

Transcript of the Sheku Bayoh Inquiry

Friday, 9 February 2024

1

2

(10.00 am)

3

LORD BRACADALE: Good morning, Mr Little. Perhaps I should

4

explain to you we have a break at 11.30, we sit until

5

1 o'clock when we stop for lunch until 2 o'clock, and

6

then we sit between 2 and 4.15, and we have a 15-minute

7

break at 3 o'clock. I understand that you may need

8

additional breaks. If you do, please just say so, and

9

we can have a break at any time.

10

THE WITNESS: Thank you.

11

LORD BRACADALE: Would you raise your right hand and say the

12

words of the oath, please.

13

MR WILLIAM LITTLE (sworn)

14

LORD BRACADALE: Thank you.

15

Ms Grahame.

16

Questions from MS GRAHAME

17

MS GRAHAME: Good morning.

18

A. Good morning.

19

Q. You are William Little?

20

A. That is correct.

21

Q. And we may have heard people refer to you as

22

Billy Little?

23

A. Yes.

24

Q. What age are you?

25

A. I am 64.

26

Q. You are a senior investigator with PIRC, and you have

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- 1 been since -- you have worked with them since
2 March 2013?
- 3 A. I was. I retired on 29 December.
- 4 Q. I was going to ask you when you retired, so 29 December.
5 So you are retired now?
- 6 A. Yes.
- 7 Q. But in March 2013 you joined the Police Investigations
8 and Review Commissioner?
- 9 A. I did.
- 10 Q. And that is the month prior to PIRC officially coming
11 into existence?
- 12 A. That is correct.
- 13 Q. In May 2015 you were a deputy senior investigator?
- 14 A. I was.
- 15 Q. And that was the same as a Mr Keith Harrower we have
16 heard from?
- 17 A. That is correct.
- 18 Q. You then became a senior investigator from 1 March 2018?
- 19 A. That is correct.
- 20 Q. Again, that was the same date as Keith Harrower became
21 a senior investigator?
- 22 A. It was, yes.
- 23 Q. You had previous experience of being in
24 Strathclyde Police?
- 25 A. I was.
- 26 Q. You had joined them in 1980 and had 29 years' service?

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1 A. That is correct.

2 Q. You retired from the police in April 2009?

3 A. I did.

4 Q. Then I understand you went to work in Jersey for a while
5 with the State police there?

6 A. I did, yes.

7 Q. And you were helping to investigate unsolved crimes,
8 including homicides?

9 A. That is correct, yes.

10 Q. And you did that for a year or so, and then
11 in March 2013, as we said, you joined PIRC?

12 A. I did.

13 Q. I don't know if you have watched any of the other
14 evidence we have heard in this Inquiry, Mr Little?

15 A. I have seen some, yes.

16 Q. You have probably seen me refer to a blue folder which
17 witnesses have in front of them when they give evidence.
18 That is -- would you open that up, please, and you will
19 see that there are a number of documents in that folder.

20 Just to explain to you, as I go through and ask
21 questions today, I will ask for documents to be brought
22 up on the screen, and that is so everyone can see what
23 I am referring to. But we have provided you with some
24 hard copies of certain documents that I am likely to
25 refer to, and if you wish to refer to them at any stage,
26 please do so. Those are for your use.

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1 And as I am going through different questions today,
2 if you think, oh, there's something in my statement or
3 there's something in a book, please feel free to find
4 it, and we can see if we can put it up on the screen as
5 well.

6 A. Thank you.

7 Q. If we -- we have on occasions sometimes not been able to
8 locate a document that a witness wants to refer to, and
9 when that happens I will say we will try and get it over
10 a break, or we can get it for next Tuesday.

11 A. Okay, thank you.

12 Q. Let's look at the first document, which is a PIRC
13 statement dated 28 July 2015. It's PIRC 00370. You see
14 that on the screen?

15 A. I do yes.

16 Q. That has your name at the top. It's written
17 "Self-Prepared", so you prepared this yourself at some
18 point, and it's dated 28 July 2015, and at that time you
19 were a deputy senior investigator?

20 A. Yes.

21 Q. You should have a hard copy of that in your blue folder.

22 A. Thank you.

23 Q. I think in your first Inquiry statement, which we will
24 come to in a moment, you told us that you began drafting
25 this statement that we see on the screen about 12 weeks
26 after the events recorded within it?

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- 1 A. Yes, that is correct.
- 2 Q. And when you prepared this statement you were in the
3 PIRC offices, and you had access to your notebook or
4 notebooks and daybooks and information recorded in
5 CLUE 2?
- 6 A. That is correct.
- 7 Q. Am I right in saying CLUE 2 is a management system that
8 PIRC investigators have available to them?
- 9 A. It is, yes.
- 10 Q. I think in your first Inquiry statement you say you did
11 your best to be truthful and accurate in what you said
12 in the statement we see on the screen?
- 13 A. That is correct.
- 14 Q. I think you also say if there is a discrepancy between
15 your Inquiry statements and this PIRC statement from
16 2015, that the Chair should prefer your PIRC statement
17 as this was written at the time?
- 18 A. That is correct, yes.
- 19 Q. Thank you. Let's look at your first Inquiry statement,
20 please, which is SBPI 00255. We see this was taken on
21 4 November and 20 December 2022. If we can look at the
22 final page, it's 45 pages long, and if we look at the
23 final page we will see -- well, your signature will
24 be -- has been redacted for the purposes of the screen,
25 but I think on your hard copy you will see your
26 signature?

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- 1 A. That is correct, yes, I do.
- 2 Q. And you have signed every page?
- 3 A. I have, yes.
- 4 Q. That was on 1 February 2023?
- 5 A. Sorry, yes ... Yes, that is correct.
- 6 Q. And the final paragraph that we can also see on the
- 7 screen is 85 and it says:
- 8 "I believe the facts stated in this witness
- 9 statement are true. I understand that this statement
- 10 may form part of the evidence before the Inquiry and be
- 11 published on the Inquiry's website."
- 12 You understood that to be the case when you signed
- 13 this statement?
- 14 A. I did, yes.
- 15 Q. Thank you. Can we now look at your second Inquiry
- 16 statement, which is SBPI 00421. I am calling this your
- 17 second statement, but actually it was a request in
- 18 writing from the Inquiry, which we call a Rule 8
- 19 request, and you responded to those questions in
- 20 writing?
- 21 A. I did, yes.
- 22 Q. So it's -- the heading is "Statement in Response to a
- 23 Rule 8 Request". I am going to, for convenience, call
- 24 this your second Inquiry statement.
- 25 A. That is fine.
- 26 Q. This is 151 pages long, and I wonder if we can look at

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1 the final page. We see this was again signed by you on
2 every page.

3 A. Yes.

4 Q. And that was on 3 December last year.

5 The final paragraph, if we can look at that, is 376.
6 If we could move up the screen, please.

7 The response to that question is:

8 "I believe the facts stated in this witness
9 statement are true. I understand that this statement
10 may form part of the evidence before the Inquiry and be
11 published on the Inquiry's website."

12 Again, you knew that to be the case when you signed?

13 A. I did, yes.

14 Q. We have heard that PIRC came into existence on
15 1 April 2013, and I would like to ask just some
16 preliminary questions about the training that you had
17 had at around about that time.

18 Can we look at your -- this is your second Inquiry
19 statement. Look at paragraph 6 of this, and I think in
20 this paragraph you've set out details of some of the
21 training courses that you've been on or you were on when
22 you were part of PIRC?

23 A. That is correct, yes.

24 Q. You have given us a list for each year. There it is.

25 You say:

26 "When I joined PIRC, I had previously been employed

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1 for 29 years as a police officer. In my earlier
2 statement to the Public Inquiry I outlined the roles
3 I performed and the experience I gained."

4 That is available for the Chair.

5 "This was principally as an investigator, which was
6 latterly as a senior investigating officer or deputy
7 senior investigating officer in major complex
8 investigations. Upon retirement, I also worked in the
9 role as a civilian senior investigating officer for
10 the States of Jersey police."

11 And you took charge of teams, you have talked about
12 that already.

13 If we move down, you say:

14 "I did undertake different training throughout my
15 PIRC career which is documented within PIRC training
16 records."

17 And you start with 2013 to 2014. So 2013 you
18 started with PIRC. Do those dates run from a particular
19 month in 2013, or do they start from March when you
20 began with PIRC, or is it January to December? So we
21 are looking at 2013 to 2014.

22 A. I am unsure of that, Ms Grahame. I lifted that from
23 a spreadsheet that is held within PIRC records.

24 Q. Right.

25 A. I couldn't say whether it ran from March to March or it
26 ran from January to December.

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- 1 Q. That is --
- 2 A. I imagine it would be January to December if it is
3 lifted off a spreadsheet, but I couldn't clarify that at
4 this time.
- 5 Q. All right. Thank you.
- 6 We see that you attended a number of courses in that
7 first year that you were with PIRC.
- 8 A. Yes.
- 9 Q. And I am interested in "Training re fatal accident
10 inquiries and deaths investigations in Scotland". Tell
11 us what that training was for?
- 12 A. My recollection was that that was ... that was
13 an in-house training delivered by a member of staff who
14 had moved to PIRC from the Crown Office deaths unit, if
15 my memory serves me right in respect of that training,
16 so it was basically giving an overview of the role of
17 the deaths unit, or the Scottish Fatalities
18 Investigation Unit it became known as, and the link into
19 fatal accident inquiries.
- 20 Q. Was it primarily about fatal accident inquiries rather
21 than training into investigations?
- 22 A. It including deaths investigations, because there was
23 obviously an investigation conducted that may end up at
24 a fatal accident inquiry.
- 25 Q. How long did that training last?
- 26 A. I think that what was a day's training.

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- 1 Q. Do you remember much about the content about deaths
2 investigations?
- 3 A. No, after this passage of time, no, I don't, no.
- 4 Q. Can we move on to 2014 to 2015, and I appreciate that
5 may cover the period up to March 2015 or it may cover
6 the period from January 2014 to December 2015.
- 7 A. Yes.
- 8 Q. I am interested in the reference to post-incident
9 manager awareness. Can you tell us about that?
- 10 A. Yes. That's -- I can't recall if that was in-house
11 training or was attendance at the police training
12 centre. I know I certainly attended a course at the
13 police training course, it wasn't the full post-incident
14 manager course, but it was -- I attended part of it in
15 respect of awareness in the role of the PIM and the part
16 that PIRC would play if there was a PIP held.
- 17 Q. We have heard from Mr Harrower that he was -- he
18 described himself as PIM-aware?
- 19 A. Yes.
- 20 Q. But this wasn't a course that allowed you to become
21 a PIM --
- 22 A. No, it wasn't a PIM PIRC course. I am not a trained
23 PIM.
- 24 Q. Thank you. It also mentions there training in
25 equalities?
- 26 A. Yes.

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- 1 Q. What did that involve?
- 2 A. My recollection is that this was a training course
3 delivered by -- I think it was one of the universities,
4 or people from a university, and it was a course in
5 respect of equality and diversity.
- 6 Q. Can you remember anything about the content?
- 7 A. I am sorry, I can't remember anything of the content ...
8 No, I can't remember anything so much about the content.
9 I do remember it was -- you know, I believe it was an
10 external delivered course, it wasn't an in-house course,
11 and it was everybody -- my understanding and
12 recollection is everybody in PIRC attended that, not
13 just the investigations department but the whole of PIRC
14 attended this.
- 15 Q. Was it also a full day --
- 16 A. Yes, I actually think it was more than a day I think it
17 was maybe two days.
- 18 Q. Did you -- what did you learn from that course?
- 19 A. It was obviously -- you know, I would like to think it
20 increased my awareness in respect of matters concerning
21 equality and diversity, and it made you think of your
22 own actions and maybe -- not "maybe"; you did think of
23 your own actions and increase your awareness. It
24 certainly made me think more about my use of language,
25 and by that I mean I -- I was maybe addressing, when
26 doing a briefing, I knew I had a habit of saying "Ladies

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1 and gentlemen" before I would start the briefing.
2 I remember thinking, well, that's maybe not appropriate
3 to everybody and everybody's viewpoint. And changing --
4 a term I use is "Folks", "Dear all". And also thinking,
5 you know, just about -- about yourself, and how you
6 might approach things, and ensuring that you take
7 awareness when you are dealing with any particularly
8 minority groups, and over above and everybody else, in
9 your use of language. I think that was the biggest
10 point I took from that.

11 Q. We have heard some witnesses give evidence about
12 unconscious bias?

13 A. Yes.

14 Q. And training in that, about raising awareness about
15 bias. Was that something that was included in --

16 A. Yes, it was, absolutely, yes, yes. And I have to say,
17 yes, it made me realise that we all have bias in some
18 way, but we maybe don't realise we have that bias, and
19 it was kind of inward reflection on that, and, yes, and
20 being mindful of that, as I said, in particular your use
21 of language.

22 Q. Did you exercise that mindful reflection, inner
23 reflection, in your practice?

24 A. Yes, I think I did. Yes, I think I did.

25 Q. In relation to the final entry there, "PIM exercise with
26 Police Scotland". What was that?

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1 A. Yes, that was -- there was -- there was an exercise held
2 by Police Scotland, and it was held in Aberdeen.
3 I remember we were up for a couple of days, we were
4 asked to participate, and it was -- there was a PIP
5 exercise. Now, the PIP exercise was a whole
6 post-incident process, and it was a mixture of
7 scenario-based, that the police had fatally shot
8 somebody, and -- and there was then put in place the
9 post-incident procedure.

10 My recollection is that there was four of us
11 attended, myself, Keith Harrower, Brian Dodd and
12 Richard Casey, and I was selected along with one other,
13 I can't remember if it was -- who else, the second
14 person was, but we were actually participants in the
15 incident, and the other two PIRC representatives, they
16 were observers, and it took you through the incident
17 that occurred, and it was -- it wasn't just
18 classroom-based, we were actually out at a scene, and
19 the firearms team were there and they went through
20 a firearms scenario and they discharged -- lethally
21 discharged a weapon. We ended up back in the PIM suite
22 in Aberdeen, and they took us through the whole gambit
23 of what would happen in that incident. My part was to
24 be that I was the attending PIRC person, what would
25 I expect before I got there, and what would I expect --
26 what would I expect to happen when I was there and what

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1 part I would play in that and my dealings with the
2 post-incident manager.

3 Q. How do you feel that course equipped you for dealing
4 with a situation where there was a post-incident
5 procedure in place?

6 A. Prior to that, and I had only been on that post-incident
7 manager awareness course, I believe I was there before
8 that, is I'd never been at a PIP, I had never taken part
9 in a PIP. PIP was originally I think -- I think the
10 Chair is aware that PIP was initially a firearms process
11 and was only instigated in the course of a firearms
12 incident, particularly a lethal firearms incident. So
13 that gave me a great awareness there of what to expect,
14 and my engagement with that, as -- as a PIP, as a police
15 process, you know, and I thought it was very good of
16 Police Scotland to invite us into that process as part
17 of the training, yes, and I felt it was very beneficial.

18 Q. Was it your understanding that PIP at that time was only
19 brought in if there had been some sort of firearm
20 incident?

21 A. That is correct.

22 Q. And what did a firearm mean to you?

23 A. A firearm meant to me is -- in relation to the PIP
24 process, a firearm meant to me a conventional firearm.
25 Everything they talked about was a conventional firearm.
26 A lethal barrelled weapon, for want of a better

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1 expression. Under legislation, a firearm means
2 different things as well. It does include Taser and it
3 does include CS and now PAVA spray.

4 Q. So in terms of your understanding at the time, did you
5 come away from that course thinking PIPs were in place
6 for guns?

7 A. Yes.

8 Q. As a PIRC investigator, what training had you been given
9 before 3 May 2015 in relation to carrying out
10 investigations for PIRC?

11 A. Apart from obviously what is kind of highlighted there,
12 and we listened to the courses, the training that we did
13 do is the month before we went live, or the time I was
14 there, from 1 March to 1 April 2013, is we engaged in
15 a series of awareness in respect of our role, the
16 legislation we would be working under, and how we would
17 implement that, and how we would engage with the
18 policing bodies that -- that we deal with. As you know,
19 we deal with all policing bodies and HMRC in Scotland.

20 So it was more about heightened awareness. It was
21 being aware of the other members of PIRC, what their
22 skill set was, because there was a variety of skill sets
23 brought together, and how you would utilise that, these
24 skill sets, within any investigation.

25 So it was more just about internal awareness, and
26 we -- we conducted some role play if there was

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1 an incident, and that included death, it included road
2 deaths, it included shootings, you know, the sort of --
3 what I would describe as the major incidents that we
4 would deal with.

5 So it was all just in-house training, it wasn't like
6 a dedicated training course we went on to.

7 Q. Did it include deaths in police custody or deaths after
8 contact with the police?

9 A. Yes, it did include deaths. It included both, yes. You
10 know, if -- the majority of people think a death in
11 custody is a death occurring in a custody suite, but it
12 was that awareness that it doesn't just include that,
13 it's death if a police officer has arrested somebody
14 outside, so ...

15 Q. You have said that was in-house. Who delivered that
16 training?

17 A. That training -- it was a mixture of ... basically it
18 was the senior managers who we had at that time. And as
19 I said, it was local awareness. And we role-played, we
20 role-played the part of being an investigator, or a lead
21 investigator into these incidents.

22 Q. Did any of that training that you had on investigations
23 involve issues where race or racial discrimination was a
24 factor to be considered?

25 A. Not that I recall, no.

26 Q. Were you given training in Article 2 and compliance with

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- 1 Article 2 in investigations?
- 2 A. There was an awareness around -- obviously the
3 Human Rights Act underpins everything that we do, so,
4 yes.
- 5 Q. Can I show you three documents and see if you recognise
6 them. One is PIRC 04446. This is a document dated
7 November 2012, but I understand we will hear evidence
8 that it was dealt with in the lead-up to PIRC coming
9 into existence and after. It's called "Police
10 Investigations and Review Commissioner. Operational
11 Model. Response to Article 2 Investigations". Do you
12 recognise that? And maybe we can move down the screen?
- 13 A. Can we scroll up a bit, please.
- 14 Q. Yes.
- 15 A. Yes, I do recall that.
- 16 Q. If we move down slightly. Do you see that on the page
17 there, it talks about the Human Rights Act and
18 obligation imposed under Article 2 applying to PIRC, and
19 sets out five procedural obligations: independence, the
20 investigation must be effective, reasonably prompt,
21 there must be a sufficient element for public scrutiny,
22 and the next of kin must be involved to an appropriate
23 extent. Do you recognise that?
- 24 A. I do, yes.
- 25 Q. We can scroll through the document if you want --
- 26 A. No, I do ...

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- 1 Q. Was that something you were trained in, that document,
2 and the implications of Article 2?
- 3 A. I don't ... I don't specifically remember a training
4 course or day on this particular document. It formed
5 part of -- part of, you know, the discussion we had, and
6 the document was available, yes.
- 7 Q. Is it something you've read, or at that time had you
8 read it?
- 9 A. I believe I would've. I can't -- you know, I can't
10 specifically recall sitting down and saying I read it,
11 but my viewpoint is I would've read it, yes.
- 12 Q. Can we look at a memorandum, PIRC 04453. This is
13 entitled "Memorandum of Understanding between the Crown
14 Office and PIRC".
- 15 A. Yes.
- 16 Q. Do you recognise that document?
- 17 A. I do.
- 18 Q. Was that something you were familiar with?
- 19 A. Yes.
- 20 Q. Did you receive training on this?
- 21 A. Again, it formed the same part -- you know,
22 I wouldn't -- it would be incorporated into training,
23 and specifically sitting for a morning or whatever,
24 going through this.
- 25 Q. If we could scroll through this, we see that it sets out
26 the role of PIRC, statutory responsibilities of PIRC,

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1 and the liaison with the Crown Office, that type of
2 thing?

3 A. Yes.

4 Q. Thank you. We can put that to one side.

5 If we can look at PIRC 04438. This is another
6 document we have heard about, "PIRC Independent
7 Investigative Processes Following Police Use of
8 Firearms". And if we move down, it sets out
9 investigative function, and again there is references to
10 Article 2, and reference to firearms, and I think you
11 mentioned this a moment ago, a firearm can be a Taser or
12 CS gas?

13 A. Yes.

14 Q. Do you recognise that document?

15 A. Could you scroll back to the top of it, please?

16 Q. Yes.

17 A. I do have some recollection, and my recollection is
18 based round about the ... the findings from the
19 Mark Duggan incident, down in the Metropolitan Police,
20 in response to how we would respond to an incident, to
21 ensure we responded appropriately, I think is the
22 content of that document.

23 Q. Do you remember having sight of this at the time?

24 A. Yes, I ... I am going to say I would have. I don't
25 specifically remember kind of reading that, but the
26 circumstances I do. I think I might be wrong, but

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1 I think this maybe sets out how PIRC would respond to
2 a fatal shooting to ensure that we took cognisance, as
3 it says there, the findings of the inquiry into
4 Mark Duggan.

5 Q. Again, do you think this is primarily in relation to
6 firearms?

7 A. Yes.

8 Q. Or do you think it s primarily in relation to
9 a shooting?

10 A. Well, it says "Following Police Use of Firearms".

11 Q. If we move down that page, you remember a moment ago
12 I said it also includes Tasers and gas?

13 A. Yes.

14 Q. The use of -- discharge of CS gas?

15 A. Yes.

16 Q. Can you tell us what your recollection is? Did you
17 think this related more to shootings rather than Tasers
18 or gas?

19 A. I am going to say shootings, and I base that on the fact
20 of -- my awareness is I don't think there's ever been
21 a PIP instigated that I am aware of in Scotland in
22 respect of a discharge of CS or PAVA, solely a PIP,
23 because of that, that incident.

