we have heard ARV is armed response vehicle, and in
14 fact it would -- not everyone's permitted to deploy an
15 ARV. What were your -- what was your authority in
16 relation to deploying an ARV?

17 A. None.

18 Q. You weren't allowed?

19 A. No.

20 Q. Was that for Inspector Stewart?

21 A. Yes.

22 Q. Could Sergeant Bissett deploy an ARV?

23 A. No.

24 Q. So it has to be Inspector Stewart?

25 A. Yes.

Transcript of the Sheku Bayoh Inquiry

1 Q. What could you do in relation to this request for an
2 ARV? What was within your remit?

3 A. I could possibly reiterate the message up to the control
4 room inspector, but I know he will be listening out,
5 I know he will have heard the job, I know he will have
6 seen the job, so I don't want to take up unnecessary
7 air time in an emergency situation like this. That's
8 about all I could do.

9 Q. And how did you know that Inspector Stewart would have
10 been on top of this job?

11 A. I couldn't know 100% because he is in a separate part of
12 the building from me.

13 Q. You can't see him from where you are?

14 A. No.

15 Q. But you have just given evidence that the grade 1 call
16 comes in, the flashing light comes on, the red light and
17 that's on his screen at the same time as yours?

18 A. Yes.

19 Q. And Sergeant Bissett's?

20 A. Yes.

21 Q. And tell us what your authority was in relation to
22 making arrangements for a dog unit to attend?

23 A. To be honest, I can't 100% remember now. At this point
24 we had transitioned to Police Scotland. We used to have
25 an enormous amount more dog handlers, and back in those

Transcript of the Sheku Bayoh Inquiry

1 days, I would have been able, I think, to call up a dog
2 handler, if a dog handler was free, to resource it
3 myself, but we were down to a handful of dog handlers
4 covering the whole of Scotland. Dog handlers were
5 getting sent from Edinburgh to Inverness, etc, so
6 I think it was certainly the supervisors, the sergeant
7 supervisors that would arrange dog handlers. It might
8 have even gone up as high as an inspector to arrange dog
9 handlers. They were such a rare -- they had become such
10 a rare resource.

11 Q. Then as we look down page 2 of the transcript we see
12 various messages about -- from PC Alan Paton, so another
13 officer saying he is heading there and asking about the
14 two separate locuses, "We will go to Victoria Road
15 before Hendry Road". Was there some confusion or
16 question about where the officers were to attend?

17 A. Yes. I don't know whether there would have been from
18 their point of view, but from my point of view because
19 I didn't know the local area, I was just having to pass
20 out what was coming in as reported by the witnesses, so
21 they had reported Victoria Road and Hendry Road.

22 Obviously the local officers would know if those were
23 two roads that are sitting right next door to each other
24 or whether they are a mile apart. If it was a mile
25 apart obviously we might have actually two separate

Transcript of the Sheku Bayoh Inquiry

1 incidents going here, but ...

2 Q. On your computer screen is there -- do you have any
3 access to local information yourself, such as whether
4 two roads are close together or they're in the same
5 area?

6 A. Yes, there was some kind of mapping system, but you had
7 to open up a separate application to get that, yes.

8 Q. How easy was that to access?

9 A. Not easy, and in the timeframe that we had here, so it's
10 not an instant process. You only had like one small
11 screen to do everything on so it would mean covering up
12 the screen that you were looking at so ...

13 Q. And you have described to us how the call-takers are
14 continuing to add information to the screen?

15 A. Yes.

16 Q. So if you were to access any of that local information
17 would that stop the call-takers' data -- that would no
18 longer be visible to you?

19 A. Yes.

20 Q. Right. Who were you dependent on for local information?

21 A. The local officers.

22 Q. And then we see that also there's a Samantha Davidson
23 comes onto the Airwaves, she is also attending, and you
24 come on and give further information about the streets
25 in Kirkcaldy and then PC Paton talks about the

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1 "Victoria Road is probably incorrect".

2 A. Yes.

3 Q. And then at 7.19.12, Scott Maxwell says:

4 "Control from 411, is there any update from ARV or
5 dogs unit, over."