24 So my recollection is this would be more for the
25 discharge or a presentation of a conventional firearm,
26 because I am not aware that we've ever -- there's ever

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1 been a PIP called. And bearing in mind it is the police
2 that decide if a PIP takes place for a Taser or
3 a discharge of either CS or PAVA gas.

4 Q. On 3 May 2015, where there had been no guns or --

5 A. Yes.

6 Q. -- shooting, but there had been discharge of CS gas, did
7 you consider at that time this document had any
8 applicability, or did you not think it was applicable?

9 A. I think it's applicable in respect of -- my recollection
10 is that this document sets out how PIRC would respond,
11 so -- so it is applicable, yes, it is applicable.

12 Because this -- you know, because it clearly says here
13 the use of firearms, yes. And as I said earlier,
14 a firearm does include a CS or PAVA spray.

15 Q. Did you have regard to the guidance in this document
16 when you were involved in the investigation into
17 Mr Bayoh's death?

18 A. I don't recall that, no.

19 Q. You don't recall having regard to it or you don't think
20 you had regard to it?

21 A. I don't recall having regard specifically to that
22 document, but I am -- no, I don't ...

23 Q. On the last page of this document there is a section
24 about minimum deployment of PIRC personnel.

25 A. Yes.

26 Q. Do you remember having regard to that information?

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1 A. Yes, I -- I can recall this document, and I can recall
2 at the time when -- I couldn't tell you exactly when it
3 came into being, you may be able to assist me there --

4 Q. We have been advised it came into existence on
5 17 June 2014.

6 A. Thank you. Thank you. This is the minimum deployment,
7 and this was a point -- I said earlier that I believe
8 this document outlines what we would consider as minimal
9 deployment. I even assume it's that minimal deployment,
10 because that minimal deployment gives us
11 a senior investigator, a scribe, a scene manager, two
12 production ... five. Nine people. At that time, PIRC
13 had six investigation teams of three people, they had 18
14 people, and two senior investigators, so take it up to
15 20. So that is asking for almost 50% of your available
16 resources to attend that incident.

17 Now, in my experience, the majority of -- if I can
18 say critical incidents involving the police use of
19 firearms -- the police use of firearms is -- that
20 doesn't happen on a Monday to Friday between 8 to 4, it
21 happens out of hours, and out of hours at that time we
22 had an on-call team of one team leader, a DSI and two
23 investigators. So how was one team leader and two
24 investigators meant to fulfil that minimum deployment?
25 I remember having -- discussing this. And the answer
26 is, well, you will phone round.

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1 Now, having many, many times been at an out-of-hours
2 incident and been in charge of an out-of-hours incident,
3 just phoning everybody round in the hope you can get
4 somebody is a bit ad hoc, because people are not just
5 sitting by the phone, some will be away, some will be
6 out at a restaurant and have had alcohol so they are not
7 able to attend, you know. So I think that is, and
8 I have always thought, that is utopia, you know. But
9 how do you muster 50% of your establishment at 4 or 5
10 o'clock in the morning? I -- I have always had an issue
11 with that, and I still do have.

12 Q. Thank you.

13 When you said you had discussed this, who did you
14 discuss it --

15 A. I remember raising it at the time, and I remember we did
16 a tabletop exercise and I raised it at the time within
17 the organisation.

18 Q. When was this tabletop exercise?

19 A. It -- it would be -- we were live, we were started, and
20 it was a day we did a tabletop exercise. It might have
21 been after this document come out, but we did a tabletop
22 exercise within the organisation. Again, the tabletop
23 exercise was a day -- Monday to Friday during the day,
24 so everybody's there, you know, and my argument has
25 been, well, where do we get that at 4 o'clock in the
26 morning? How do I get that at 4 o'clock in the morning?

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- 1 Q. Who did you direct your comments to?
- 2 A. Just generally within -- you know, and we were all
3 there, you know, the -- the senior managers were there,
4 John Mitchell was there and Irene Scullion was there.
5 But I have always had a -- I see a challenge with that,
6 getting that minimum deployment out.
- 7 I would love to have that at an incident. I would
8 love to have that. If I went to a PIP or a scene
9 I would love to have that. And what happens if you have
10 more than one scene? Which we have had several times,
11 you know.
- 12 Q. In terms of your understanding of this minimum
13 deployment, if there's two separate scenes would you
14 expect the same number to attend each scene?
- 15 A. That is what they are saying for a scene. So this is --
16 again it is guidance, this is saying that. So we
17 include that, so we've gone from nine to 14 and we have
18 got an establishment of 18. I don't know how we would
19 do that.
- 20 Q. Are you aware of that utopia ever having been achieved
21 in relation to any minimum deployment?
- 22 A. I wasn't involved in the incident, the incident recently
23 at the hotel in Glasgow, but that happened -- I can't
24 remember the day, but it was a Monday to Friday and it
25 was during the day when the police fatally shot
26 somebody, yes, so every PIRC resource we had went to

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- 1 that.
- 2 Q. Was anything done about your concerns? Were they
- 3 addressed in any way?
- 4 A. No, because we still had the challenge of you just phone
- 5 everybody round. We had a list of phone numbers. You
- 6 carried -- you carried, I would suggest, well,
- 7 I certainly carried it, I would suggest every team
- 8 leader carried a list of the phone numbers, which
- 9 including their personal numbers, their home number and
- 10 their PIRC mobile number. But just because you have the
- 11 phone number doesn't -- you know.
- 12 Q. Thank you.
- 13 The other thing, if we can leave that document to
- 14 one side, I noticed in your Inquiry statement, so back
- 15 at SBPI 00421, paragraph 6, you say that prior to
- 16 retirement you were on an equality, diversity and
- 17 inclusion course delivered by ACAS.
- 18 A. Yes.
- 19 Q. I am interested in that course. Can you tell us
- 20 a little bit more about that?
- 21 A. Yes. My recollection of that course is that was
- 22 relation to ... conducting job interviews, and how you
- 23 ensure that you take cognisance of equality, diversity
- 24 and inclusion if you are interviewing people for
- 25 a position within PIRC.
- 26 Q. I have asked other witnesses about diversity in PIRC.

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- 1 A. Yes.
- 2 Q. In May 2015, can you tell us anything about the
3 diversity in terms of the staff numbers that you had?
- 4 A. Within the investigations department is -- my
5 recollection at that time, we had -- I think we had
6 either 22 or 24, including the seniors and not including
7 Mr Mitchell and Ms Scullion in respect of that. So
8 there was a balance of males and females within that
9 group.
- 10 Q. Do you remember how many women there were?
- 11 A. Off the top of my head, no. But there was a number, it
12 wasn't as if there was just one or two.
- 13 Q. Were there any ethnic minorities employed by PIRC at
14 that time?
- 15 A. Not in the investigations department. My recollection
16 for -- I couldn't say with any certainty in relation to
17 the other parts of the organisation.
- 18 Q. We have heard that quite a large number of staff in the
19 investigations department were former police officers.
- 20 A. There was a number, yes.
- 21 Q. Do you remember how many weren't former police officers?
- 22 A. The exact number, no. But at that time we certainly had
23 people who -- who had come to us from the force's
24 investigation department, from the Border Agency, from
25 Trading Standards, from the fire and rescue service
26 investigations. So they were four areas that I can

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1 definitely recall that they were there from. And at
2 that time, the 3 May, we also had two members of staff
3 who had just started, and a trainee development scheme
4 had started within the investigations department, so
5 they had come, again from -- not -- they weren't police
6 officers, they came from ... yes, I had one of the
7 trainees on my team. He came from the -- he worked in
8 the care sector.

9 Q. So definitely six investigators or trainee investigators
10 who were not former police officers?

11 A. I would say more than six. There were certainly two
12 fire service investigators.

13 Q. So definitely seven?

14 A. Yes.

15 Q. Can I ask you, before I move on to the events in 2015,
16 can I ask you about an incident that took place at
17 Victoria Hospital on 18 October 2014. I think you
18 mention this in your first Inquiry statement.

19 SBPI 00255, at paragraph 8.

20 You say:

21 "In October 2014 [you] had undertaken
22 an investigation in relation to an incident at Kirkcaldy
23 Hospital where police officers had discharged CS spray
24 within the A&E unit and the whole unit had to be shut
25 down because of the use of spray."

26 And the matter was reported to PIRC as all

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1 incidences of the use of firearms, including spray, must
2 be reported to PIRC.

3 "My recollections are that none of the officers who
4 were involved in that incident were involved in the
5 incident with Mr Bayoh."

6 And then you also mention it in your second Inquiry
7 statement at paragraph 38. This is 421.

8 Sorry, we won't be able to show both of these
9 paragraphs together.

10 A. It's okay, I have opened --

11 Q. So 38, you say largely the same, and you say there was
12 nothing for a PIRC scene manager to examine. Because it
13 was the use of spray which would dissipate in the air,
14 I imagine.

15 You wrote -- you undertook that investigation?

16 A. I did, yes.

17 Q. Did you write a report on that?

18 A. I did, yes.

19 Q. Did you make recommendations to Police Scotland about
20 this incident?

21 A. My recollection is -- well I did, yes. I did, yes.

22 Q. Do you remember what it was you recommended?

23 A. I can't remember how many recommend ... I think there
24 was maybe two, but it was definitely -- the challenge
25 during the course of that investigation, or one of
26 the challenges that I recall was the record-keeping

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1 within that division, and that is -- that's -- I call it
2 Fife Division, I can't remember the number they use for
3 it. It was almost non-existent, and the recommendation
4 was they need -- we recommended that they need to get
5 their house in order, for want of a better expression,
6 in respect of recording of the spray, and that is about
7 recording how much spray is used, when it's used, the
8 weight of the canisters. After there has been
9 a discharge of spray the canister is weighed, and that
10 gives an indication of -- against the records, of how
11 much contaminant was used.

12 I can't remember what the other recommendation was.
13 I remember there was an issue around about CCTV, but we
14 don't have the power to ... to make a recommendation to
15 the NHS. That is not within our grasp.

16 Q. But it was police officers who had used the spray in the
17 hospital?

18 A. It was, yes, yes.

19 Q. I am interested in -- you have said there was issues
20 with the recording of how much spray had been used?

21 A. Yes.

22 Q. The weight of the canister before it had been used, the
23 weight after the canister had been used, and an absence
24 of records. Why would that type of thing be helpful to
25 an investigation, knowing how much weight?

26 A. First of all, it is helpful to know is who is that

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1 canister assigned to? That is part of the
2 record-keeping, who that is assigned to. It's also
3 about where the CS spray or -- yes, it was CS spray at
4 that time -- CS spray is stored and what locker that
5 that is stored. It is also keeping a note of the use of
6 the spray, and, as I said, the amount of spray used. If
7 they don't weigh the spray when they come back to
8 identify that, they could have -- they could be going
9 out on their next deployment with a CS canister that has
10 no CS in it, which obviously could have a detrimental
11 effect if they go to use it, from that point of view.
12 So from that -- that is point of view of use.

13 And this is -- my collection is that these were all
14 areas that Police Scotland undertook in how they managed
15 CS spray, bearing in mind it is a firearm.

16 Q. I suppose would it also be possible, if you know the
17 weight when the person is allocated the spray --

18 A. Yes.

19 Q. -- and if, for example, they said: I didn't use my spray
20 but the weight has dropped --

21 A. Yes.

22 Q. -- you would be able to see that that had been
23 discharged.

24 A. Yes, and vice versa. If they said they just used it for
25 a second, but actually the whole container is empty,
26 then that is an indication, if that is the only time

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1 that spray has been used, then it has not been used for
2 a second, it has been used for a lot more than a second.

3 Q. Right. So it would allow some analysis to be done in
4 terms of the discharge?

5 A. That is correct.

6 Q. And by an investigator?

7 A. Yes.

8 Q. I think you do mention also on the second Inquiry
9 statement we have got on the screen, at paragraph 182
10 you say:

11 "PIRC had issued two recommendations to
12 Police Scotland."

13 So that is 182. There we are.

14 You see in the middle of that paragraph:

15 "PIRC had issue two recommendations to
16 Police Scotland on the completion of the investigation
17 into that incident ..."

18 Those were issued on 19 March 2015. Was that your
19 recommendations to Police Scotland?

20 A. Yes, the report would have gone to Police Scotland. It
21 was a police referral, as we would describe it, yes.

22 Q. It then says:

23 "Police Scotland advised PIRC that they had
24 implemented both of my recommendations on
25 10 November 2015 after the death of Sheku Bayoh."

26 I am interested in the period of time that it took

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1 from your report to the date of implementation, or at
2 least when you were advised about implementation. What
3 powers did PIRC have at that time in terms of placing
4 deadlines or time limits on recommendations?

5 A. We -- I think the timeline we gave, though I am unsure
6 if it is still the same, it was three months. We
7 expected some response within three months in respect of
8 that. We have no powers to force a policing body to
9 implement what we recommend, although I am not aware of
10 any policing body not implementing the recommendations
11 or not taking action on a recommendation. We maintain a
12 recommendations monitor, and that is -- once the report
13 goes in and the recommendations, that is updated by our
14 administration staff, and they would -- they would do
15 follow-ups. If they hadn't seen anything, they would --
16 I will use the phrase a "jag letter"; they would send
17 a letter to them saying: we provided this to you, it is
18 now past the three-months, what's happening with this?

19 Q. Looking to the future -- I appreciate you have retired
20 now, but you did do this report -- would additional
21 powers be of assistance to PIRC in reinforcing the
22 recommendations that are made in these reports?

23 A. I think so, yes. Yes. As I say, I am not aware of
24 there being any issue from a policing body not
25 implementing a recommendation. I would envisage,
26 although I've not been involved in it, there have been

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1 previous ones where there has been some discussion,
2 because it can be challenging, you know.

3 An example I would give would be it would be ideal
4 if every police officer carried CCTV, yes? Or carried
5 a camera. But we know there's challenges around about,
6 and it is financial challenges. So, you know, we
7 couldn't put in a report we recommend that every CCTV --
8 sorry, every police officer be issued with a bodycam,
9 because we know they can't do that, right?

10 So we need to be, you know, we need to -- there's
11 got to be -- there's thought put into recommendations,
12 justification put into that. But, yes, I do think --
13 I do think -- and you can see in that one there that
14 these recommendations have been implemented after we've
15 started the investigation into the death of Mr Bayoh,
16 and the challenges around about CS spray were still
17 there when we were doing that investigation.

18 So, yes, if we had had some power, yes, I think it
19 would be beneficial.

20 Q. We have other statements and information -- evidence
21 available to the Chair that indicates that it was very
22 difficult for PIRC to determine the weight of the
23 canisters and assess to what extent they had been
24 discharged on the day of 3 May?

25 A. Absolutely, yes.

26 Q. Can you explain in summary what the difficulties were

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1 for PIRC?

2 A. They were very similar to the matters I had identified
3 in the investigation into the incident in
4 Victoria Hospital, is the challenge was identified what
5 canister was assigned to what officer. And this was
6 also a phase when Police Scotland were charging from CS
7 to PAVA, so you had both CS and PAVA sprays. Both CS
8 and PAVA were deployed that day.

9 The manner in which -- the manner in which -- and
10 I am generalising here, because I can't recall if the
11 canisters ... all the canisters were taken when the --
12 when the -- the equipment was taken off the officers
13 under a forensic kind of strategy, but there was other
14 equipment was lying about the scene, it was just
15 in-gathered and not taken forensically, as I would
16 describe it.

17 But you also had the challenges of how much CS and
18 how much PAVA was actually discharged by the officers at
19 Mr Bayoh, yes. And obviously compounding that challenge
20 was -- that information was the decision taken by the
21 attending officers not to provide statements. So who
22 actually discharged the PAVA against -- who discharged
23 the CS spray on that day I was not aware of for some
24 time, and how much was used. And one of the -- one of
25 the areas that we kind of -- that was at the back of my
26 mind was: has the combination of CS and PAVA been used

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1 against Mr Bayoh caused some sort of chemical reaction
2 within Mr Bayoh? And that was an area that we looked
3 at.

4 So really the poor record-keeping, the poor
5 management of the issuing of the canisters, and
6 thereafter the use of it and the weighing of it and the
7 recording of it, yes, that caused challenges. And if
8 that recommendation had been issued prior to this
9 incident, then some of that -- these issues would have
10 been mitigated and we would have been able to identify.

11 But to go back, the incident -- I submitted a report
12 on 19 March, we give a three-month period, and that
13 would have taken us beyond when this incident occurred.

14 Q. It would have taken you to around 19 June?

15 A. Yes, yes.

16 Q. Am I right in thinking from what you have said that if
17 there had been proper records, even though you
18 wouldn't -- you didn't have statements from the officers
19 at that time --

20 A. Yes.

21 Q. -- that it would have been possible for PIRC to identify
22 everyone's spray, weigh that spray, and identify if any
23 had been discharged during the course of that incident?

24 A. Yes, we would have, yes.

25 Q. And to what extent it had been discharged?

26 A. Yes. How much had been sprayed, yes.

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1 Q. So regardless of whether you had a statement from any of
2 the officers --

3 A. Yes.

4 Q. -- that information would have allowed you to make that
5 assessment?

6 A. Yes, but the challenge being I didn't have a statement
7 from the officers, so I didn't know who had used what
8 spray in what manner and their rationale for using it.

9 Q. And you didn't have the records?

10 A. No.

11 Q. Thank you.

12 We have heard evidence this week from Keith Harrower
13 who spoke about 3 May 2015.

14 A. Yes.

15 Q. My understanding is you weren't in the office that day
16 at all?

17 A. No.

18 Q. So you weren't present. But am I correct to say that
19 you came into the office and commenced duty about half
20 past 7 on Monday, 4 May, and that is when your
21 involvement began?

22 A. That is correct, yes.

23 Q. I think you mention that at SBPI 00255, paragraph 36.
24 That is on the screen. This is your first Inquiry
25 statement.

26 A. Thank you.

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1 Q. You say there you came in on 4 May and you went to
2 Hamilton. You had been on holiday before the holiday
3 weekend. Am I right in thinking the Monday was
4 a holiday Monday?

5 A. It was, yes, it was one of the May weekends, yes.

6 I actually think, on reflection, I actually hadn't
7 been on holiday just prior to that weekend, I think
8 I had been on holiday the week before. I had been back
9 for a couple of days and then it was a holiday weekend
10 again.

11 Q. From you what you say there:

12 "I was oblivious to the incident. I do constantly
13 read the news, but I hadn't for whatever reason prior to
14 coming in."

15 That was coming in on the Monday morning?

16 A. Correct, yes.

17 Q. Then you remember thinking what is happening, there was
18 lots of people, activity, something must have happened.
19 Then you were given a briefing by Irene Scullion and
20 Keith Harrower on the circumstances surrounding the
21 death of Sheku Bayoh. You were asked if you remembered
22 the details of that briefing, and your recollection was
23 that Keith prepared the briefing paper. And you talk
24 about normally you would prepare a briefing paper for
25 an out-of-hours incident for the managers in the
26 morning, and you had sight of a briefing paper,

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1 Keith Harrower, was the author and it was dated
2 3 May 2015.

3 I wonder if we can look at, please, the briefing
4 paper. PIRC 03694. I think you said in that statement
5 you had access to this briefing paper. It is headed up
6 "Briefing Note for Director of Investigations".

7 A. Yes.

8 Q. We have heard that is John Mitchell.

9 A. It was, yes.

10 Q. And it was dated 3 May 2015, and Keith Harrower gave
11 evidence this week to say he had prepared that briefing
12 paper, briefing note.

13 Can we just check, that is the document that you are
14 referring to when you refer in your statement to the
15 briefing paper, is it?

16 A. It is, yes.

17 Q. Do you recognise that?

18 A. I do, yes.

19 Q. We will come back to that in some detail in a moment.

20 Can I first of all, just in relation to your general
21 impressions of the office that day, you've talked about
22 activity and it being busy, you realised something had
23 happened. How many investigators were in the office
24 that day?

25 A. Exact number? I'm sorry I -- I couldn't tell you
26 an exact number. I don't know if there was anybody on

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1 holiday or anything. But what I would say is that the
2 number that were there, they were all utilised apart
3 from one on that day in response to this incident.

4 Q. Who was the one?

5 A. Richard Casey.

6 Q. We've heard he was a senior investigator.

7 A. He was. Or he is.

8 Q. Sorry, he is. What was he doing that day?

9 A. My understanding is that he was being left to respond to
10 any other incident that might come in. Obviously there
11 would still be more incidents coming in, more referrals
12 coming in, and they would need somebody to manage that
13 aspect.

14 Q. In 2015, do you remember how many referrals you would
15 get on average every week or every day?

16 A. No. Not nearly as many as we get just now from that
17 point of view. How many? I would hate to guess. Some
18 weeks it could be two, some weeks it could be five, six,
19 seven, you know, yes, so ... Because bearing in mind
20 they are coming in from all policing, it is not just
21 from Crown, which would, you know, be the -- you know,
22 the kind of criminal aspects or the kind of ... the
23 death aspects. You know, police make referrals, and all
24 policing bodies make referrals.

25 But the number, no, I couldn't hazard a guess. That
26 will be recorded somewhere. There will be some

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1 statistic of what came in in what month, bearing in mind
2 that we don't -- we don't take every police referral
3 that comes in. We have the ability to say no, we're
4 content with what has happened there.

5 Q. Thank you.

6 Can I go back briefly to your first Inquiry
7 statement, the 255 one, and look at paragraph 27. You
8 were asked here about how important it was for the
9 information provided by the police to be accurate in the
10 initial hour or two of a PIRC investigation, and how
11 much this impacts the decision-making that follows.

12 You say here it has a lot of importance as that is
13 what you are basing your decision on, so it needs to be
14 accurate. You talk about things that you ask for at
15 an early stage; we have heard about things called STORM
16 records, which are records about calls that may have
17 come in, actions that have been taken.

18 And then towards the end of that paragraph, you say:

19 "So I can say of information it can only be as
20 accurate as what they know at that time. And in this
21 instance I can only base my decisions on the accuracy of
22 that information that I'm getting."

23 So we've heard that additional information can be
24 brought in as matters -- the investigation progresses?

25 A. Yes.

26 Q. You've said here you can only base your decisions on the

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1 accuracy of the information you're getting. Do you
2 proceed on the basis -- do you take the information at
3 face value, and proceed on that basis initially until it
4 changes?

5 A. Well, you do take it at face value, yes, because that is
6 all you've got to work on, yes. So that is the same
7 with any incident. And then as the investigation
8 progresses, you know, you may identify that some of that
9 information is inaccurate.

10 Q. Can we look back at the briefing note, PIRC 03694.
11 Sorry, go back to paragraph 36. We see you have
12 referred to it. Sorry, in your statement you refer to
13 the briefing note, and you say that the briefing was
14 from -- I am happy to go back to the briefing note. You
15 say it was from Irene Scullion and Keith Harrower. Were
16 you given a copy of the briefing note?

17 A. I don't know if I received this when I initially was
18 asked to undertake or be involved in this investigation.
19 This note certainly -- I can't recall when I first saw
20 this note on 3 May. I think when I first went in I'd
21 hardly even got my jacket off and I was called in to see
22 Irene, and Keith was there. I am unsure if
23 John Mitchell was there at the time as well. And I was
24 given -- I think initially I was given a verbal
25 briefing, is my recollection. And then I later became
26 aware of the briefing note for that. Because my

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1 recollection is I hadn't even powered up my laptop or
2 computer or anything, I had just come in, taken my coat
3 off, and I was called in to say: you're undertaking this
4 investigation. The words used at the time was: you will
5 be the lead investigator, and John McSporran, who wasn't
6 in that day, will provide oversight.

7 But that quickly changed, you know -- you may ask me
8 about that later on -- that quickly changed. So right
9 away I am being told: you're taking this on. I was
10 given a briefing, the exact content of the briefing
11 I can't recall now, but it made me realise that this was
12 a -- right away was a significant investigation for us,
13 and I wanted to put in place some form of structure and
14 get this up and -- I would describe it as up and
15 running. Obviously Keith did what he did, you know,
16 with the on-call team, some additional people, but now
17 we needed to get some structure put in place and -- and
18 roles allocated to specific people to take this
19 investigation forward, and we needed to do that quickly.

20 So I don't recall reading that right away. This may
21 well have been after there was a -- a general briefing
22 to everybody, again, delivered in the main by Keith,
23 because he had been on site. I maybe had a read of this
24 after that, but I certainly saw it in the early part of
25 that day.

26 Q. You said you were called in. Was it Irene Scullion that

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- 1 called you in and appointed you as lead investigator?
- 2 A. I think it was Irene and John. I remember John Mitchell
- 3 saying about --
- 4 Q. We may hear from John later in the hearing that he
- 5 wasn't in that day, that he wasn't in until later?
- 6 A. Oh, right?
- 7 Q. But that is your recollection anyway, at the moment?
- 8 A. My recollection is John was there that day.
- 9 Q. We've not heard his evidence so I may be wrong on that.
- 10 A. Okay. I may be mistaken, but definitely Irene Scullion
- 11 was there and Keith and Richard Casey.
- 12 Q. A senior manager appointed you as lead investigator?
- 13 A. Yes, yes.
- 14 Q. And you were given a verbal briefing. Was that by
- 15 Keith Harrower?
- 16 A. Yes, it would have been.
- 17 Q. We have heard evidence from Mr Harrower that he had his
- 18 operational notes available, he had his briefing note
- 19 available --
- 20 A. Yes.
- 21 Q. -- his memory of events. Do you remember anything about
- 22 that verbal briefing that you were given?
- 23 A. No. After this passage of time, no.
- 24 Q. You've said you became aware of this briefing note
- 25 later. Do you remember when you became aware of it?
- 26 A. It would have been -- it would have been very early on.

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- 1 It would have been very, very early on.
- 2 Q. In the morning?
- 3 A. Yes, in the morning, sorry.
- 4 Q. Would that be shortly after you came in, shortly after
- 5 the briefing, or at a later point?
- 6 A. I think it would be shortly after -- my recollection is
- 7 it was shortly after the briefing, yes. And my
- 8 recollection is the information that I was passed
- 9 verbally was what is in this paper.
- 10 Q. Did you take any notes of that initial briefing from
- 11 Mr Harrower?
- 12 A. I can't recall, but, you know, I would need to see my --
- 13 what I would call my daybook from that day.
- 14 Q. I think we have two hard copies of a notebook, as
- 15 I understand it, one may be a daybook, in your blue
- 16 folder. One is definitely a notebook, official notebook
- 17 covering that period. PIRC 04200. I won't ask for that
- 18 to be put on the screen at the moment unless you say
- 19 there is something in there about that briefing?
- 20 A. Sorry, is that -- no, I am talking about my daybook.
- 21 The bigger book.
- 22 Q. The other one is -- again, I won't have this put on the
- 23 screen -- PIRC 04520. So there should be two quite
- 24 chunky documents. One says "Book" at the top. "Office
- 25 Depot", is that the daybook?
- 26 A. That's the daybook, yes. Just give me a wee second.

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1 Q. Let's get that on the screen, PIRC 04520.

2 A. (Pause) No, I have taken no notes.

3 Q. Let's go back to the briefing note then, please. Can
4 we look at page 2. You will see the big paragraph, it
5 says:

6 "It was reported that as the officers drove into
7 Hayfield Road they saw the now deceased coming towards
8 them as the vehicles came to a halt. They could clearly
9 see he was in possession of a knife and was making his
10 way towards them. Some of the officers, unknown how
11 many at this stage, drew their police issue batons. At
12 least one of the officers also drew their PAVA spray and
13 issued a warning to the now deceased who continued to
14 come forward. PAVA was subsequently sprayed towards the
15 now deceased, however this had little effect. There is
16 some reference to him laughing at the officers. It was
17 also reported one of the female officers was apparently
18 kicked in the back and also sustained a blow to the back
19 of her head. She sustained no serious injury as
20 a result but complained of pain."

21 Do you see that?

22 A. Yes.

23 Q. Did you have a copy of this on the morning of the 4 May?

24 A. I did.

25 Q. I think in your Inquiry statement, I won't put this on
26 screen, you were asked whether Keith Harrower gave out

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- 1 any explanation as to where this information came from.
- 2 You said that wasn't -- and you didn't question it?
- 3 A. That is correct, yes.
- 4 Q. To me you say in paragraph 39 of your Inquiry statement:
- 5 "It's a combination of all that information he is
- 6 getting, trying to put it into a structured and
- 7 timeously form. That's his assessment of the
- 8 information. I would take that as his assessment of the
- 9 information he was made aware, but I wouldn't question
- 10 it. I wouldn't question: where did you get that from or
- 11 where did you get that?"
- 12 So, really, did you take that at face value at the
- 13 time?
- 14 A. Yes, I did.
- 15 Q. And what was your impression? I have been asking other
- 16 witnesses about this, whether that paragraph gave them
- 17 the impression that the subject was the aggressor in
- 18 that situation and the police had responded with baton
- 19 and sprays, is that an accurate --
- 20 A. That is accurate, yes.
- 21 Q. Thank you. As I understand it, you were that lead
- 22 investigator for that day?
- 23 A. That is correct.
- 24 Q. On 4 May. I think we will hear later that the following
- 25 day the role was ultimately taken over by
- 26 John McSporran?

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1 A. That is correct.

2 Q. I think a moment ago you said you understood he was
3 going to support you --

4 A. Yes.

5 Q. -- going forward, but he ultimately became lead
6 investigator?

7 A. That is correct.

8 Q. Thinking about the 4 May that day, was there anything
9 that you came to know that altered the impression you
10 had got from that briefing note?

11 A. Not at that time, no.

12 Q. We've heard from officer -- that none of the officers
13 gave statements that day, so you wouldn't have had any
14 information from them at that time?

15 A. Or hadn't given statements the day before? There was no
16 information from the attending officers, yes.

17 Q. Mr Harrower gave evidence that neither were there any
18 basic facts?

19 A. No.

20 Q. Initial accounts?

21 A. No.

22 Q. Or any statements of any description?

23 A. No.

24 Q. Looking back now, how difficult was it for you -- we've
25 heard that that description isn't entirely in line with
26 the information that became available to PIRC, and I'm

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1 wondering, looking back now, how difficult it was for
2 you to move away from that initial impression that you
3 gained from the briefing paper as, ultimately, more
4 informing became available to you?

5 A. That's the information that Keith -- Keith had
6 obviously -- all the kind of meetings he had been at, so
7 it's like he compiled that into a briefing paper.
8 Having done this many times myself, I understand how he
9 would go about that. And as you say, there is that
10 phrase; they could clearly see he was in possession of a
11 knife and was making his way towards them. We now know
12 that did not happen.

13 So that was part of the basis of the information.
14 My job, particularly on that first day, was to put
15 in place a structure, to allocate roles to people, to
16 ensure everybody knew what that role was, and then look
17 at what priority did we need to do that day. My
18 initial -- what did we need to get done that day.

19 Okay, so although that information was there at the
20 time, that wasn't in any way -- I didn't take that as
21 being set in stone that that is what happened, because
22 we had to find out what happened. The whole point is
23 let's look at the evidence to establish what happened.
24 Having been involved in -- you know, I have been
25 involved in investigations since 1980, right? You
26 only -- you work through the evidence -- you find the

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1 evidence, you work through the evidence, you at times
2 will challenge the evidence, okay? So although that was
3 there, I wasn't -- I would say I wasn't take that as
4 being gospel that that had obviously happened. And
5 I would say at the back of my mind I was always thinking
6 to myself, well, how do we know that?

7 I didn't challenge it, I didn't query it, because
8 I was -- I was really focusing on what we really needed
9 to do that day, okay? And there was pressures on us in
10 respect of the time they did the post mortem, and I felt
11 pressure on myself in respect of the post mortem.

12 So although that was in there and I read that, and
13 that obviously gives -- that certainly makes -- it makes
14 a statement that Mr Bayoh was in possession of a knife
15 and making his way towards the officers when they first
16 arrived, we know that is not what happened. Okay? And
17 that is my role, to find the evidence and go through
18 that evidence and establish what happened and why it
19 happened.

20 Q. I'm interested in what you said a moment ago about your
21 job is to put in place a structure that day?

22 A. Yes.

23 Q. And allocate a structure, so that everyone knew their
24 role and started to prioritise.

25 A. Yes.

26 Q. Why was there not a structure already in place that day

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1 when you came in?

2 A. I don't know. I don't know if the decision -- there was
3 obviously a decision made prior to me arriving, that
4 I was taken on initially, as I was told, in the lead
5 investigator's role on this, okay? So why was there no
6 structure? There would have been -- Keith had some form
7 of structure on the day to deal with that. He had
8 allocated resources and he had allocated people to deal
9 with the deceased at the hospital. That is
10 the structure; he has put that in place, right?

11 When I came in, when I got told, I just
12 immediately -- I didn't ask, well, why has nobody done
13 anything about -- who has allocated to do what, right?
14 So I immediately set about putting in place a structure.
15 And I think as -- you may have alluded to it earlier, in
16 my mind this was different from any death investigation
17 that came into the organisation before, right?

18 So I put in place a structure that I would say is --
19 a structure I had been trained in, a major incident
20 structure, a major incident protocol, right, I created
21 a major incident room. We had never had one of them, we
22 had never used that before. Previously -- and I think
23 after the previous incident, whether it be death, or
24 whether it be criminality or whatever, is you managed
25 that within your team, or you may have got some help
26 from some other teams, you know, for some part of it,

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1 right: I need a wee bit of help to do some door-to-door
2 with this incident, can you help me? That was not
3 happening on this one. This was getting -- in my eyes,
4 I had to get control over this and how maybe we were
5 going to manage this.

6 So I didn't ask why nobody had put a structure in.
7 You say Mr Mitchell wasn't there; my recollection, you
8 know, passage of time, you know ...

9 Q. I may be wrong on that --

10 A. Yes, but maybe I'm wrong, you know --

11 Q. -- we have not heard his evidence.

12 A. But I remember being told -- because I remember thinking
13 to myself: this surely isn't just going to be my team,
14 myself and my two people, right, you know, and I was
15 basically saying: you can use whatever you want. And
16 right away I went: right, I am putting in major incident
17 protocols, as I describe it, and I was putting that
18 structure in. And I needed to do that with the
19 resources we had, and I needed to -- the resources to
20 know what they were doing for us to get moving, was the
21 way I see it, and in particular in respect of
22 the post mortem.

23 Because there was a time of a post mortem which was
24 quickly -- fast approaching. Because time eats away at
25 you very, very quickly, you know, the time I had
26 discussions with Irene and Keith, the time I tried to

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1 put some structure in place, tell them I will brief
2 them, tell them what I want to do. There was a bigger
3 briefing so people had a better understanding of what
4 had happened. Because I wasn't alone in just coming in
5 that day and not -- because I had only been -- I think
6 Keith had six people, right, you know.

7 So why was there not a structure? I don't know.
8 I don't know whether they were leaving it for me to
9 decide what would happen. That is the way it felt to
10 me, to be honest with you. But I just set about doing
11 it.

12 Q. So it became your responsibility as lead investigator to
13 set up that structure from the beginning, really, and
14 decide what you wanted to do?

15 A. Basically I just decided that. I just -- I felt I just
16 went into an automatic role of what, over the years, my
17 training had, you know, had set in me to do, was the way
18 I view that. So, yes.

19 Q. So you are taking control of this investigation?

20 A. Yes.

21 Q. Treating it like a major incident, and setting up the
22 structure you think will best serve the interests of the
23 investigation?

24 A. To the best of the ability of the resources we had, yes.

25 Q. And you said someone said to you: use who you want; is
26 that what you said?

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1 A. No. Somebody said: just use everybody.

2 Q. Use everybody?

3 A. Yes.

4 Q. So how many resources did you have available on that

5 day?

6 A. I am just having a wee look, if you don't mind -- I am

7 just having a wee look at my daybook and I'm trying

8 to ... No, I've not made ... aware of the fact ... No,

9 I've not made a note of it on that day. I think in the

10 preceding days I made a note of who was involved, but on

11 that particular day, because it was ... So

12 I certainly -- I created what I would call a major

13 incident room to deal with the flow of information

14 coming in and I placed three people within that.

15 Q. Who were they?

16 A. That was Ian Macintyre, who was a fellow DSI, Laura, who

17 is no longer with us -- I am sorry, her surname escapes

18 me, that is dreadful. And I put in one of the admin --

19 one of our admin staff into that.

20 Q. In terms of --

21 A. And the other ones, I obviously allocated John Ferguson

22 and Stuart Taylor to attend the post mortem. I

23 allocated -- or there was discussion and then there was

24 an allocation of Alistair Lewis and John Clerkin as

25 FLOs. I then allocated Brian Dodd and I think four

26 others in respect of house to house. And I allocated

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1 Garry Sinclair and Maurice Rhodes to continue in their
2 role in respect of the scene management and the
3 handover, or deal with the scenes that were still --
4 because I think we still had control of the scene at
5 Hayfield Road at that time.

6 Q. So three in the major incident room?

7 A. Yes.

8 Q. Yourself in charge as lead investigator?

9 A. Yes.

10 Q. Ian McIntyre, Laura and --

11 A. Laura White. Sorry, my apologies.

12 Q. And a member of the admin team were the three in the
13 major incident room?

14 A. In the incident room, yes.

15 Q. You. Three in the incident room. John Ferguson and
16 Stuart Taylor allocated to attend the post mortem?

17 A. Yes, they had been involved in the recovery of
18 Mr Bayoh's remains, yes.

19 Q. That had been the previous day?

20 A. The previous day, yes.

21 Q. Alistair Lewis and John Clerkin as FLOs?

22 A. That is correct.

23 Q. Brian Dodd, plus four --

24 A. I think it was four with Brian to liaise with
25 Police Scotland in respect of the house to house, and
26 then undertake inquiries in line with the terms of

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1 reference we had from the Crown. I also allocated two
2 in respect of CCTV, and this is looking at --

3 Q. Do you know who they were?

4 A. That was Kevin Rooney and John McAuley. And
5 I allocated -- I also allocated two to attend the
6 hospital, because we didn't have Mr Bayoh's hospital
7 records.

8 Q. Who were they?

9 A. That was Markus Mitterer, who was my line manager at the
10 time. He was a senior investigator. And ...
11 Edward Miles who was a DSI.

12 Q. I was counting, so let me go back to that.

13 A. Sorry, my apologies. This is off the top of my head in
14 respect to that, so yes ...

15 Q. Up to Brian Dodd I think I counted ten people, and then
16 the four that were with Brian Dodd takes us up to 14?

17 A. Yes.

18 Q. Then Garry Sinclair and Maurice Rhodes, who continued
19 with their scene management role.

20 A. Yes.

21 Q. That takes us up to 16. Two for CCTV, Kevin Rooney and
22 John McAuley, which is 18.

23 A. Yes.

24 Q. And two, Mitterer and Miles, at the hospital. So that
25 is a total of 20 people. That must have been a large
26 percentage of the investigators that you had available?

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- 1 A. It was everybody. It was everybody. As I said, apart
2 from Richard Casey, it was everybody.
- 3 Q. And Casey was left back in the office checking other --
4 being available for other --
- 5 A. That was my understanding, that Richard wasn't to be
6 utilised in respect of involvement in the investigation.
- 7 Q. So as lead investigator on that day, you've come in on
8 the Monday morning --
- 9 A. Yes.
- 10 Q. -- taken control, and essentially allocated ... 20
11 people are involved this investigation?
- 12 A. Yes.
- 13 Q. Did you think that was necessary to cover the scope of
14 the investigation at that time?
- 15 A. It was all we had.
- 16 Q. Would you have allocated more?
- 17 A. If I had more I would have -- later on I asked
18 the Commissioner to give me the review staff, so we shut
19 down the review section.
- 20 Q. How many were in the review section?
- 21 A. I think there would have been about six or seven in
22 there who deal with another aspect of PIRC's --
- 23 Q. We have heard about case handling review --
- 24 A. Yes, that is it.
- 25 Q. So that was an additional six or seven staff. When did
26 you get them?

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1 A. I didn't get them. It was a number of days later I got
2 them. And that was in respect of the -- the size of the
3 house to house enquiries that we had to conduct, and
4 that was after we were given the whole incident, as
5 I would describe it, rather than just a bit of the
6 incident which we had in the first few days.

7 Q. We can look at how that expanded.

8 Overall, the Crown Office terms of reference at that
9 time we've heard were given in a telephone conversation
10 between Mr Green and Mr Harrower the day before. As
11 I understand it, on 4 May you didn't have anything in
12 writing from the Crown?

13 A. No, no.

14 Q. And as I understand it, you didn't get anything in
15 writing until the following day, is that correct?

16 A. That's correct, yes.

17 Q. So were you working on the basis, the same basis as
18 Mr Harrower had?

19 A. Yes. But I must say that is not unusual. That is not
20 unusual for an out-of-hours or weekend event, you know,
21 that we get a verbal instruction that allows us to --
22 because we have to be instructed -- the way the
23 legislation is we have to be instructed. And then that
24 would be followed up by a letter, the challenge maybe
25 being is because the Monday was a public holiday day.
26 That may be a challenge for Crown, I don't know. But,

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1 yes, normally the next working day we would receive
2 a written instruction from Crown.

3 Q. We've heard from Mr Harrower that the initial approach
4 instructed by the Crown was for PIRC to investigate the
5 events in Hayfield Road, and the cause of death, the
6 subsequent cause of death at the hospital, and then the
7 police were to continue to look at events leading up to
8 that?

9 A. That was my understanding as well, yes.

10 Q. That was the position you had on that day?

11 A. Yes.

12 Q. I understand you had some concerns about that approach.
13 I think in your Inquiry statement you said you thought
14 it was --

15 A. I had never come across it before. It was not something
16 I had encountered in my time, really, that we do a bit
17 and the police do a bit. I had never encountered that
18 before. And I thought it was -- I did think -- you
19 obviously putting a structure in place, but your mind's,
20 you know, working a hundred miles an hour: what do we
21 need to do? Why do we need to do it?

22 But I remember thinking to myself: but the events
23 that led to Mr Bayoh being in Hayfield Road, he didn't
24 just drop out of the sky into Hayfield Road, there's all
25 these precursor events that have a huge bearing on what
26 happened at Hayfield Road, because you had all the

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1 members of the public who phoned up regarding that
2 action that led to the police attending that incident.
3 So here was I just to deal with the police engagement
4 with Mr Bayoh and events thereafter, but you had all
5 these precursor events which, in my mind, had a huge
6 bearing on where we went to.

7 Q. Was that going to cause concerns for you as lead
8 investigator working out where that dividing line was?

9 A. If it had continued, I suggest it would have done, yes.
10 That obviously became resolved on the Tuesday, and quite
11 rightly resolved in my mind. But -- and this was just,
12 you know, within my own mind -- it was compounded by
13 a phone call I took later on from Mr Nicholson, and
14 I couldn't disagree with him in relation to that call.

15 Q. I will come on to that later.

16 We've heard evidence about the police, when they are
17 investigating an unexplained, unascertained death, that
18 they develop hypotheses, and that a hypothesis,
19 for example, could be that there is an underlying health
20 condition, or it could be that he was assaulted
21 previously and then collapsed as a result of that prior
22 assault in Hayfield Road. Is that the sort of
23 difficulty that you envisage when trying to divide
24 two -- an investigation into two?