6 So he has requested that at 7.17.23 and at 7.19.12,
7 he is requesting an update.

8 A. Yes.

9 Q. And by that stage, you say at 7.19.17:

10 "I believe a dog unit is en route."

11 A. Yes.

12 Q. And Con 2, Michelle Hutchison we have heard, says:

13 "Be aware organising an ARV as well, stand by."

14 What's been going on behind the scenes after
15 Scott Maxwell makes the request for an ARV and a dog
16 unit before you make this transmission at 7.19 and
17 Michelle Hutchison says that at 7.19?

18 A. So basically we would look into trying to get a dog
19 handler and I have said I believe a dog handler is
20 en route. I think that's probably because someone has
21 put an entry on the job saying that a dog handler is
22 allocated. The ARV bit ... I would suggest that means
23 that the area -- the ACR inspector is currently looking
24 at it and deciding whether it will merit an ARV going.

25 Q. So you are -- although you can't see him, you are

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1 assuming that the inspector is helping with this
2 incident?

3 A. Yes.

4 Q. And are you also able to see Sergeant Bissett, is he
5 also helping?

6 A. I couldn't, no. The way the pods work, although they're
7 all in a big circle around the central bit where the
8 supervisors sit, the pods themselves are little circles,
9 so if you happen to be sitting on a desk you could be
10 facing the sergeant, or you could have your back towards
11 him, so I had my back towards him on this one.

12 Q. Right. Then can I ask you to look at your statement
13 from 11 March 2022 -- this is your first Inquiry
14 statement -- and to look at paragraph 24, just before we
15 leave the issue of the dogs unit. You say:

16 "Whilst I was allocating resources to this incident,
17 I can see from the incident 0745 that East Overview 1 is
18 showing as allocating a dog unit at 7.18.38. The dog
19 unit was SD10. Another dog unit SD18 was mobilised also
20 at 0721 by [redacted] at East Overview 3 who is
21 a supervisor. It does not say where they were coming
22 from, but probably far away. I'm aware from the
23 combined Airwave transcript ... that one of the dog
24 handlers mentions he is coming from Edinburgh. Again,
25 prior to Police Scotland we knew where all these dog

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1 handlers and we had our own dog handlers. But once
2 Police Scotland came along you could be sending a dog
3 handler from Edinburgh to Inverness, believe it or not."

4 Just to be clear about this, the incident 0745
5 that's not the time, that's the incident number, is it?

6 A. Yes.

7 Q. And who are East Overview 1 and East Overview 3? Who
8 are they?

9 A. Well, it's going to be two of the three people in
10 East Overview, so I wouldn't be able to say specifically
11 which one was which, but there's an inspector, sergeant
12 and an assistant, so I would have thought that
13 East Overview 1 was probably the inspector and
14 East Overview 3 was probably the assistant.

15 Q. So who was East Overview 1? Do you know who they were?

16 A. I don't, I don't 100%, but I'm guessing it might be the
17 inspector.

18 Q. So again you can't see these people, but somebody is
19 helping organise the dog units?

20 A. Yes.

21 Q. And they seem to have located two possible dog units?

22 A. Yes.

23 Q. And -- but again you can't tell from the information on
24 your screen where those dog units are?

25 A. No.

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1 Q. You can't tell how long they would take to get to
2 Hayfield Road?

3 A. No, but I certainly seem to recall I was pretty sure it
4 was Edinburgh they were coming from.

5 Q. How did you know that?

6 A. Because I'm pretty sure that's all we had had for a long
7 time was either one -- two quite frankly was an
8 exception, so it was covering the whole of the east area
9 and probably 95% of the time they were Edinburgh and
10 they would have to go to Stirling, or St Andrews, or
11 wherever.

Q. But this was early on a Sunday morning.

13 A. Yes.

14 MS GRAHAME: I'm conscious of the time, sorry.

15 LORD BRACADELE: Yes. Would that be a convenient point to
16 stop?

17 Mr Masterton, can you come back tomorrow?

18 A. Yes, sir.

19 LORD BRACADELE: Very well. We will sit again at 10 o'clock
20 tomorrow.

21 (4.07 pm)

22 (The Inquiry adjourned until 10.00 am on Thursday,

23 24 November 2022)

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