25 A. Yes. Yes, there would be. Because I couldn't see at
26 that time -- and this was all just going through my

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1 head, I recall, in respect of: right, this is what we
2 are going to do, this is what we have been instructed to
3 do. And then you just start to move forward that day,
4 you know, I am thinking to myself is, well, I would need
5 to know what the police were doing, and their part in
6 the investigation, to inform me of what I would need to
7 take forward once we got it really moving, the
8 investigation, you know, really kind of moving. And
9 I couldn't see how that would be.

10 So the police are doing a wee bit, so I would need
11 to you -- you know, we don't have the ability to manage
12 a police investigation. That is not, you know -- we
13 investigate part, the police are told to investigate
14 part. How do you get the two to meet, if that was the
15 way it continued? And how do you ensure you have
16 a transfer of information in a seamless and timeously
17 manner, you know, to ensure that I'm not taking forward
18 actions that actually they're not informed of, because
19 this is what happened beforehand.

20 Q. I think you said that was not something PIRC -- you knew
21 PIRC had ever dealt with before?

22 A. Not that I am aware of, and certainly not that I'd been
23 aware of before. Not that I'm aware of.

24 Q. Have you ever been in that situation with PIRC up until
25 your retirement after May?

26 A. No.

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1 MS GRAHAME: Thank you.

2 I wonder if that might be an appropriate time for
3 a break?

4 LORD BRACADALE: We will have a 20-minute break now.

5 (11.32 am)

6 (A short break)

7 (11.55 am)

8 LORD BRACADALE: Ms Grahame.

9 MS GRAHAME: Thank you.

10 Can I ask you to look at paragraph 41 of your second
11 Inquiry statement, SBPI 00421. It's paragraph 41. You
12 mention here that officers hadn't provided initial
13 accounts, hindering the PIRC investigation.

14 If we can go on to the next page, please. You say:

15 "At the start of the investigation I obviously had
16 no account from any of the officers. It was unclear who
17 had attended, and in what order. I had no clarity on
18 what each officer's action were, and more importantly
19 why they took those actions. I needed to know what had
20 Mr Bayoh's actions been when the first officers
21 encountered him."

22 Two things I would like to ask you about here. The
23 phrase "more importantly why they took those actions".
24 Why was the reasons why officers had taken actions
25 significant to the investigation?

26 A. The first point was obviously -- I would say it would be

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1 to ... so we had an understanding of what happened. The
2 officers had attended there in response to a number of
3 calls from members of the public, they had taken
4 actions, and I think it was important to know why they
5 took those actions.

6 From Keith's briefing and briefing paper, there's
7 an inference that CS and PAVA has been used, batons have
8 been used, restraints have been placed. There has been
9 a police officer injured in some manner. I'd no idea
10 how that had occurred, and in what order it occurred,
11 who did what, the rationale for doing that. Police
12 officers obviously have quite unique powers in society,
13 they are allowed to use force, but they've got to
14 justify it and it has to be proportionate and it has to
15 be necessary. So why was that level of force -- you
16 know, we have basically all the components in their
17 armoury all used, you know. I don't think there was
18 a Taser officer there at that time, you know, but they
19 used CS, they used PAVA, they have used batons, they
20 have used restraints, and they used handcuffs, we knew
21 later they had used handcuffs. Why was it necessary for
22 that whole gambit to happen?

23 Q. Was that something you wanted to know the answers to as
24 part of your investigation?

25 A. Yes.

26 Q. Then you say:

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1 "I needed to know what had Mr Bayoh's actions had
2 been when the first officers encountered him."

3 With would that be part of that aspect of your
4 investigation?

5 A. Yes, there was obviously -- in my mind, there would have
6 been a rationale why all these aspects took place. You
7 know, it's -- yes. In my mind, there had to be a reason
8 why this all occurred. You know, why did the police
9 use -- resort to that level of force?

10 Q. If, as is noted in the briefing paper, a subject is
11 aggressive and approaching officer with a knife,
12 presumably the response by officers will be seen in
13 a different light than if that person is unarmed and
14 walking past the officers?

15 A. Yes.

16 Q. Can we look at paragraph 41 below that section:

17 "It was being mentioned that police officers had
18 used CS and PAVA sprays as well as making use of baton,
19 handcuffs, other restraints. Why and by whom, that
20 I did not know. Some of the information I would be able
21 to piece together from materials seized from
22 Police Scotland and other sources, like copies of
23 Airwave, messages, incident logs, other witness
24 statements, CCTV etc, but that all required time and
25 resources, so [their] failure to provide initial
26 accounts and later statements caused undue

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1 difficulties."

2 Was that something you were commencing in your
3 investigation, collating or gathering in Airwave
4 messages, logs, and we heard -- you mentioned earlier
5 STORM logs, CCTV?

6 A. Yes.

7 Q. Was that in an attempt piece together the chronology of
8 events?

9 A. Yes. That sort of information would be gathered for any
10 incident that we undertook. Any investigation we
11 undertook, we would look to in-gather all that, and
12 piece together a timeline of what had happened, you
13 know, in respect of that. But as I said, that all takes
14 time. That just doesn't -- police aren't able just to
15 hand that over that day, the next day. This takes time
16 to get. And even when we have it, we've secured it,
17 I then have to free up resources to examine that
18 information, okay? So you take like an Airwave message,
19 I would need somebody to sit, to transcribe that -- to
20 listen to it, to transcribe that. You know, this is
21 weeks down the line we are getting this information, you
22 know, once we've got it.

23 So it's all very well the time -- challenge being
24 the time it takes police to provide that information to
25 us. We secure it, we log it and then we have to examine
26 it, and you have to look at it (inaudible) to examine

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- 1 it.
- 2 Q. Was it on 4 May that you started the ball rolling with
3 gathering in this type of information, or was it later?
- 4 A. No, that came the next day. Once we have received the
5 written confirmation from Crown what we were to
6 investigate, we then go through a formal process where
7 we have to serve a letter of notification on to, in this
8 case, Police Scotland, outlining what we have been asked
9 to investigate, what the legislation is we've been asked
10 to investigate, and also highlighting that we require
11 the former information, and the legal framework we are
12 using to get that information.
- 13 Q. How long does it take to go through that process or that
14 procedure with getting the written confirmation,
15 preparing the paperwork, and then ultimately recovering
16 things like Airwave messages?
- 17 A. It depends how much it is, it depends where in the
18 country it is. You know, the Airwave messages and the
19 incident logs, they sit in a separate police division.
20 They have numerous, if I take -- C3 it's known as, where
21 the calls come into, they have a number of control
22 rooms. But just because there is a control room sited,
23 say, in Fife, it doesn't mean all calls go to Fife.
24 They are like virtual control rooms, is my understanding
25 of it.
- 26 So if I call in and I am in Fife, and the next

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1 available person to answer that call is actually sitting
2 in Inverness, then that call goes to Inverness and it is
3 recorded into Inverness, you know, into their system, to
4 the call-taker, and then that is handled through
5 a police controller.

6 So it all sounds like, oh, well, we like Airwave
7 messages, we like all this. But it is all dotted about
8 in different parts of Police Scotland.

9 Q. Could that process be made more efficient, do you think,
10 and faster?

11 A. Just talking in general here, one of the things I like
12 to do, when I am allocated an investigation, is no
13 matter where they are in the country I will go and see
14 them almost at the outset. I will go and see who is the
15 lead investigator, senior investigating officer, the
16 person in charge of that incident, I will go and see
17 them.

18 Part of it is explain who I am explain, explain what
19 I have been asked to do. I have maybe just had a verbal
20 instruction at that time, I have maybe received a
21 written instruction. And I'll go and say to them: what
22 I will be looking for from you is the following, and
23 I will give them a list relative to that. And I'll say:
24 if you were able to have somebody start in gathering
25 that now, because tomorrow I will serve on the Assistant
26 Chief Constable an official letter instructing this.

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1 So I like to try and get the ball rolling right at
2 the start because -- because it takes time. Okay? We
3 don't have access to police systems, okay. If we had
4 access to police systems that would be great.
5 For example, when I started in PIRC, and I started on
6 1 March, and we were in different offices -- we were in
7 a temporary office at that time, but we were told that
8 we would get view-only access to one of the police
9 systems, criminal history records, right?

10 That was part of a safety point of view. If we were
11 going out to see somebody, I like to know if there were
12 any warning signals or something. I was told we would
13 have that shortly and it would be installed at Hamilton.
14 We are still waiting on that system, okay? We have no
15 access to the police systems. If we had view-only
16 access to the police systems, great, we could go in and
17 view that.

18 Q. Would that help investigators --

19 A. That would help. That would help. That would speed up,
20 absolutely it would speed up.

21 Q. And your practice of speaking to the SIO and giving them
22 advance notice, essentially, of what you are looking
23 for, was that followed by other investigators, or is
24 that something unique to you?

25 A. I don't know. Something that I did. Because also the
26 letter is very formal, the letter served on the

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1 Assistant Chief Constable, you know, and then passed
2 down.

3 And I also think it is -- I used to always think if
4 I was sitting in my old role when I was in the police,
5 if I was sitting in my last office and I got allocated
6 and I got sent that letter, I'd go: great, I've still
7 got all my other work to do, I've got my other, whatever
8 it would be, robberies, homicide, whatever I am dealing
9 with, and I am being asked to deal with this as well.

10 So it's a bit like having good relations, trying to
11 ensure that you get information quickly. And my
12 viewpoint is -- maybe a wee bit old school -- go and see
13 somebody face-to-face, have a coffee with them, explain
14 who we are, particularly -- you know, a lot of people
15 don't know who we are, a lot of people in the police
16 don't know who we are.

17 Q. Even though --

18 A. If they have not been involved with us, a lot of people
19 don't know who we are. So it is just kind of
20 identifying that and in some way trying to get some way
21 to speed up the information you get and when you get it.
22 Because invariably a lot of the information you get, you
23 get it in dribs and drabs as well, and I will accept it
24 in dribs and drabs.

25 We can put a timeframe onto police say -- invariably
26 say within seven working days, which we do. I don't

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1 think I have ever had an investigation where, within
2 seven working days, I have had all the information
3 I have asked for. Part of the challenge, being it is
4 dotted all around the place. Then the way -- you with
5 work through a single point of contact, a SPOC. They
6 then have to feed out to like C3, to personnel for
7 complaint history records, such like. So it all gets
8 fed out.

9 Q. Thank you. Can we look at paragraph 142, please.

10 I would like to ask you about some paperwork regarding
11 the use of CS and PAVA sprays. 142.

12 You were asked about the paperwork, including
13 notebooks, use of force forms, CS or PAVA spray forms,
14 and we've heard evidence that it was a legal requirement
15 to -- if you discharged your CS spray that you should
16 complete a form. We have heard that that form was then
17 sent to PIRC through various email addresses. We have
18 also heard evidence about notebooks and such like.

19 I think here in 142 you say:

20 "The failure to complete documents was known to
21 Police Scotland as they had reported this fact to PIRC."

22 Did PIRC have no power to require officers to
23 complete forms or notebooks?

24 A. No, we don't have. No.

25 Q. And --

26 A. Sorry, not in -- not in a Crown-directed investigation.

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- 1 Q. That is important. I think in
2 a Chief Constable-directed --
- 3 A. Referral, yes.
- 4 Q. -- investigation, would that be a different answer?
- 5 A. Yes, we have the power to -- for them to supply the
6 information to us in a format that we require to -- my
7 understanding of the legislation is: is there is
8 a failure of that? Then we could seek recourse through
9 a civil process.
- 10 Q. Do you know why there is a difference between
11 a Crown-directed investigation, such as took place on
12 3 May 2015, and a Chief Constable-directed
13 investigation?
- 14 A. No.
- 15 Q. We have heard some evidence about the legislation --
- 16 A. Yes.
- 17 Q. -- (b)(i) and (b)(ii) and that type of thing. Do you
18 know why there is different powers?
- 19 A. No, I don't. I find it quite ironic that in an actual
20 police-referred investigation we have more powers. You
21 know, we have the power to go in and enter my police
22 office and search any police office, you know, as long
23 as it is justified, but we have that power under
24 a Chief Constable-referred investigation.
- 25 Q. But not under Crown-led?
- 26 A. No, under a Crown one I'd need to seek a warrant.

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1 Q. In terms of in a Crown-directed investigation, once
2 Police Scotland report the failure of forms being,
3 documentation being completed, is that -- they have
4 satisfied their obligations at that point?

5 A. Well, they have told us they haven't completed it, so we
6 are not getting that information. Normally I would
7 say -- and this one is in respect of the CS/PAVA spray,
8 because obviously, as we have discussed previously, that
9 is, you know, in the legislation a firearm, and there is
10 an obligation or there is a legal requirement to notify
11 us about the use of a firearm, the discharge of CS -- as
12 happened there. So there is a legal notification.

13 The framework for that happens generally is that
14 that information is collated through officer safety
15 department in Police Scotland, in Police Scotland's
16 example, and that is passed to us. Okay? That didn't
17 happen in this case, but when we spoke to the officers,
18 they passed that information to us, they told us they'd
19 discharged, so -- we may be coming on to it later on in
20 the investigation.

21 So my viewpoint is I had an action outstanding the
22 in-gathering of the forms completed, the CS/PAVA,
23 through the normal framework, through -- and there
24 wasn't any submitted. So I took the viewpoint that the
25 officers have told us in their statements they
26 discharged PAVA or CS spray, so they had fulfilled their

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1 legal requirement to tell us about it. So why would
2 I then go back to Police Scotland and say: I want you to
3 fill in these things retrospectively? I have the
4 information, and the legal requirement is they give us
5 that information, and they had done. Certainly it took
6 a month to get it, but we had it.

7 Q. So from 4 June, when officers gave their actual
8 statements to PIRC, they then, during that process,
9 explained they had discharged their sprays --

10 A. Yes.

11 Q. -- and fulfilled, as far as you were concerned, that
12 requirement?

13 A. Yes.

14 Q. But in the period from 3 May until they gave their
15 statements, there were no forms available to you?

16 A. No.

17 Q. And you had no power to insist on that?

18 A. No.

19 Q. Was there any way you could have insisted on those forms
20 being completed at that time?

21 A. No, I couldn't. It would be up to Police Scotland to
22 consider it as a conduct matter. I couldn't.

23 Q. PIRC -- presumably you can confirm PIRC wouldn't have
24 any authority to proceed with conduct matters in
25 relation to --

26 A. No. We've -- we only deal with conduct in respect of

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1 senior officers, which is Assistant Chief Constables and
2 above.

3 Q. So for constables or members of the response team, you
4 wouldn't have any authority to put pressure on them by
5 dealing with conduct matters?

6 A. No.

7 Q. Thinking about the future, is that the type -- would it
8 be of assistance to PIRC, who are conducting
9 an investigation, to be able to put some sort of
10 pressure or have some authority to require these forms
11 to be completed?

12 A. Then you're opening up the whole can of worms that PIRC
13 becomes responsible for conduct matters for the
14 federated ranks, for the ranks below Assistant
15 Chief Constable. I do not know what the figures are of
16 how many conduct matters are dealt with by particularly
17 Police Scotland, bearing in mind they have, what, 18,000
18 officers. I think it is a whole new kind of can of
19 worms.

20 What I will say is this is the only time that we've
21 came across this in respect of police officers, before
22 that and since that, you know. This threw up a lot of
23 different conundrums in respect of the officers' stance
24 that was taken. You know, it may well be -- I think
25 having the power to demand it and they don't give us it,
26 how do you isolate just that part to all the other

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1 conduct matters? I don't know. It's not a decision for
2 me. But I can see great challenges for PIRC in its set
3 up of the moment and having to take that on, but it is
4 a consideration, yes.

5 Q. Did you consider at any time making a formal complaint
6 to Police Scotland about the fact these forms,
7 particularly the CS spray forms, hadn't been completed?

8 A. No, I didn't. No.

9 Q. Looking back now, is that something you think maybe you
10 should have done or not?

11 A. It is certainly something that we would know the answer
12 to if we had gone down that route, yes. And I suppose,
13 you know, we are working a wee bit in hindsight here,
14 you know, yes. But I have to say from my personal point
15 of view, I was focusing on, you know, trying to get the
16 information -- move the investigation on. The aspect
17 round about the officers' stance and the rationale
18 behind that, and the toing and froing going on, that had
19 actually been kind of taken away from myself in the
20 main, and John McSparran, and was being dealt with by
21 John Mitchell and the Commissioner, and they were
22 engaging with the officers' legal representatives and
23 the Federation.

24 Q. We can maybe ask them in evidence --

25 A. Yes, from that point of view. But I did not request
26 that Police Scotland consider some form of stance there

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1 in respect of the conduct regulations.

2 Q. Were you aware -- we've heard evidence that the officers
3 did not wish to complete any of these documents,
4 including statements at that time, because they wished
5 to take legal advice. Were you aware of that on 4 May?

6 A. Yes, I was, yes. Keith Harrower briefed me on that,
7 yes.

8 Q. Can I ask you if know the answer to this: what do PIRC
9 actually do when they get use of spray forms into the
10 office? Are they analysed? Are they audited?

11 A. They are analysed -- the circumstances and for the use
12 and -- they are -- they are examined. We have
13 a small -- it is part of people's duties to look at the
14 CS and PAVA forms, and to examine them and consider if
15 the use of it was justified, proportionate, necessary.
16 They look at all that. A lot of times we will ask for
17 further information from Police Scotland. We may ask
18 for a statement from somebody to that effect. And on
19 some occasions we have taken on investigations, we have
20 moved that to an investigation to ensure that its use is
21 proportionate.

22 There has been a number of criminal investigations
23 undertaken, because we have looked at the circumstances,
24 we have not been happy with the circumstances, it
25 appears to show criminality on the part of police
26 officers, and we have engaged with the Crown in respect

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1 of that, and Crown have then instructed us to undertake,
2 and they serve us with a notice to undertake in respect
3 of (b) (i) investigation.

4 So they have not come in -- they don't just come in
5 and form a statistical return, they are examined and
6 looked at, and there's a process for doing that.

7 Q. Are they examined in relation to ethnicity?

8 A. I don't know.

9 Q. Okay. Can I ask you to look at SBPI 00255 and
10 paragraph 35, please. I think you were asked about --
11 we have talked about the inaccuracies that appeared in
12 the briefing note?

13 A. Yes.

14 Q. And you were asked about your experience as
15 an investigator and how much these early inaccuracies
16 caused detrimental effect to the investigation. I think
17 you say:

18 "I would say you are aware you are getting the same
19 kind of information. You are receiving over the
20 telephone from different people briefings of what they
21 know at the time and what they are aware has happened.
22 I use the phrase at PIRC, and I have used it since we
23 started here in PIRC, we are the hindsight brigade. We
24 come in after everything has happened and then try to
25 piece together what actually did happen. Depending what
26 we have been asked to do, we consider is it procedurally

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1 correct, is it accurate, could there have been
2 recommendations made about certain circumstances, what
3 police did, report findings for the Crown. You base
4 your initial decisions on what we are going to do and
5 what we've got based on the information that has been
6 passed to us at the time. At that time that Keith was
7 getting phone calls, I believe he was not aware that the
8 police officers were refusing to provide statements.
9 A month after that initial account that Keith got ..."

10 This is Keith Harrower, as I understand it, that you
11 are referring to?

12 A. Yes.

13 Q. "... we knew that it contained inaccurate information,
14 but the inaccuracies only came to light when we start
15 piecing everything together and we get the officers'
16 accounts."

17 So was it only after the 4 June, when officers
18 provided statements, that you realised that there were
19 inaccuracies in the initial accounts that Keith Harrower
20 had been provided?

21 A. No, I wouldn't -- no. My recollection is no. They
22 obviously gave us a kind of fuller picture of what
23 happened in respect of that. For instance, the briefing
24 paper talks he was clearly in possession of a knife.
25 I can't remember the exact phrase. It talks about that.

26 We knew prior to that that that would appear to be

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1 inaccurate, because the knife was recovered, and it was
2 recovered some distance away from where the police first
3 engaged with Mr Bayoh. So the statement was he was
4 clearly in possession of a knife. That is inaccurate.

5 Q. When did you become aware that the knife was found some
6 distance away from where Mr Bayoh was?

7 A. It would have been in the first few days. What day,
8 I can't -- I couldn't tell you whether it was -- I don't
9 know if it was on the Monday, you know, but I would be
10 surprised if I wasn't aware of that by the kind of
11 Tuesday or Wednesday, that is for sure.

12 Q. So Keith Harrower is there on the Sunday?

13 A. Yes.

14 Q. You are there on the Monday?

15 A. That is correct.

16 Q. And you think it may have been the Tuesday you realised
17 that that information was incorrect?

18 A. Yes.

19 Q. When on the Tuesday did you realise? Was it the Tuesday
20 that you were advised about knife having been found some
21 distance away?

22 A. I think it would have been -- I think I would have been
23 aware of that on the Tuesday, at some point on the
24 Tuesday, yes, because we have a knife recovered. But
25 obviously there was enquiries ongoing to establish if
26 that could have been the knife that the witnesses had

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- 1 seen Mr Bayoh carrying, but yes.
- 2 Q. Being aware of that on the Tuesday, was anything done in
3 relation to documentation that was prepared or brief --
4 subsequent briefings that were given to indicate the
5 information in that original briefing note was
6 incorrect?
- 7 A. The only thing is in relation to -- the information
8 would have been passed at the briefing that there was
9 a knife recovered and where it was recovered, so
10 everybody working on the investigation would have been
11 aware of that. That is not information that we would --
12 that would have been hidden from any investigators or
13 anybody working on the investigation, so they are aware
14 of that happening.
- 15 Q. We have heard about -- you were lead investigator on the
16 4th --
- 17 A. Yes.
- 18 Q. -- but didn't find out about it until the 5th?
- 19 A. I think it would be the 5th, because of the nature what
20 happened on the 4th, of going to the post mortem and
21 such like.
- 22 Q. We have heard about something called cascading, where
23 information is shared?
- 24 A. Yes.
- 25 Q. And we have heard evidence from Mr Harrower that
26 information was shared with other investigators on the

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- 1 basis of the 3 May briefing.
- 2 A. Yes.
- 3 Q. I am wondering to what extent it would be cascaded to
4 investigators that the knife was found some distance
5 away and Mr Bayoh wasn't likely to have been in
6 possession of it? Was that something --
- 7 A. That would have been part of the briefing, yes, you
8 know, as -- when we became aware of that, yes.
- 9 Q. When would that briefing, that altered briefing have
10 been implemented?
- 11 A. Well, we briefed every day. I set in place a structure
12 that we briefed every day. That was important for John
13 and I, you know, to understand what had happened, what
14 the investigators had uncovered the day before, and what
15 we were looking for to focus on the next day, and what
16 they were doing.
- 17 So I needed the investigators to tell me what had
18 occurred, they'd taken a statement off somebody and
19 roughly what that person had said, rather than waiting
20 to read that statement and catch up with the reading and
21 such like, so -- but exactly about that information, it
22 would have been information passed in a briefing, that
23 the knife was recovered some distance away from where
24 the police first engaged with Mr Bayoh, yes.
- 25 Q. When was that information made available to PIRC that
26 a knife had been found some distance away?

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1 A. After this passage of time I can't recall that.

2 Q. You don't remember. Let's look at paragraph -- sorry,
3 we were on -- it's on the screen. You say:

4 "I have been asked whether I feel that the early
5 hours of the PIRC investigation were hampered by the
6 failure of the officers to give those initial accounts.
7 Absolutely, yes. I would be more wary now after what
8 happened, but up to that point I would be making
9 an assumption, which was wrong, that this information is
10 coming from the people who were actually at the
11 incident."

12 If we can move down the page, please:

13 "If I am passed some information, I would have it in
14 the back of my mind: is this actually coming from the
15 people, or is this just all this mishmash of what's
16 happened flying about, rather than the people who were
17 actually there telling us what happened? I would go
18 back to basic facts, initial accounts."

19 So when you were given the briefing on the morning
20 of 4 May, you were -- now you would be more wary about
21 making an assumption, but is it correct that you assumed
22 that the information you were given on that date was
23 correct?

24 A. Yes. Just to be clear, my recollection is the briefing
25 on 4 May was provided by Keith and Irene. I then
26 allocated, during the course of that briefing, roles

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1 that people to take. So I didn't -- I didn't brief on
2 the briefing paper, it was Keith, who had obviously been
3 there on the 3rd, so he kind of imparted that
4 information to the team.

5 Q. I think you said earlier you had no idea what that
6 happened when you arrived at the office?

7 A. No.

8 Q. You did become aware of the briefing note, the briefing
9 paper --

10 A. Yes.

11 Q. -- at some point on the 4th?

12 A. Yes.

13 Q. Can we have a look at that again, please. It is
14 PIRC 03694. I would like to look at page 3, please.

15 I think at this stage, when we look at the briefing
16 note, there was some information that a knife had been
17 found. Under "Subsequent Police Action COPFS", it says:

18 "In response to the circumstances, Police Scotland
19 secured the location. At some stage officers removed
20 the knife believed to be in possession of now deceased
21 from the ground at locus, along with three police issued
22 batons."

23 So I think at least in this briefing note it appears
24 that, although it was recognised a knife had been found
25 at the locus, it says "believed to be in possession of
26 now deceased". So there was no distinction made in the

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- 1 briefing note at that time that perhaps it was found
2 some distance away?
- 3 A. No, it just says "at locus", and it was a very big
4 scene.
- 5 Q. Would this be indicative of the fact that you didn't
6 have statements from the officers, so you didn't know
7 exactly what had taken place, or was it an indication
8 that they hadn't collated CCTV evidence or witness
9 statements to allow an assessment of that kind to be
10 made?
- 11 A. I think it's a mixture. At that time we didn't have --
12 I'm -- we didn't have the statement from the officer
13 that recovered the knife, and that would obviously have
14 given an indication of an exact recovery point.
- 15 Q. We have heard that was a DC O'Connell that recovered the
16 knife. You didn't have a statement from him at that
17 point?
- 18 A. Well, I -- I don't think we had a statement, but
19 I wasn't aware of ... you know, at that time. It would
20 also -- we will have a record of when we got that
21 statement, but ...
- 22 Q. Yes. I can check that, thank you.
- 23 Can I ask you for your views on -- we've heard some
24 critical comments. Let's look first of all at
25 SBPI 00255, paragraph 37, please. I think this asks you
26 about your recollection. You were told there was

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1 a death in custody of a male in Kirkcaldy, and you say:

2 "It was really high profile. There's already lots
3 of media attention surrounding it. I was to be lead
4 investigator."

5 Was it clear to you from the very outset of your
6 appointment that this was going to be a very high
7 profile incident with media attention?

8 A. That was the feeling I had, and I think, as I explained
9 earlier, that is why I immediately put in place -- or
10 tried to put in place, to the best of our capacity and
11 ability, a major incident structure.

12 Q. We have heard evidence previously that an officer said
13 he knew that it was going to be -- there was going to be
14 a lot of media attention because a man had died, it was
15 after contact with the police, and that man was black.
16 Would you agree with that assessment, that that would
17 promote significant media attention?

18 A. Yes, I would. If I think about the deaths in custody we
19 have had, unfortunately we have had a few, you know,
20 that's a fact, there has not been the level of media
21 attention attached to any of those investigations
22 compared to this investigation and the circumstances of
23 it.

24 Q. What was it that elevated the media mention in this
25 situation, in your view? What factors?

26 A. There were a number of factors as we moved on, you know,

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1 a number of factors. I go back to the stance of the
2 police officers and the legal advice they took. That
3 obviously compounded what happened. The media, you
4 know, became aware of that, and lots of questions were
5 being asked around about that. From my point of view,
6 I was just trying to focus on: what do we need to do?
7 How do we keep moving forward? You know, in-gathering
8 the evidence, assessing the information, examining that
9 evidence, and looking at the facts, so ... So, yes.

10 But the three point you made is, yes, that is what
11 generated -- there was media attention, you know, and
12 you could see that just by the news on that day, by
13 recollection. Articles appearing in the paper, you
14 know.

15 Q. I am grateful for my learned junior checking. It would
16 appear that O'Connell's statement was dated 4 May --
17 this is the officer who recovered the knife.

18 A. Yes.

19 Q. It commenced at 1 o'clock in the afternoon, 13.00 hours.

20 How long would it take for the information that was
21 gathered in from that statement to then reach your ears?

22 A. I would say it -- it would ... although that
23 information -- he completed that statement obviously
24 that day if he highlighted that. I do not recall
25 getting that information on the 4th, that is
26 a certainty. The information was all put into the

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1 police HOLMES system, the statements, they recorded
2 that. It took us a significant amount of time to get
3 all the information from Police Scotland over. So what
4 time that statement was actually -- went, and what date
5 that statement was passed to us, is -- I don't know, but
6 I know we were many, many days down the line when we
7 were still having to get information from
8 Police Scotland, and that is more -- I know it talks
9 about handover, and I am quite sure you will move on to
10 that, but it is not like we go into the office and say:
11 thanks very much, and we just take everything away. It
12 is staged, you know, from that point of view.

13 So I cannot tell you, sitting here now, when
14 I became aware of that information, okay? But what
15 I will say is I knew that information before officers
16 were interviewed. That is an absolute certainty.

17 Q. Thank you. We have heard some evidence from
18 Pat Campbell about comments he has made about the change
19 in lead investigator, and we have heard that
20 Keith Harrower was lead investigator on the Sunday, you
21 were brought in on the Monday and took on that role, and
22 then there is evidence available to the Chair by way of
23 written statement from John McSporran that he then took
24 over the following day?

25 A. Yes.

26 Q. Now, it would appear that that is three lead

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1 investigators over the course of three days.
2 Pat Campbell, who gave evidence, talks about this and
3 talks about the challenge that that would present.
4 Obviously he is coming at it from the perspective of
5 a senior investigating officer in charge of
6 an investigation for the police, but he comments on the
7 issues with that transfer; three lead investigators over
8 three days.

9 How common is it in PIRC to have three lead
10 investigators in three days?

11 A. I think the three is uncommon. That is uncommon, yes.
12 But obviously the continuity is -- is John and I, that
13 John and I remain in place for this investigation.

14 So I know you are saying it is three initially, you
15 know, it's passed to me. The brief I got was to be lead
16 investigator, John McSporran will provide oversight.
17 I think by the time we got to the 5th it was obvious
18 that, you know, we needed to provide a kind of --
19 a structure, because in effect I had no deputy, so
20 I became John's deputy, John came in, so there was
21 a continuity with us.

22 The point that Mr Campbell makes is the passing of
23 the information between Keith and myself and the
24 changeover. I didn't make that decision. Somebody else
25 made that decision. All I can say is that in my
26 experience it occurs and if you take from -- if I talk

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1 firstly about the PIRC point of view is we were on-call
2 team. We have a DSI that leads the on-call team. The
3 on-call team is a week's on call, it's a Friday to
4 Friday, okay? So if Keith had been appointed as the
5 lead investigator, who was going to then take over
6 Keith's role of being on call from the Monday to the
7 following Friday?

8 So I would imagine that would have been one of
9 the considerations. So I have been on call with PIRC.
10 I have attended the scene of an incident out of hours
11 and I have passed over to somebody else, because I have
12 been told "you're not leading this, somebody else is
13 leading this". In my role in the police, when I was
14 a DI in the police and I would be covering an on-call
15 for Glasgow city centre, I have encountered the same
16 scenario. I have dealt with an incident -- I remember
17 I dealt with an incident where there was a death of
18 a child. There was lots of issues with the death of the
19 child. The family were deaf, so I had to bring in
20 interpreters and manage all that. The death occurred in
21 the hospital, so you are having to manage the scene at
22 the hospital. I handed that over to somebody else on
23 the Monday. I'd come on the Friday, I dealt with it
24 Friday, Saturday, Sunday. I handed that over -- I was
25 instructed to hand that over to somebody else. So it
26 occurs. Is it ideal? I can understand the

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1 consideration why it is not ideal, but the
2 practicalities of -- sometimes that can happen. I also
3 think Keith was also going on holiday soon. So do you
4 run Keith into the investigation and then he goes away
5 on holiday and it runs without a deputy for however long
6 Keith's on holiday for, I don't know. I would suggest
7 that that is a question that the person who made the
8 decision that I take over on the Monday would be better
9 placed to answer. But what I would give you is the
10 practicalities that I have encountered.

11 Q. We have heard on 5 May a senior investigator,
12 John McSporran, was brought in, and you have said you
13 were a deputy senior investigator. You continued to
14 work to John McSporran from that date?

15 A. Yes.

16 Q. We have also heard that Casey was a senior investigator?

17 A. Yes.

18 Q. He was available in the office on the Sunday. He was
19 available in the office on the Monday.

20 A. Yes.

21 Q. I am wondering, do you know why senior investigator
22 Casey couldn't have taken the role of lead
23 investigator from the outset?

24 A. That is not a question I can answer.

25 Q. All right. We can ask someone else.

26 A. Thank you.

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1 Q. You talked earlier today about your priorities, and
2 I wonder if you could look at your notebook, please. So
3 you come in as lead investigator and you are working out
4 your priorities. I think there is notes in PIRC 04200.
5 You might find it helpful to have the hard copy in front
6 of you. I would like to go through some of the entries
7 that you made. I think if we start on what is my
8 page 2. It is the first official page of the notebook.
9 We can see on the left-hand column: Monday 4 May 2015,
10 7.50 hours, and it says "reported on duty" I think.
11 "Appointed as lead investigator". Do you see that at
12 the bottom?

13 A. Yes. I've got that, yes.

14 Q. I wonder if you can read out the right-hand column at
15 the top. It says to a death of ... is that "male"?
16 "Believed to be Sheku Bayoh"?

17 A. Yes. "Investigation to death of male believed to be
18 Sheku Bayoh."

19 There is also an address in Kirkcaldy:

20 "Died on 3 May 2015 at Kirkcaldy Victoria Hospital
21 after being arrested. Briefing given by SI Casey and
22 DSI Harrower. Major incident protocols instigated."

23 Then I've got "priority actions" that I have under
24 lined and --

25 Q. Can you read out the priority actions, please?

26 A. Yes. "Post mortem, family need to be contacted ..."

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1 That's ... I am struggling with my own writing, and
2 engage with -- "engagement with [post mortem]" or "PM",
3 I've got "PM", "door-to-door enquiries establish MIR,
4 scene management". So that is the ...

5 Q. What is "establish MIR"?

6 A. Major incident room.

7 Q. Scene management. Then on to the next page. What does
8 it say?

9 A. "Terms of reference. Legislation Section 33A. Police,
10 Public Order and Criminal Justice (Scotland) Act 2006 to
11 investigate interaction between the police and the
12 deceased and the events thereafter."

13 Q. Then the next entry is 12.35. We will come on to that
14 in a moment. So is this the only entry in your notebook
15 that relates to your initial priorities?

16 A. Yes. Yes, I would say so.

17 Q. Is there anything in your daybook about your priorities
18 that we should be aware of as well? PIRC 04520, page 2
19 of the PDF, and we can see, if we move down the page
20 towards the bottom, we see an entry Monday 4 May 2015.
21 I think it says "7.50 reported on duty" perhaps. There
22 is a mark over it.

23 A. Yes.

24 Q. And then "advise re death in custody". I can't read the
25 next line.

26 A. It's "OP Quaich". We give every investigation we do

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- 1 an operational name. So this was given Operation
2 Quaich.
- 3 Q. I see. Then on to page 3. "From initial briefing".
4 I don't know what the next word says.
- 5 A. "From initial briefing paper deceased Sheku Bayoh 31
6 resides at ..." and it is been redacted, I think.
- 7 Q. So you seem to have had the initial briefing paper.
8 Would that be the briefing note we looked at earlier?
- 9 A. Yes, it would appear to be I have had access to that
10 briefing paper. I apologise, when you asked me
11 earlier respected to that I actually looked at the 5th
12 rather than the 4th. It was only when we moved on
13 I realised. So I have obviously had that, and then
14 I have taken notes regarding morning briefing.
- 15 Q. Is this morning briefing, does it say 9.30 in the
16 morning on 3 -- then it says 3 May --
- 17 A. Yes, this is basically Keith. So I've got -- this is
18 Keith highlighting the information he received. So I've
19 got 9.30 and then I have put up:
20 "3rd of the 5th KH [Keith Harrower] got telephone
21 call from Dave Green re incident. KH liaised with
22 Garry Blackhall and Pat Campbell."
- 23 So I would suggest what is happening here is
24 I've just made some scribbly notes here while there was
25 a briefing ongoing.
- 26 Q. You mention members of the public, medical staff and you

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1 mention the FLOs that you told us you appointed?

2 A. Yes.

3 Q. It says "Muslim", does it?

4 A. Yes.

5 Q. So you were aware from an early stage he was Muslim.

6 Then it says "Chief Inspector re cultural issues by ..."

7 A. "... by Police Scotland."

8 Q. Police Scotland. Then Kevin Houlston. You have scored

9 that out. Stuart Houlston. What was that in relation

10 to?

11 A. I have also got "FLO contact", is my understanding.

12 I have obviously -- by that time Alistair Lewis and

13 John Clerkin are going to be our designated FLOs and

14 I have made a wee note here that -- because my

15 understanding is Kevin Houlston was identified and

16 minuted that he would be the family liaison officer, and

17 I am looking at that for FLO contact. Who would my FLOs

18 contact to speak to. Then I realise that

19 Kevin Houlston was not deployed, and you may go on to

20 that later. But that's initially I am thinking who --

21 my family liaison team, who can they speak to to engage

22 with the family. Because in circumstances where

23 Police Scotland have deployed FLOs and then we deploy

24 FLOs the normal process would be I would have my FLOs

25 engage with the Police Scotland FLOs and have the

26 Police Scotland FLOs introduce PIRC FLOs and,

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1 thereafter, they would then be responsible for
2 engagement with the family.

3 Q. So that was identified as a priority for you on that
4 day?

5 A. Yes, because I need to engage with -- we need to have
6 some engagement with the family. Yes, absolutely.

7 Q. Then moving on to the next page. Again it refers to
8 FLOs. What does it mean "01/05" there?

9 A. Don't know.

10 Q. Do you see a number --

11 A. I have no idea why I have scribbled that down, what it
12 refers to.

13 Q. Then you seem to have five items numbered down the
14 left-hand column.

15 A. Yes.

16 Q. It is headed up "FLOs". What is number 1? Post mortem?

17 A. "Post mortem, family need to know about post mortem".

18 Q. So that was your number one --

19 A. Yes. On that day I would say it was. I wouldn't say
20 these are all written in particular order. You know,
21 I am not sitting structurally thinking, right, we
22 need -- these are things we need to do.

23 Q. Are these things that you are hearing from the briefing
24 or are these things you are noting as your priorities?

25 A. I think it is things because I am hearing from the
26 briefing I am having to think what needs to happen.

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1 Q. And then 2 is door to door?

2 A. Yes. It is Brian Dodd I am talking about.

3 Q. And 3 is Laura --

4 A. Laura White that I talked about. CLUE, so that is

5 obviously the information management system that would

6 be within our incident.

7 Q. Then 4 is CSM, crime scene management, with Garry --

8 A. Yes "/Fergie and Stuart" and I've circled Stuart --

9 Q. John Ferguson and Stuart Taylor?

10 A. Yes. Sorry, John Ferguson.

11 Q. And Stuart Taylor, I think you said?

12 A. Yes.

13 Q. Then 5. I don't see -- it is something separate. It is

14 redacted.

15 A. No, obviously something has happened and then I've been

16 made aware that that --

17 Q. So --

18 A. -- as part of the post mortem, that prior to the

19 post mortem the deceased's remains are going to be

20 examined by Quaser.

21 Q. Let's look at the post mortem:

22 "Family need to know about post mortem."

23 What steps did you take -- having identified that as

24 one of your priorities that morning, what steps did you

25 take to fulfil that priority?

26 A. So I was aware that the family had been -- there had

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1 been engagement with the family regarding the
2 post mortem process. I think, if my recollection is
3 right, there had been engagement by one of the senior
4 police officers about that. Keith Harrower had also
5 engaged with family that evening, and my understanding
6 was matters about the post mortem because there had been
7 a decision that the post mortem was going to be held on
8 the Monday. In my experience the family will, or very
9 close family friend -- but normally the family will --
10 part of the post mortem -- before the post mortem can
11 commence is the remains have to be identified. So the
12 family -- that would normally be a part of the family.
13 So I had -- and I was aware that there had been -- the
14 family had asked that the post mortem not take place.
15 I think -- I don't know if I'm getting events right but
16 whether -- well, I knew at that time that the family --
17 the family were unable to -- or say they are unable or
18 unwilling to but the family -- there was a reluctance in
19 the family to come and identify the body on the Monday
20 because they were waiting on other family members
21 arriving. I am quite certain I knew that at that time.

22 Q. Who told you that?

23 A. That must have been Keith or -- yes, it must have been
24 Keith. I was aware of that, okay. And I knew the
25 post mortem was scheduled for that morning. So because
26 we've -- we've identified FLOs, but I didn't want the

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1 FLOs calling the family directly when they have had no
2 introduction, they don't know -- somebody just phoning
3 up saying "Hiya, I'm Alistair Lewis, I'm from the police
4 investigation, I'm your FLO", that is not applicable.
5 So I asked Keith, because he had met with the family and
6 they knew who he was, to phone the family and it was --
7 I can't remember if it is Mr Johnson identified or his
8 wife identified as the family, to phone them and
9 basically say look: this -- my understanding is the
10 post mortem is taking place, Crown has decided the
11 post mortem is taking place. We have family liaison
12 officers now in place. Part of the process is the body
13 needs identified. Will you engage with us in respect of
14 that? Because if they had said yes, I would have then
15 immediately dispatched my family liaison officers to
16 meet with the family and brief them as to what would
17 happen at the post mortem and what is to be expected
18 when they go to identify the body. Because how many
19 people have actually undertaken that role? So it's
20 important, and being able to support the family and
21 provide advice to the family and take them forward.
22 Keith did that and that is what -- did that and I
23 also asked him at that time to introduce Alistair Lewis
24 as the lead FLO during that phone call.

25 Q. So was it an instruction from you as lead investigator
26 to Keith Harrower?

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- 1 A. Yes.
- 2 Q. To speak to the family?
- 3 A. Yes. I did not want Alistair Lewis phoning the family
4 I am going to say "a cold-call", because they didn't
5 know who he was and suddenly -- that would be wholly
6 and totally inappropriate.
- 7 Q. Who told you that Crown office had decided the
8 post mortem should take place?
- 9 A. At that time Keith. Keith.
- 10 Q. Thinking back, was your impression, in relation to
11 the Crown Office decision, that that had been made and
12 it was taking place regardless?
- 13 A. I don't know about the word "regardless" but it was
14 certainly that it was -- the Crown had made the
15 decision, for whatever reason, that it was taking place.
16 But following Keith's conversation with the family,
17 I contacted Dave Green and I outlined the family's
18 position in respect of the post mortem.
- 19 Q. What did you say to Dave Green?
- 20 A. I was having a wee quick flick through there. I haven't
21 recorded it.
- 22 Q. Let's look at SBPI 00255. This may assist you.
23 Paragraph 40:
24 "I am asked about the section in my statement which
25 states I was further advised during the events on 3 May
26 the immediate family had intimated to Harrower that they

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1 did not wish the post mortem process to proceed at this
2 stage and asked that it be deferred until relatives and
3 elders attended from England. The family could not give
4 a date or time of arrival of such persons. This had
5 been passed to Crown Office but instructions had been
6 given that the post mortem would be taking place. The
7 family intimated that they would not be engaging in this
8 process. I have been asked whether I have ever dealt
9 with a request from a family regarding the timing of
10 a post mortem for religious or other reasons. My
11 recollection is no, I haven't. I have been asked what
12 I did with this request. I did have a discussion with
13 Crown, David Green, about it in this instance. Keith
14 had had some interaction with the family the night
15 before, although I was appointing two family liaison
16 officers to deal with the family, but Keith had met the
17 family so I asked him to phone again and ask them again
18 to engage with us in the post mortem process. So
19 although Keith had told me they didn't want to be
20 involved in the process I asked Keith to contact the
21 family because they knew who he was. While FLOs had
22 been appointed, they had never met the families. What
23 I got back from Keith was 'No, they're not engaging.
24 They don't want the post mortem to go ahead.' I phoned
25 David Green at Crown about that."

26 I will move on to the David Green thing in a moment.

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- 1 When you say what you got back from Keith, so this is
2 after you have instructed him to contact the family?
- 3 A. Yes.
- 4 Q. The phrase there is "No, they're not engaging. They
5 don't want the post mortem to go ahead." That is in
6 quotation marks. Is that your recollection of what
7 Keith said to you?
- 8 A. Yes. I mean that -- that's my first statement to the
9 Public Inquiry, isn't it? The statement I gave a year
10 ago?
- 11 Q. Yes, that is your first statement.
- 12 A. Yes, that is my recollection in respect of --
- 13 Q. Was there anything said, thinking back now, about the
14 mother travelling up from England or when she was likely
15 to arrive? Or had she already arrived? Or anything of
16 that sort?
- 17 A. My recollection is no. At this point in time I am aware
18 of that -- that conversation took place, yes, but my
19 recollection of that morning on 4 May, I cannot recall
20 being made aware that the family were travelling that
21 day.
- 22 Q. You say then:
- 23 "I phoned David Green at Crown about that and David
24 told me that the post mortem was going ahead. I haven't
25 recorded it anywhere but my recollection is his words
26 were 'we need to know how this man died'."

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1 Again that is in quotation marks:

2 "So I can only ask Crown -- I can only impart to
3 Crown the information. It is Crown's decision to hold
4 a post mortem and when that post mortem takes place and
5 who undertakes the post mortem. It is not my decision.
6 David Green wasn't willing to delay the post mortem.
7 I had no further information as to the reasoning on
8 that. I passed on to Mr Green the position of the
9 family, because it presents a challenge if family are
10 not attending, because you need a family member or
11 somebody very close to the deceased because there is
12 an identification process to take place before
13 the post mortem is undertaken."

14 I am interested -- you understood initially that
15 the family wanted the mother to attend?

16 A. Yes.

17 Q. You have a conversation with Keith Harrower after you
18 have instructed him to speak to the family that morning,
19 and if we can have your quotation on the screen perhaps.
20 What you have recorded there in your Inquiry statement
21 is:

22 "No, they're not engaging. They don't want the
23 post mortem to go ahead"?

24 A. Yes.

25 Q. Your impression now, did you see that as a change of
26 position from the family or a sort of hardening of their

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1 attitude towards the post mortem? Because there is no
2 mention there of the mother; waiting until the mother
3 arrives.

4 A. What that is is -- and my recollection is Crown has
5 decided the post mortem is going ahead, right? That
6 decision had been made on the 3rd. When I came on on
7 the 4th and I was aware there was a post mortem taking
8 place that morning, and there had been an indication
9 from the family that they were not at that time prepared
10 to attend for identification at that time due to wishing
11 family members to attend. Yes. So I tried to --
12 I tried to overcome that by getting Keith to phone the
13 family again. Maybe they had thought there was
14 discussion about it. I wouldn't view that as
15 a hardening of position. Their position was they
16 weren't attending. All I've said: no, they're not
17 engaging, they don't want -- the rationale why it had
18 been imparted previously, so I don't view it as
19 a hardening of position.

20 I phoned Dave Green again to advise him of the
21 family's position and that is all I can do. All I can
22 do is advise Dave Green: look, the family are unwilling
23 to attend for the time you have scheduled this
24 post mortem. Now, his viewpoint was that the
25 post mortem is going ahead. That presents a number of
26 challenges. First of all, in relation to

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1 the post mortem process, it presents the challenges how
2 do we identify Mr Bayoh's remains? Because you can't
3 have a post mortem unless -- my understanding is
4 you can't have a post mortem -- remains. So we then
5 have to find an avenue of how we identify that body.

6 You then have the other part which impacted again is
7 the relationship with the family, because the family
8 have made a request, not unreasonable when you look at
9 it in fullness, absolutely not unreasonable, and we're
10 going ahead and doing the post mortem. The family have
11 had no contact with Crown at that time. It's not
12 a police process, it's not a PIRC process, it's a Crown
13 process and the Crown have said: no, it's going ahead.
14 Their rationale why, that is something that will
15 obviously be explored. But, as I said, this presented
16 challenges and I tried to alleviate that by having Keith
17 phone again; let's see what we can do.

18 What I have articulated there, yes, I've not
19 articulated what the family's wishes there were, and
20 I have certainly phoned Dave Green. I have obviously
21 articulated to him that -- about something because
22 I have then put "... and David told me the post mortem
23 was going ahead. So, you know, there's -- and then we
24 have to look at how do we then identify the body. That
25 is their decision, but I have to weigh up -- we have
26 nobody to identify this body. But vice versa going

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1 forward is we have ... we have created some conflict
2 or -- yes, I am going to say conflict with the family
3 that we didn't need to, that we absolutely didn't need
4 to. Because a post mortem, as you know, is a very, very
5 invasive process and families need to be aware of what
6 happens there. And my family liaison officers could
7 have assisted to alleviate a lot of these issues. If
8 the post mortem had been delayed, then I could have had
9 my family liaison officers meeting with the family,
10 engaging with the family, trying to explain to -- or
11 explaining to them in a controlled, calm environment
12 about what is going to happen here. You know. But the
13 post mortem just went ahead.

14 Q. Are you satisfied now in terms of your recollection that
15 you explained the family's position to David Green; that
16 they didn't want to attend until the mother had arrived
17 from London or England?

18 A. I believe I would have done that. I can't see -- you
19 know, I would have explained -- I would have just said
20 they're not prepared to -- they are not prepared to
21 attend to identify the body. Because that was not the
22 position of the family.

23 Q. So you wouldn't have said that because that wasn't --

24 A. I can't --

25 Q. -- your understanding.

26 A. I would have explained -- because the whole point of

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1 getting Keith to phone them again was to re-engage with
2 the family.

3 Q. Are you satisfied from your recollection now that
4 David Green understood the family position; that they
5 wanted to wait until the mother had arrived?

6 A. I don't know what David Green understood. That is
7 something I think that David Green needs to be asked.

8 Q. We should hear evidence from him in due course --

9 A. Yes, but from my point of view is the police have
10 engaged with the family. The family have given
11 an understandable viewpoint why they wanted --
12 they're not saying they don't want the post mortem to go
13 ahead. They want it delayed. Keith engaged with the
14 family. I asked Keith to re-engage with the family.
15 That is all being imparted to Crown, okay. But it's
16 a Crown process.

17 Q. From what you have said, would your preference have been
18 for the post mortem to have been delayed?

19 A. I understand the rationale, as we needed to identify as
20 soon as possible the cause of death. I understand the
21 rationale for that. But to balance that against the
22 family's wishes and the reasoning they gave, sitting
23 here now, the post mortem should have been on the
24 Tuesday. Sitting here now.

25 Q. Would it have hindered your investigation in any way if
26 the post mortem had taken place the next day?

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1 A. No. No.

2 MS GRAHAME: Thank you. I am conscious of the time. Would
3 that be an appropriate point to break?

4 LORD BRACADALE: We will stop for lunch and sit at
5 2 o'clock.

6 (1.02 pm)

7 (The short adjournment)

8 (2.00 pm)

9 LORD BRACADALE: Ms Grahame.

10 MS GRAHAME: Thank you.

11 Can I take us out of the topic we are talking about
12 for a moment and ask you to look at document for me,
13 please. It's PIRC 04153. If we can look at the very
14 top of that, it says -- it's a policy log, do you see
15 that?

16 A. Yes.

17 Q. Do you recognise it?

18 A. Yes.

19 Q. My understanding is that this was commenced by
20 senior investigator John McSporran?

21 A. That is correct.

22 Q. And if we look on to the next page, you will see it is
23 a typed-up table, if you like, and the first entry is:
24 "John McSporran, 5 May 2015."
25 So this is the next day?

26 A. Yes.

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1 Q. And then on the last page you will see the last date of
2 it is in November, I think. Go right down to the
3 bottom. 2 November 2015. And it says next to that
4 entry, "Conclusion of policy file".

5 A. Yes.

6 Q. Can we go back to the top, please. We have not heard
7 from Mr McSporran yet, but my understanding is he
8 commenced that log on 5th, the day after you became lead
9 investigator.

10 If we stay with the first page, please, do we see
11 that it says:

12 "Senior investigating officer, DSI William Little.
13 Deputy investigating officer, SI John McSporran."

14 I think I had understood from your evidence that
15 McSporran was the lead investigator and you were his
16 deputy?

17 A. Yes, I think I made mention that when I was first asked
18 to become involved, I was advised I would be the lead
19 investigator and John McSporran would be providing
20 oversight, and I think that is the rationale. While
21 John, when he commenced the policy log, he has put me
22 down as the SIO, but I think I have also said in
23 evidence it became very apparent that the scale of the
24 investigation was, you know, becoming ... and John
25 assumed the role of SIO and I was the deputy SIO. Did
26 that happen on a set day? It just very quickly morphed

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1 into that, is the best way I could explain that.

2 Q. So on 5 May, the initial plan was that John McSporran
3 would have oversight of the investigation?

4 A. Certainly on the 4th, I mean, I don't know what -- you
5 know, how John was briefed, but very, very -- yes. And
6 John has obviously recorded it, and John must have been
7 briefed I was to be the lead and he was -- as I said,
8 the words used to me was "provide oversight". But it
9 very quickly became that John became the SIO and I was
10 the deputy SIO with John as my manager or one of my
11 managers at that time, yes.

12 Q. I was going to say, he was a senior investigator at the
13 time and you were a deputy senior investigator --

14 A. That is correct --

15 Q. At that time.

16 To go back to the issue of the knife which --

17 A. Yes.

18 Q. -- was found at Hayfield Road, and the significance of
19 that. There is one column, if we go to number 10 -- 12,
20 sorry. I might have the wrong ... It's just above
21 the number 13, however. If we can move to the next
22 page.

23 This is the only reference to a knife in this
24 document, and it relates to:

25 "At quite an early stage, several members of the
26 public observed the deceased walking along the road

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1 carrying a knife and telephoned the police. Police
2 officers were sent. At some point the deceased may have
3 struck a vehicle or vehicles with the knife."

4 So that has been a summary or a recording of the
5 early stages of events on 3 May 2015.

6 A. Yes.

7 Q. What is the purpose of this policy log?

8 A. It's an SIO decision log. It's areas where you would --
9 you would put areas of strategies. You see there is
10 house to house strategy, you know, what is the decision
11 and the rationale for that decision. It's for -- it's
12 an area to record your kind of bigger, more pertinent
13 decisions and the rationale behind it, so that you can
14 go back and understand why you made such a decision and
15 when you made such a decision, so it's like a reference
16 point.

17 Q. Can you explain -- this one is obviously typed. Are
18 they normally typed and added to on a sort of rolling
19 basis?

20 A. No, it's the hard -- that has been tidied up. It's the
21 hard copy that you write in.

22 Q. We've seen other policy logs where they are all
23 handwritten. This is a typed version of a handwritten
24 document?

25 A. That is correct, yes. It normally is a kind of blue
26 book, and it's carbonated, and you would write in it.

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- 1 Q. Was this prepared and added to by John McSporran alone,
2 or did you contribute in any way?
- 3 A. John made the entries, and when John and I kind of --
4 you know, when John came on board and we sat down and we
5 kind of divided up the tasks, what was going to happen,
6 it was agreed that John would take a kind of -- what I
7 described as a strategy overview of it as the SIO, and
8 he would maintain the policy log, he would -- he
9 undertook some media that we dealt with and strategic
10 decisions, and I would be more tactical and deal with
11 the kind of day-to-day aspects of implementing such --
12 the strategy and the decisions. But John -- I don't
13 think there is an entry -- there is not an -- I don't
14 think there is an entry with my name on it, I don't
15 think I --
- 16 Q. I couldn't find one.
- 17 A. No, I've not made an entry into that log. It may have
18 been I discussed with John, and then John has completed
19 the log-up. You try to complete the log as timeously as
20 you can, but sometimes obviously some entries are fairly
21 lengthy so it takes you a bit of time doing them.
- 22 Q. I am interested in the -- obviously we have looked at
23 the briefing note --
- 24 A. Yes.
- 25 Q. -- from 3 May which you had sight of on 4 May?
- 26 A. Yes.

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1 Q. And we looked at that earlier, I don't need to look at
2 it again. But the reference in there was that
3 the officers could clearly see that Mr Bayoh was in
4 possession of a knife and was making his way towards
5 them, and the officers, at least one, drew her PAVA
6 spray and issued a warning, but he continued to come
7 forward.

8 A. Yes.

9 Q. You have mentioned before lunch the reference to the
10 knife. I'm interested why this document, the policy
11 log, would not have any reference to your realisation
12 that he was not in possession of a knife?

13 A. That's ... first of all, it is maybe a question for John
14 to answer that, but from my position, sitting as ...
15 that is not a decision, that is evidence. You have
16 found that, it's documented. It's through the
17 production book, the production log, that the knife is
18 recovered, where it's recovered, and when it's
19 recovered, and who it's recovered by. So it just forms
20 part of the evidence chain.

21 There is no decision about, you know, we need to
22 seize the knife, we need to identify the knife. It is
23 just part of the evidence chain. So if I was
24 maintaining the policy log, I wouldn't have a reference
25 in there in respect of: knife recovered, wherever it was
26 recovered. Because we know that, and that is recorded

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1 somewhere else and we know who did it. I mean, there
2 was an explanation what they did with the knife.

3 Q. I think that might also explain a later reference which
4 I think is at number 44. You see all the items are
5 numbered. This is a record dated 3 June 2015, so the
6 day before the officers give their statements, and it
7 says:

8 "SPA forensics to undertake DNA profiling of items
9 seized to show interaction between deceased and
10 officers."

11 And the next column says:

12 "To provide proof of contact between officers and
13 deceased."

14 Would that have included -- so that decision to send
15 items seized to forensics, would that relate to the
16 knife? Because we have heard other evidence much
17 earlier in the Inquiry that there was DNA profiling and
18 fingerprint testing carried out on the knife. Would
19 that have included the knife, or would that have related
20 to something else, such as clothing of the officer
21 Nicole Short?

22 A. My initial understanding of reading that is that would
23 include the knife, because I know the knife was sent for
24 DNA profiling, and I remember that what came back about
25 the knife was, in layman's terms, it's how it was
26 described to me, as it's a soup of DNA on the knife and

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- 1 they couldn't separate that DNA.
- 2 Q. So there wasn't any confirmation from the DNA analysis
3 that Mr Bayoh had touched that knife?
- 4 A. I can't remember if they were able to identify who that
5 soup of DNA was. I don't think so. I think it was that
6 that was not ascertained.
- 7 Q. And I understand the forensic services report, the
8 conclusion on three knives that were found in Arran
9 Crescent and the knife found on the grass verge at
10 Hayfield Road --
- 11 A. Yes.
- 12 Q. -- and the conclusion is:
- 13 "They were found to be similar in general
14 appearance, ie similar markings to each other."
- 15 And an opinion was expressed:
- 16 "In our opinion, knife 1, which could have come from
17 the same set of knives 1, 2 and 3 that were in Arran
18 Crescent and compared ..."
- 19 A. Yes.
- 20 Q. "... or any other set of knives with similar appearance
21 and markings."
- 22 A. Yes.
- 23 Q. And my understanding is that there was no DNA link
24 established --
- 25 A. No.
- 26 Q. -- between Mr Bayoh's DNA and the knife?

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- 1 A. That is correct.
- 2 Q. And there was no fingerprint link established?
- 3 A. No.
- 4 Q. My understanding is that at no point did anyone go back
5 to Collette Bell and ask her to identify the knife found
6 on the grass verge either. Do you know anything about
7 that?
- 8 A. I have no comment. I don't -- I don't know. I don't
9 recollect that. If you are telling me that is what
10 happened, I don't recollect that.
- 11 Q. All right. Thank you.
- 12 A. What I will say about the knife, if I can say it, if my
13 memory serves me right, and it's maybe in the report,
14 I remember the knife, what it was sealed in, all that,
15 it mentioned contamination with the chemicals they had
16 used to examine. But if nobody went back to
17 Collette Bell then I understand that, but my
18 recollection is the knife was -- you know, it was --
19 I think it had a hazard marking on it, if my
20 recollection serves me right.
- 21 Q. There is evidence available to the Chair that no one
22 went back to Collette Bell to ask her to identify the
23 knife.
- 24 LORD BRACADALE: Could you help me with one ... This may be
25 a question more appropriately directed to Mr McSporran.
26 But could you look at entry number 1, please, on the

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1 log. The second paragraph says:

2 "On being detained/arrested, Sheku Bayoh struggled
3 with police officers who physically restrained him.
4 Officers used CS/PAVA spray during the arrest, and used
5 police batons against the deceased. Sheku Bayoh was
6 taken to the ground by police officers where he was
7 handcuffed to the rear and had leg restraints applied."

8 Now, Mr McSporran has made that entry on the 5th.

9 A. Yes.

10 LORD BRACADALE: That is really quite a change, isn't it,
11 from the briefing document that you saw on the 4th, in
12 terms of Mr Bayoh's' actions?

13 A. It makes no reference to the information provided in the
14 briefing paper of Mr Bayoh in possession of a knife.

15 LORD BRACADALE: Yes.

16 A. Or clearly in possession of a knife, if I recall
17 correctly, and I think also running at the officers, and
18 that is not in there.

19 LORD BRACADALE: Do you understand why that is? How that
20 came about?

21 A. No. I also see that -- no, I don't, I don't,
22 your Honour. And I also see it talks about him being
23 handcuffed to the rear; my memory is he was handcuffed
24 to the front.

25 LORD BRACADALE: Perhaps I will return to this with
26 Mr McSporran.

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1 A. Can I just also say, in respect of a policy log, the
2 first entry in a policy log, an SIO policy log, is you
3 provide a narrative of the circumstances as you
4 understand it.

5 MS GRAHAME: And this was prepared by Mr McSporran?

6 A. It was, yes.

7 Q. We hope to hear further evidence from him.

8 Can I ask you to go back to your Inquiry statement,
9 255, the first one, please, and paragraph 38. It's
10 halfway -- in the middle of the page as we see it on the
11 screen at the moment.

12 Now, the post mortem is a Crown Office process. The
13 Crown Office direct it. We looked at this paragraph
14 before lunch, so we have looked at the first part. But
15 you say:

16 "... but we have a big part to play in it."

17 So you are explaining here that the post mortem is
18 a Crown Office process, they direct it, but you say:

19 "... we have a big part to play in it."

20 A. Yes.

21 Q. And I'm interested in that sentence, and you say:

22 "I was like, oh, right. As soon as you get told
23 you're doing that, your head is starting to say: what do
24 we need to do? What do we need to put in place? What
25 do we need ..."

26 And you realise the magnitude of the situation. So

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1 this is the paragraph we looked at before lunch related
2 to you on 4 May at the beginning.

3 This phrase:

4 "... we have a big part ... in it."

5 What do you mean by that, "a big part to play in
6 it"?

7 A. As I have said earlier, the post mortem is a Crown
8 process, yes? They are responsible for the time and the
9 date and the pathologist, number of pathologists, that
10 point of view. But the aspect -- the aspect with the
11 family is as the investigating organisation for this
12 incident -- for that aspect of the incident that we had
13 at that time is then we had a responsibility in respect
14 of notifying the family. As I have said previously as
15 well, or I can't remember the evidence, but this is the
16 only post mortem that I have been involved in, in all my
17 years, where a family haven't come and identified the
18 body.

19 So the normal process would be I would have my FLOs,
20 meet with the family, explain what is happening, let
21 them know the timescales, and let them know what is
22 going to happen and make arrangements -- and this was
23 taking place in Edinburgh, at the City Mortuary in
24 Edinburgh. They are in Kirkcaldy. Normally we would
25 transport them as well. I think I said earlier
26 a post mortem is a very invasive -- it's a -- it can be

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1 quite a harrowing process just even being made aware of,
2 or seeing your loved one and identifying your loved one.
3 So invariably we would ask -- we would drive them in
4 case they were unable to drive back. So we've got that
5 aspect of it.

6 During the course of the post mortem there will be
7 a number of samples taken by the pathologists, and
8 I would need to supply a production team in respect of
9 the samples that are taken by the Crown pathologist and
10 ensure that they are kind of secured, they are packaged,
11 they are recorded accurately. And some of the -- some
12 of the samples we will take away and we will need to
13 make arrangements for where they need to go to for
14 examination. Some of samples the pathologists will
15 retain and they will make arrangements for that.

16 So there is a lot of work for us, as I would
17 describe it, and that's a big part of what to play. We
18 don't just, if there is a post mortem, sit back in
19 isolation and wait for an update. We are there, we are
20 involved in it.

21 Sorry, when I say "we", I am talking
22 organisationally.

23 Q. I am interested in what you say about your role in
24 relation to the family. There is evidence available to
25 the Chair from an investigator that in his view it was
26 not for him to interfere in that process. He was

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1 unaware of how the availability of the appropriate
2 people in terms of the post mortem, including the
3 pathologist, what was available, whether that day or
4 further ahead in the timescales, that wasn't for him.
5 He was aware of all the circumstance that were relevant
6 in relation to the scheduling, but ultimately the
7 decision, it was for the Crown, in terms of the decision
8 to carry out the post mortem.

9 That sounds a little bit more hands-off than you
10 have been describing. Would you agree with that
11 description?

12 A. I don't know who the witness is, but the two
13 investigators that I sent to the post mortem was
14 John Ferguson, who unfortunately is no longer with us
15 and passed away during Covid. John was a hugely
16 experienced investigator. Hugely ... you know. And
17 alongside him was Stuart Taylor who was a trainee, and
18 had not been long as a trainee, and came to the
19 organisation from the Care Commission. This was the
20 first -- my understanding is this was the first
21 post mortem he had been involved in.

22 So if that is where the information is coming from,
23 I understand what he is saying there. Whereas if
24 John Ferguson was here with us, he would be able to
25 explain exactly, because John and Stuart were in the
26 post mortem, they were actually in with the pathologist

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- 1 when the post mortem is taking place.
- 2 Q. I don't want to leave you in dark on this. That was me
3 quoting from Keith Harrower's evidence.
- 4 A. My apologies.
- 5 Q. No, no, I hadn't said. Do you feel that is perhaps not
6 as proactive as you ... Being proactively engaged with
7 the arrangements for the post mortem, was that
8 exclusively in relation to you, or would --
- 9 A. No --
- 10 Q. -- you have thought most investigators would take your
11 approach?
- 12 A. I would say investigators who have comparable experience
13 as I maybe have, or, you know, in the kind of -- in that
14 area. Now, I don't know Keith's experience there, but
15 in my experience this is what happens at a post mortem,
16 you know, so ... We are hands-off in the arrangements of
17 it and the kind of -- you know, everything that happens
18 around about it. But when the post mortem takes place,
19 you know, particularly in these circumstances, we have
20 a very, very active role to take part in.
- 21 Q. And an active role in relation to the family?
- 22 A. Yes. Yes. Yes.
- 23 Q. And the arrangements for their -- normally their
24 attendance at the post mortem?
- 25 A. Absolutely, yes.
- 26 Q. Can I ask you to look at paragraph 40, please. I think

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1 we are moving down here. That is fine, thank you.

2 You were asked in this statement about a part of
3 your PIRC statement. It states:

4 "I was further advised that during the events on
5 3 May 2015 ..."

6 Do you see that on the screen?

7 A. Yes.

8 Q. And I'm interested in the section where you say, it's
9 just below halfway down:

10 "I did have a discussion with the Crown,
11 David Green, about it in this instance. Keith had had
12 some interaction with the family the night before,
13 although I was appointing two family liaison officers to
14 deal with the family."

15 I think we have spoken about that.

16 Can I move on and ask you about Collette Bell,
17 please. We have heard evidence about Collette Bell.
18 She was the partner of Sheku Bayoh?

19 A. Yes.

20 Q. And she had recently had a baby?

21 A. Yes.

22 Q. We have heard evidence from Collette Bell that she
23 wanted to see Mr Bayoh on 3 May. She had given
24 a statement to officers in Kirkcaldy Police Office on
25 the understanding that she would hopefully then be able
26 to see his body. She also gave evidence about having

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1 the long-term impact of not seeing him, and the impact
2 that had on her.

3 From your knowledge on 4 May, you have told us about
4 knowing the family wanted to wait for their mother, and
5 you had asked Mr Harrower to contact Ade Johnson. What
6 were you aware of on 4 May in connection with
7 Collette Bell and her status as Mr Bayoh's partner?

8 A. I was aware that she was his partner. I was aware that
9 they had a child together. But at that moment in time,
10 and dealing with this aspect, the information that had
11 been relayed to me is that the family single point of
12 contact, if I could use that phrase, was Mr Johnson.
13 How that had been arrived at, I was unaware, and that
14 was why I asked Keith to contact Mr Johnson because he
15 had had previous contact. Okay? So, yes.

16 Moving forward, and on reflection, then there should
17 have been contact with Collette Bell in respect of the
18 post mortem process and the identification of Mr Bayoh's
19 remains. Yes. But at that time and that moment
20 when I was dealing with this, and in efforts to have the
21 post mortem process completed in a manner that I thought
22 was suitable, ie the family or a family representative
23 has -- I'd asked Keith to do that. And, as I say,
24 Mr Johnson was identified as the family single point of
25 contact at that time. That later moved.

26 But following the passage of time, yes, in hindsight

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1 Collette Bell should have been contacted by the family
2 liaison officers and we may have been able to undertake
3 the process that I view should have been normally
4 undertaken, and that would greatly have assisted in our
5 engagement with the whole family in my view.

6 Q. If you had known on 4 May in the morning, when you take
7 on the role of lead investigator, that Collette Bell
8 wanted to see Mr Bayoh's body, is that something you
9 personally would have supported on that day and
10 attempted to facilitate?

11 A. I would have supported it, yes, but I would have needed
12 to have contacted Crown to ask their permission.

13 Q. Is that something you would have been willing to do?

14 A. Absolutely, and it is something I have done previously
15 in an investigation. I can remember a mother wanted to
16 see her son the night before his post mortem, and I had
17 to arrange through Crown for that to happen, and
18 ultimately we made arrangements for the mother to go.
19 We took the mother -- or my FLOs took the mother to the
20 mortuary and there was a viewing, and that was a viewing
21 rather than the identification process because the
22 pathologist wasn't there. It was a viewing, and that
23 was arranged.

24 So it is not something that -- it is not something
25 that would happen with a great deal of frequency, but we
26 have had such a request and we have managed that

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1 request.

2 Q. Is that the position even where there were -- you have
3 told us about the time constraints, your arrival, your
4 appointment as the lead, the briefing taking place that
5 morning, and then we have heard the post mortem took
6 place at the lunchtime. Is that something you could
7 have accommodated within that time?

8 A. The thing is, because I was unaware of what Collette's
9 wishes were, I was unable to even attempt that process.
10 I was unable to even liaise with Crown in respect of
11 that process.

12 Q. I think in your statement you say that you were driven
13 to the post mortem that day by Richard Casey?

14 A. I was, yes.

15 Q. And was that -- you left Hamilton and the post mortem
16 was to be in Edinburgh?

17 A. It was, yes.

18 Q. I think there is an entry or two entries in your
19 notebook which I said we would come back to. And if you
20 want to have a look at those, that is PIRC 04200. The
21 left-hand side of the column is 12.35.

22 A. "Whilst en route to PM, T/call from ACC Nicholson
23 expressing concerns re Police Scotland still being seen
24 to investigate."

25 Then I've got:
26 "Asked them to contact DOI/HOI."

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1 So that would be director of investigations/head of
2 investigations, yes.

3 Q. Right. Can I ask you about this call with
4 ACC Nicholson. You said in your Inquiry statements that
5 you knew Pat Campbell and you knew ACC Nicholson?

6 A. That is correct, yes.

7 Q. And I think in -- let's look at SBPI 00421, paragraph 2.
8 You detail who the officers were that you had prior
9 knowledge of --

10 A. Yes.

11 Q. -- before you started in the role, and you mention
12 Nicholson. And I think, in summary, you say you had
13 worked with him on a number of investigations that
14 included investigations ... You had no relationship with
15 him, but he was your former manager and you had engaged
16 with him on occasions through different roles in
17 Strathclyde Police?

18 A. That's correct, yes.

19 Q. We have heard that he was Gold Commander in the
20 investigation?

21 A. Yes.

22 Q. And I think in your second Inquiry statement, which is
23 this one at paragraph 2, you do comment further down
24 perhaps ... You say you had no relationship. You had
25 had contact until you retired.

26 But you say:

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1 "I did approach him by email to see if he would
2 consent to be a referee when I applied for the role of
3 deputy senior investigator with PIRC."

4 A. That is correct.

5 Q. So was he actually your referee when you joined PIRC?

6 A. He was one of my referees, yes. I can explain why that
7 aspect happened. My recollection is, in respect of
8 the application form, is PIRC asked that the referees
9 are able to provide some -- I can't remember the
10 phrasing, but provide some input in respect of your ...
11 I think it was in relation to attendance at work, and
12 I can't remember what else, right. And the challenge
13 I had, because my other referee was the Deputy Chief
14 Officer for the States of Jersey police where I had been
15 working, is the challenge I had is that my last two line
16 managers had retired from the police, and the way I read
17 that is it was looking for somebody who would still be
18 able to speak to, or provide information regarding my
19 employment record and such like. And being aware that
20 Mr Nicholson was still within Police Scotland is -- when
21 I had retired he was head of the CID, I emailed him at
22 his Strathclyde Police account and asked him if he would
23 be my referee.

24 Q. There are obviously lots of different types of
25 references?

26 A. Yes.

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1 Q. You can have forms that have to be completed, or it can
2 be personal written commendations for someone. There
3 are references that are really just an acknowledgement
4 that you worked there for a certain period of time.

5 Can you describe the type of reference that you were
6 asking Nicholson to provide?

7 A. I think it was just in the first aspect you gave there.
8 It was just the fact I had been employed when I had been
9 employed, and some aspect around about, you know, my
10 attendance record from that point of view. So that was
11 the rationale behind that. I don't know what sort of
12 reference was provided, if any, by Mr Nicholson.
13 I don't know that. It would be something that our HR
14 department could provide, but I don't know.

15 Q. That is not necessary.

16 Did you feel from your prior contact with
17 ACC Nicholson that you had to declare that to your line
18 manager in relation to your appointment on 4 May as lead
19 investigator into the death of Mr Bayoh?

20 A. No, not on that occasion. But there had been a previous
21 investigation within PIRC that Mr Nicholson featured
22 heavily in, for an expression, and I kind of advised
23 that that was a conflict of interest for me, and I took
24 no part in that investigation.

25 Now, Mr Mitchell was aware of that, because my
26 understanding is he also for that prior investigation

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1 had to declare a conflict of interest, so he was aware
2 of that. So in respect of that and -- yes. So
3 I didn't -- I didn't obviously say I can't be involved
4 in this because Mr Nicholson is the Gold Commander, no.
5 I took it as read that Mr Mitchell would be aware of
6 that because of the prior incident.

7 Q. So you didn't declare that on this occasion.

8 A. No.

9 Q. Was that because ACC Nicholson was Gold Commander but
10 not one of the officers who had been involved in the
11 events at Hayfield Road?

12 A. No, I don't think it was because of that. I think it
13 was because I had declared previously at this previous
14 incident or investigation that was under taken by PIRC,
15 and I declared then I had a conflict of interest, and
16 I took no part in that investigation. So Mr Mitchell as
17 the head of department knew that, because he had also,
18 is my understanding, declared that conflict of interest.

19 Q. Did you expect Mr Mitchell to remember that conflict of
20 interest that you had had with Nicholson?

21 A. I did. Absolutely did, yes.

22 Q. As I said earlier, I may be wrong, we haven't heard from
23 Mr Mitchell, but my understanding is he didn't come back
24 to work until the 5th. So I am interested in, if that
25 is correct, do you think now, in hindsight, on the 4th,
26 when you were appointed lead investigator, you should

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- 1 have re-notified senior management of that prior
2 conflict?
- 3 A. That senior management -- if I am incorrect and
4 John Mitchell wasn't there on the 5th, the senior
5 management would have been Irene Scullion, and
6 Irene Scullion knew that conflict of interest because
7 she undertook the investigation that Mr Nicholson
8 featured into, so she was aware of that.
- 9 Q. On the previous conflict of interest, you had
10 withdrawn --
- 11 A. I hadn't even withdrawn. I hadn't been involved in any
12 way.
- 13 Q. You weren't involved at all?
- 14 A. Not in any way.
- 15 Q. Obviously you felt that was the right course of action
16 there?
- 17 A. Yes.
- 18 Q. Why did you not feel that was the right course of action
19 here? What was the distinction?
- 20 A. Because Irene Scullion knew that. She was still
21 appointing me as -- if Irene was the only one in, she
22 was aware of that.
- 23 Q. Did you not feel you had any personal responsibility to
24 draw that to her attention on the 4th?
- 25 A. Not at that time, no.
- 26 Q. Can I ask you about the content of the conversation you

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- 1 had with ACC Nicholson. You have noted in your book,
2 12.35, you have a conversation with him, is that right?
- 3 A. That is correct, yes.
- 4 Q. That is what you just read out. What were his concerns
5 at that time when he called you on the phone?
- 6 A. His -- my recollection is his concerns regarding the
7 public perception is here we have a death in custody of
8 a male or a person that had occurred in the street
9 following engagement with the police, and here we still
10 had police being visible carrying out enquiries. They
11 were -- they had officers -- my understanding is
12 officers out, conducting house to house investigations,
13 CCTV scoping, areas like that. So he felt as if that
14 presented an issue in respect of the public perception,
15 how this was being investigated.
- 16 Q. Were there still officers in uniform at Hayfield Road?
- 17 A. I think there was, yes. I think we still retained the
18 site at that time, and they were providing ... scene
19 protection.
- 20 Q. If we look at 255, paragraph 59. This is your Inquiry
21 statement. This is where you talk about this call?
- 22 A. Yes.
- 23 Q. You say:
- 24 "He was also concerned regarding the perception of
25 the public ..."
- 26 Do you see that, just below halfway down?

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- 1 A. I have that, yes.
- 2 Q. "... and the police were still investigating the death,
3 because the police had a bit to play and the PIRC had
4 a bit to play, as the police had been instructed to
5 investigate the preceding events and we had to
6 investigate the event itself and the events thereafter."
- 7 Is that division of labour that you expressed
8 concern about earlier today --
- 9 A. Yes.
- 10 Q. -- was he also concerned about that --
- 11 A. Yes.
- 12 Q. -- at the time?
- 13 You then said -- you agreed with him and said:
14 "Yes, this does look messy. The public would be
15 saying, what do you mean this is an independent
16 investigation? Police officers are doing door-to-door
17 because they are doing door-to-door in their bit,
18 whereas I have a door-to-door team now taking over from
19 the police in areas we have been asked to investigate."
- 20 Did you consider this to be a bit messy?
- 21 A. I absolutely agreed with Mr Nicholson in respect of what
22 the public perception would be of this, yes. It didn't
23 convey that it was an independent investigation.
- 24 Q. What did you do about this? Obviously ACC Nicholson
25 spoke to you about it that day?
- 26 A. Yes.

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- 1 Q. You agreed with his concerns?
- 2 A. That is correct.
- 3 Q. Were there any steps you took?
- 4 A. I asked him to contact Irene Scullion in respect of his
- 5 concerns because I was aware that Irene Scullion --
- 6 I had left the office by that time, but my understanding
- 7 was Irene Scullion was liaising with Crown in respect of
- 8 matters, and I felt Mr Nicholson's viewpoint needed to
- 9 be articulated to Crown in respect of that, because
- 10 Crown had made this decision; was this the correct
- 11 decision? What would happen? So I asked Mr Nicholson
- 12 to contact Irene Scullion in respect to that.
- 13 Q. So you were supportive of him pursuing his concerns --
- 14 A. Yes.
- 15 Q. -- in relation to this via Irene Scullion who was in
- 16 Hamilton?
- 17 A. Yes.
- 18 Q. Did you hear any more about this on the 4th?
- 19 A. I don't recall hearing any more. Obviously I would have
- 20 had some conversation with Irene, but I don't recall
- 21 hearing any more about it. I may well have done, but
- 22 I don't recall.
- 23 Q. We have heard evidence that on the 5th, the following
- 24 day, the first written instructions came in --
- 25 A. That is correct.
- 26 Q. -- and then everything was brought under the PIRC

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1 umbrella?

2 A. Yes, whether that was a result of the conversations that
3 Irene was having with Crown, and I presume Mr Nicholson
4 would have been having with Crown as well.

5 Q. Thank you. Can we look back to your official notebook,
6 PIRC 04200, and back to the entries you have on page 3.
7 The next entry is 12.45 and it says "Edinburgh City
8 Mortuary". Could you read out this entry, please?

9 A. Okay, so it's 12.45, Edinburgh City Mortuary:
10 "PM Kerryanne Shearer."
11 Next line:
12 "Ralph Bouhaidar."

13 Q. We have heard they were the pathologists.

14 A. They were two pathologists, although I have not
15 identified that. And I have:
16 "Mr Bernie Ablett PF."
17 He was the Procurator Fiscal in attendance at the
18 post mortem.
19 I have:
20 "No sudden death report. Call to
21 [Detective Inspector] Campbell. No hospital records/no
22 GP."
23 And then I have got:
24 "17 ..."
25 With the photocopy it's either 17.30 or 17.50.
26 "... concluded PM."

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- 1 Q. Can you tell what the timing of that -- it is your
2 handwriting, obviously. Is that 30 or 50?
3 What is the next entry?
- 4 A. I have 17.50, so I presume it is 17.30.
- 5 Q. Right, so the second line is 17.50?
- 6 A. Yes.
- 7 Q. And the top line is 17.30?
- 8 A. Yes. Apologies, I am not the neatest writer.
- 9 Q. Not at all. And the 17.30 is when the PM concluded?
- 10 A. 17.30?
- 11 Q. Yes.
- 12 A. Yes.
- 13 Q. Are you quite sure about those times?
- 14 A. I have recorded that -- that -- could I refer to my
15 daybook, please?
- 16 Q. Yes, please do. You have it. This is PIRC 04520.
- 17 A. Thank you very much. So --
- 18 Q. Could you tell me which page you are looking at?
- 19 A. It's not numbered, sorry. The copy -- if you go by the
20 times for that day, it's the very top of the page. And
21 I think, the way it is copied, it's missing, but it's
22 definitely "7.50".
- 23 Q. So it's page 8, I think.
- 24 A. Yes.
- 25 Q. It would maybe appear that the number "1" of "17" has
26 been removed in the photocopying process?

Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. So that is clearly a "50"?

3 A. Yes.

4 Q. What is the entry next to 17.50 in your day book?

5 A. It's:

6 "Telephone call from AL ..."

7 Which will be Alistair Lewis.

8 "... re access to house to get clothes etc for baby.

9 Agreed that two DOs be sent ..."

10 I've got:

11 "... two DOs be sent from Edinburgh to access house

12 for items that family need. Concerns for ..."

13 I can't read my own writing there.

14 "Concerns for ..."

15 Q. Those officers ...?

16 A. "Concerns for [something like] that officers for

17 Kirkcaldy enter house."

18 Q. So --

19 A. Oh, it's:

20 "Concerns from solicitor that officers from

21 Kirkcaldy enter house."

22 Q. Thank you.

23 A. My apologies.

24 Q. This entry is about a telephone call with Mr Lewis who

25 is the FLO.

26 A. Yes.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. And it's timed 17.50.
- 2 A. Yes.
- 3 Q. Can I assume the PM was concluded prior to you taking
4 this call from Mr Lewis?
- 5 A. My recollection is ... yes, it was.
- 6 Q. Do you remember how soon after it concluded that you
7 received the call?
- 8 A. I can't recall.
- 9 Q. So we have the entry in your daybook of 17.50 which is
10 a call with Mr Lewis?
- 11 A. Yes.
- 12 Q. We have an entry in your notebook which notes the
13 conclusion of the post mortem. And then after that
14 there is another entry and it mentions "call from AL",
15 in your notebook as well.
- 16 A. In my notebook, not my daybook?
- 17 Q. Do you want to look at your notebook as well? PIRC
18 04200. This is your official notebook. We will look at
19 page 3. And it's towards the top of that page on the
20 right-hand side.
- 21 Does this help you, then, having looked at your
22 daybook, to identify the timings that you have noted
23 here in your notebook?
- 24 A. Yes.
- 25 Q. So what is the one on the top, "Concluded post mortem"?
- 26 A. I think it is 17.30.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Right. And then the next --
- 2 A. But -- sorry, my apologies, Ms Grahame. But it could be
3 17.50, because it could well be I have written
4 "Conclusion of post mortem", and then 17.50 "Call from
5 [Alistair Lewis]".
- 6 Q. So from your memory now, were those events simultaneous?
- 7 A. They were very close to each other, so exactly the
8 difference in timing, sorry, and -- unfortunately for --
9 because of my scribbles I can't exactly say.
- 10 Q. But roughly --
- 11 A. Yes.
- 12 Q. -- 17.50 the PM concludes --
- 13 A. Yes.
- 14 Q. -- and you get a call from Mr Lewis?
- 15 A. Yes.
- 16 Q. Thank you. You have mentioned the call from Mr Lewis.
17 Then the next entry is 20.05?
- 18 A. Yes.
- 19 Q. And it says "Kirkcaldy Police Office". I think Mr Casey
20 drove you to Kirkcaldy Police Office after the
21 post mortem, is that right?
- 22 A. That is correct.
- 23 Q. What were you doing between ten to 6 and 8 o'clock?
- 24 A. We concluded at the post mortem and that aspect, then we
25 made ourselves -- we travelled to Kirkcaldy, and my
26 recollection is we stopped at a service station and

Transcript of the Sheku Bayoh Inquiry

1 grabbed a cup of coffee.

2 Q. You had been on duty since ten to 8 in the morning.

3 A. Yes.

4 Q. Then you went straight to Kirkcaldy?

5 A. I think we stopped en route for --

6 Q. Apart from the stop.

7 A. Yes.

8 Q. Right. Looking towards the bottom of that page then,

9 you have gone to Kirkcaldy, it says you have had

10 a meeting with Pat Campbell --

11 A. Yes.

12 Q. -- Detective Chief Inspector Hardie. There is then

13 other entries, which I think we will come back to if you

14 don't mind.

15 A. Yes.

16 Q. I would like to ask you some further questions in

17 relation to this meeting that you had when you went back

18 to Kirkcaldy.

19 A. Yes.

20 Q. As I understand your Inquiry statement, when you go back

21 to Kirkcaldy you had a meeting, and Pat Campbell was

22 there, and Detective Chief Inspector Hardie?

23 A. Correct.

24 Q. And yourself. Was Casey with you?

25 A. He was. And my recollection is that Stuart Wilson, the

26 Detective Inspector, was there as well.

Transcript of the Sheku Bayoh Inquiry

1 Q. So Stuart Wilson the Detective Inspector, not
2 Stuart Taylor --

3 A. No, no.

4 Q. -- who had been at the post mortem.

5 Tell us about that discussion.

6 A. That discussion was in respect of various aspects, as
7 I said there, of the investigation. We obviously had --
8 we were doing some, they were doing some. So it was
9 about kind of clarifying the lines of investigation, is
10 my recollection, just some of the points I made there,
11 the house to house.

12 Then I have got:

13 "Police Scotland would continue in line with terms
14 of reference.

15 "Arran Terrace remains with Police Scotland ..."

16 Is what I have put there.

17 "CCTV ..."

18 So I have also had a discussion around about the
19 CCTV and the productions, and what I have noted there
20 is:

21 "We have also had a discussion regarding the
22 productions that Police Scotland had in-gathered."

23 There was quite a number, and they were to remain
24 secure with Police Scotland, I think it is "arrangements
25 made", when we would take possession of these items.

26 Q. So that afternoon you have gone to the post mortem?

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1 A. Yes.

2 Q. You have arrived at the mortuary at 12.45?

3 A. Yes.

4 Q. You have remained there during the afternoon --

5 A. Correct.

6 Q. -- as part of that process. That is concluded at 10 to

7 6. You have had a short break, and then you have gone

8 straight to Kirkcaldy Police Office at just after 8 and

9 had a meeting.

10 A. Well, it was either concluded at half -- my writing is

11 not clear. Maybe there are other events that happened

12 that will provide clarity on that, but ...

13 Q. Your notes I think cover an entire day, but the entries

14 are quite, could I say, limited in your notebook?

15 A. Yes, I understand that, yes.

16 Q. Is that normal to have quite limited entries throughout

17 a whole day?

18 A. Yes, for my notebook?

19 Q. Yes.

20 A. Yes, because otherwise I would just be spending all my

21 time scribing. I am obviously engaging with people,

22 speaking with people. There are things happening I am

23 being kept up to date with. And yes, well, Ricky Casey,

24 is driving. Part of the rationale for that was there

25 were no PIRC cars available. In fact we hired extra

26 cars, we didn't have them by that time for the

Transcript of the Sheku Bayoh Inquiry

1 investigation, and the car I had at that time did not
2 have hands-free mobile. So when I made the decision to
3 go through to the post mortem, and it is not something
4 I normally do, but in this instance I did for the
5 rationale that I have explained in my statements --

6 Q. We will come on that.

7 A. Yes. I didn't -- I had no means of communication unless
8 somebody phoned me and I stopped and then we would
9 phone. So Ricky said he would drive me, and it allowed
10 me -- that is how I was able to have the telephone call
11 with Mr Nicholson.

12 My feeling is I would have had a number of phone
13 calls during that journey, but only the one with
14 Mr Nicholson was kind of outwith, you know, how are you
15 getting on with things? Who is doing that? What is
16 happening here? Because Mr Nicholson's to me was very
17 important because it was obviously raising the issue of
18 the public perception of what is happening here. As
19 I said to you, I could agree with you.

20 So my official notebook is to make notes in respect
21 of areas of, I would say, importance, and areas of
22 evidential value. So if I took a statement off
23 somebody, I would take a note of that. If I took
24 an item as evidence, I would put that into my notebook.
25 But it doesn't cover my day's activity. This is part of
26 the reason for the daybook, but, again, it doesn't cover

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- 1 your whole activity.
- 2 Q. Can I ask you, where was your daybook at the time you
- 3 were travelling to Edinburgh and you were spending time
- 4 at the post mortem?
- 5 A. My daybook was with me.
- 6 Q. That was with you, as well as your notebook?
- 7 A. Yes.
- 8 Q. Were you taking notes in your daybook during -- further
- 9 notes during the day?
- 10 A. I think -- yes, I was taking -- yes, there was more
- 11 scribbly notes in respect of that. I think you can see
- 12 that there were more entries.
- 13 Q. So as you were going through the process and during the
- 14 day, you were scribbling thing in your daybook?
- 15 A. Yes.
- 16 Q. And then as I understand it, a document was later
- 17 prepared that is typed?
- 18 A. Yes.
- 19 Q. And I wonder if we can look at that, PIRC 04148. This
- 20 is dated 5 May which is the following day.
- 21 A. Yes.
- 22 Q. It says it is "Officer's Note re Post Mortem on
- 23 Mr Bayoh".
- 24 A. Yes.
- 25 Q. Who prepared this note?
- 26 A. My recollection is I prepared that note.

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- 1 Q. What was that note prepared from on 5 May?
- 2 A. It was prepared from recollection of what had occurred
3 during the course of the post mortem and some notes in
4 my daybook, and, I would have suggested, in consultation
5 with John Ferguson.
- 6 Q. Who had been at the post mortem as well?
- 7 A. Yes.
- 8 Q. Do we see on the first page of this note it details:
- 9 "Monday 4 May --"
- 10 A. Yes.
- 11 Q. "-- post mortem scheduled."
- 12 A. Yes.
- 13 Q. There is reference to David Green?
- 14 A. Yes.
- 15 Q. And the Quaser examination?
- 16 A. Yes.
- 17 Q. It says:
- 18 "The family of the deceased had intimated to both
19 Police Scotland and the PIRC that they did not want to
20 be involved in the identification of the deceased.
21 Following advice Mr Green, arrangements were made for
22 the deceased to be identified as follows."
- 23 A. Yes.
- 24 Q. There is no mention there of them waiting for the mother
25 to attend, but you have explained that already to us
26 today. There was then formal identification of the body

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1 carried out.

2 If we move down the page, please, we can see who was
3 in attendance.

4 A. Yes.

5 Q. We mentioned the pathologists. There was a photographer
6 there to take post mortem photographs of any injuries or
7 such like. And then a number of people are mentioned as
8 being in attendance: John Ferguson, PIRC investigator;
9 DC Peter Gilzean; DC Peter Grady; Bernie Ablett, you
10 have mentioned, who is a Fiscal; and Keith Hardie, a DCI
11 from Police Scotland?

12 A. Yes.

13 Q. Next page, Richard Casey, PIRC investigator; yourself as
14 lead investigator; and Stuart Taylor who was a
15 training --

16 A. Trainee.

17 Q. Trainee investigator. So there were a number of people
18 there.

19 It says:

20 "Prior to the commencement of the post mortem, the
21 difficulty with regard to family engagement in
22 identification was explained. Both the pathologists
23 were happy to proceed with the agreed identification."

24 A. Yes.

25 Q. I think you said earlier, this is the first time you
26 have ever experienced a post mortem where the family did

Transcript of the Sheku Bayoh Inquiry

1 not attend to ID?

2 A. That is right.

3 Q. Did you feel that merited an explanation to the
4 pathologists?

5 A. Well, yes, because the pathologists -- my understanding
6 is the pathologist would not proceed with the
7 post mortem until there was a formal identification of
8 the deceased, so there was a discussion about how that
9 was going to be achieved.

10 Q. You said earlier you went to the post mortem but that
11 wasn't your normal practice?

12 A. That is correct.

13 Q. Can you explain why you attended this post mortem?

14 A. Yes, I can. Prior to the post mortem I had had
15 a discussion with John Ferguson regarding the recovery
16 of Mr Bayoh's remains from Kirkcaldy Hospital to the
17 post mortem, and John had enlightened me in relation to
18 some aspects round about Mr Bayoh's body, and an area
19 that caused me some -- caused me concern was the fact he
20 talked about there was blood -- as well as being in the
21 nose area, dried blood, there was blood within his ears,
22 you could see the blood was round his ears.

23 Being unaware of what had taken place, but having
24 information that during the course of the restraint that
25 Mr Bayoh -- force had obviously been used, batons had
26 been used, and I was concerned that these batons had

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1 caused an injury to the head that maybe led to the
2 demise of Mr Bayoh.

3 So going back to a comment that Mr Green made about
4 the post mortem was going ahead, I needed to know as
5 soon as possible if the head -- if there was a head
6 injury, and if that head injury had contributed to the
7 death of Mr Bayoh. I needed to know that.

8 I can maybe go back to a kind of hypothesis. Well,
9 that was -- that concerned me, and that is why I went
10 through to the post mortem. Because truth be told,
11 I have got John Ferguson there, who has been to a lot
12 more post mortems in his career than I have. I have
13 John Ferguson there, I have Stuart Taylor there, the
14 Fiscal is there. I don't need to be there. I had 101
15 things to do within the office. But my viewpoint at
16 that time is I needed to know that ASAP, and that is why
17 I went.

18 Q. Why did you need to know that ASAP? What difference
19 would that have made, if that had proved to be the case,
20 that batons or a baton had caused a head injury which
21 had resulted in the demise of Mr Bayoh?

22 A. It could -- it could and it may have changed the status
23 of the officers. At that point the status of the
24 officers was they were witnesses based on the
25 information we had, limited. As I say, it may have
26 changed, because as I said earlier police officers are

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1 quite unique in society because they are allowed to use
2 force, even lethal force, as long as it is justified,
3 proportionate and necessary.

4 But if Mr Bayoh, and if the pathologist was able to
5 give some favourable opinion that that was the primary
6 cause of his demise, then I needed to know that as soon
7 as possible.

8 MS GRAHAME: If I could stop you there.

9 I wonder if that might be an appropriate time?

10 LORD BRACADALE: We will take a 15-minute break.

11 (3.02 pm)

12 (A short break)

13 (3.23 pm)

14 LORD BRACADALE: Ms Grahame.

15 MS GRAHAME: Thank you. Could I ask you to look at a
16 paragraph in your Inquiry statement, 255, paragraph 54,
17 please. It's continuing in relation to what we were
18 talking about just prior to the break.

19 You had been given a briefing by Keith,
20 Keith Harrower, that suggested that Mr Bayoh had been
21 batoned, and then it says:

22 "Investigator John Ferguson, who had been involved
23 in the recovery of the deceased's body to the mortuary,
24 had advised me that there appeared to be substantial
25 blood in the deceased's ears."

26 So reference to ears there.

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1 Now, you said earlier that Mr Ferguson had been in
2 the Victoria Hospital --

3 A. Yes.

4 Q. -- with the body, and had been instrumental in
5 transporting it --

6 A. That is correct.

7 Q. -- to the mortuary and attended the post mortem --

8 A. Yes.

9 Q. -- and he has advised you that there appeared to him, at
10 least, to be substantial blood in the deceased's ears.

11 Now, we have heard evidence from Kerryanne Shearer,
12 who was the senior pathologist who carried out the
13 post mortem, and there was no reference in the
14 post mortem report to what is described here as
15 "substantial blood in the deceased's ears".

16 A. Okay.

17 Q. Do you remember precisely what Mr Ferguson told you
18 about that and where you were at the time he told you?

19 A. I was in the office when he told me, and it was -- it
20 was when we were discussing the post mortem and his role
21 within the post mortem.

22 Q. Was that before the post mortem --

23 A. Before the post mortem. Before the post mortem. And he
24 told me about, you know, blood around the nose area and
25 the mouth area and he mentioned this about the ears, and
26 then there was blood -- I am saying "substantial blood

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1 in the deceased's ears". I -- although at this moment
2 in time I can't say if that is the exact words John
3 used, but why would I use that word? It was obviously
4 in respect of that. But whatever happened, John
5 absolutely highlighted to me that there appeared to
6 be -- there was blood round about the deceased's ear,
7 and I was worried that that had caused some form of
8 trauma to the head.

9 Q. Did John Ferguson give you any more information about
10 the blood or --

11 A. No, not --

12 Q. -- when he had seen that?

13 A. No -- well, he -- John had been involved in, as I said,
14 removing Mr Bayoh's remains from the hospital to the
15 mortuary along with SPA staff. I mean, what -- as
16 I said to you, that is why I went to the post mortem.
17 It is not something I would normally do. I would have
18 a team go to the post mortem. So why would I go to the
19 post mortem? That is my recollection of that.

20 What about the photographs from the post -- from --
21 the photographs of the deceased is that he was
22 photographed before he moved, is my recollection.

23 Q. We have never displayed those in relation to it, but the
24 Inquiry does have them.

25 A. (Overspeaking) -- but that could clarify that point.

26 Q. Do you remember, when you attended the post mortem,

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1 noticing anything about Mr Bayoh's ears?
2 A. The thing is I wasn't in the post mortem. So I am in
3 the viewing room at the City Mortuary and the only
4 people in the post mortem is the pathologist and the
5 photographer and the production team, which was
6 John Ferguson, and a police officer. So I'm not --
7 although there's -- there's like a camera, there's
8 a camera facility, but my recollection is that didn't
9 work, because normally you could sit -- my recollection
10 of Edinburgh is you could sit and the camera could be
11 moved to show ... There also is the facility to have
12 dialogue with the pathologist, because normally it's the
13 pathologist would have dialogue with you, but, truth be
14 told, I have never, ever known a post mortem I have gone
15 to where there has actually been an interaction with
16 you, as sitting in the viewing room.

17 So I couldn't see, from that point of view. And
18 also my recollection is Mr Bayoh was still intubated, so
19 he would -- you know, he would have tubing around about
20 his face. My recollection -- I may be wrong here, but
21 my recollection is that had not been removed until the
22 post mortem, which is ... which, in my experience, is
23 a normal scenario. They don't remove the tubing from
24 a deceased until the post mortem.

25 Q. Do you remember John Ferguson giving a briefing to the
26 pathologist?

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- 1 A. I am aware John gave a briefing. I can't recall if
2 actually I was actually present for the whole briefing,
3 because it was John's role to give the briefing, and he
4 had the most knowledge -- of PIRC staff he had the most
5 knowledge, because he had been there on the 3rd and
6 through all the process of the deceased's remains being
7 removed to City Mortuary.
- 8 Q. We have no record or documentary record of a briefing
9 note having been prepared by Mr Ferguson --
- 10 A. Yes.
- 11 Q. -- for the purposes of the post mortem.
- 12 A. Yes.
- 13 Q. Are you aware of any briefing note or notes that would
14 have been prepared by him --
- 15 A. No.
- 16 Q. -- at that time?
- 17 A. No. That is -- unfortunately John would, if he answered
18 that, it may well be he just gave it off the top of his
19 head, you know.
- 20 Q. From your recollection now, do you remember any part of
21 the briefing that Mr Ferguson gave to the pathologist?
- 22 A. I -- what words were used I couldn't, after this passage
23 of time, say, no.
- 24 Q. In particular, do you remember him drawing the
25 pathologist's attention to the blood that he said was in
26 Mr Bayoh's ears?

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1 A. I don't remember him saying anything about that to the
2 pathologist.

3 Q. Did you draw that issue to the pathologist's attention,
4 given your concerns about the blood in the ears and the
5 implications of that?

6 A. Not that I recall. It is obviously not for me to be
7 saying to the pathologist. I do recall I did ask of the
8 pathologist, because I was concerned, and the area I was
9 concerned about was the use of CS and PAVA combined, and
10 if there could be a chemical reaction.

11 So I -- we had a discussion with the pathologist in
12 relation to what areas of swabbing were required, and
13 although we were trying to do everything possible here,
14 because if you don't do it at the time, you know, you
15 can't do it later, for want of a better expression,
16 and I specifically asked for the mouth and nose area to
17 be swabbed because of the potential of some form of
18 chemical reaction, because both CS and PAVA had been
19 used together. I certainly remember having that
20 discussion.

21 Q. Given your concerns about a possible head injury and the
22 implications of that, did you speak to the pathologist
23 about a head injury?

24 A. Not before the post mortem, no. That -- if there was
25 a head injury, the pathologist would have identified the
26 head injury, and that would have been notified at the

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- 1 conclusion of the post mortem.
- 2 Q. I think you mentioned this earlier, the Inquiry doesn't
3 have a statement from Mr Ferguson.
- 4 A. Yes.
- 5 Q. I understand he has passed away.
- 6 A. Yes.
- 7 Q. Are there any other documents that you think we could
8 look for or we could try and find that may assist in
9 getting to the bottom of this reference in your
10 statement about what John Ferguson says he saw?
- 11 A. John -- John maintained a -- I will call it a running
12 diary, a running log, which you have, I think
13 I mentioned somewhere within my Rule 8 in respect of
14 that, because you asked me to comment on something.
15 John maintained a running log, but copied into that
16 running log John had copied emails from other people.
17 Because I was asked to comment on this. In fact it was
18 actually an email from Police Scotland to someone else
19 in Police Scotland, you know. So there is within the
20 paperwork a running log in respect of how John -- what
21 he did. Because John then took on the role of
22 engagement with the SPA in relation to any forensics
23 examinations that were being undertaken.
- 24 Is there anything in that log? I don't know.
25 I can't recall.
- 26 Q. Thank you.

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1 A. I remember having a discussion with John about the log,
2 because John's viewpoint was he absolutely needed that
3 for any future Inquiry, legal thing. And my viewpoint
4 with John was: that gets included in your statement,
5 John, you record that in your statement. But it wasn't
6 recorded in a statement, it was recorded -- kept as a
7 separate document that you have.

8 Q. Thank you.

9 A. I know you have it because I said I made reference to
10 it.

11 Q. Thank you.

12 So you have told us about your concerns. You say on
13 the second line there you were worried that a head
14 trauma injury was what had caused Mr Bayoh to die.

15 A. Yes.

16 Q. And then as we look down this paragraph, you talk about
17 being reassured by the presence of Keith Hardie. Do you
18 see that, just below the middle?

19 A. Yes.

20 Q. You say you didn't normally go to the post mortem:

21 "Not something I would normally do but I felt
22 I needed to go there. I was reassured over that because
23 when I went there, DCI Keith Hardie was there. Keith
24 was there for the same reason I was there due to that
25 point."

26 Can you tell us a little bit more about this. What

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- 1 was reassuring about the presence of Keith Hardie?
- 2 A. Keith -- Keith -- and he was in charge of the Major
3 Investigation Team that -- and I think on the first day
4 was acting as Deputy SIO to Mr Campbell, he was there as
5 well. And what I meant was it wasn't something out of
6 turn that I just felt I had to go and do, but there you
7 had the head of the Major Investigation Team, that he
8 was at that post mortem as well. So, I am not -- this
9 may be badly worded, that, but it is not to say I was
10 reassured that he was there in case there was, you know,
11 a blunt-force trauma injury that had caused issue.
12 I don't recall having discussed that. I think it was
13 more the fact he wanted to be there so he was timeously
14 made aware of what the post mortem had identified in
15 respect of that.
- 16 Q. So you say:
- 17 "I was asked whether I discussed my concerns about
18 the potential head injury with Keith. I can't recall if
19 I did or I didn't."
- 20 And then you go on to say:
- 21 "I have no recollection of discussing my concerns
22 with Keith."
- 23 A. Yes.
- 24 Q. "I discussed it with John Mitchell in respect of going
25 to it."
- 26 A. Yes.

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1 Q. And tell us about this conversation you had with
2 John Mitchell.

3 A. As I have said, my recollection is that John Mitchell
4 was there. It was very, very late at night when I got
5 back from the post mortem, and then going to Kirkcaldy
6 and then getting back. I think that "I discussed it
7 with John Mitchell in respect of [that]" is ... I'm
8 quite certain when I got back to the office that ... if
9 Mr Mitchell was on that day, he wasn't in the office.
10 It may well be that that was the next day I discussed
11 that with him. I couldn't put a time on that, to be
12 honest with you.

13 Q. Could we go up the page, please.

14 You had the discussion with John Mitchell:

15 "It was because I needed to know right away if
16 blunt-force trauma has killed this man."

17 We go back to the status of the officers as
18 witnesses. If blunt-force trauma had been the cause of
19 death, then the investigation would absolutely be
20 whether the actions of the police officers were
21 justified, proportionate and necessary, and that's why
22 you went to the post mortem?

23 A. Yes.

24 Q. And it says:

25 "Keith was there for the same reason I was there."
26 Can we go up the page, please. Keep going, please.

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1 You say:

2 "The impression I got was that Keith Hardie was
3 concerned because he wouldn't normally go
4 to a post mortem either."

5 What caused you to think that he was concerned?

6 A. The fact he was there.

7 Q. Why was he there?

8 A. This was a very unusual post mortem, in my experience,
9 because you had police officers and PIRC representatives
10 there. So I would say the normal course of events, you
11 know, in my experience with Keith and his role, was he
12 wouldn't go to a post mortem because he would have a
13 team based there. If he were taking a murder
14 investigation he would have a team there, and they would
15 report back. And that was part of the reason, as I
16 said, my rationale for going there. I wouldn't normally
17 go, but I felt I had to find out ASAP if there was
18 an identified cause of death at that time. And my real
19 concern was over this head injury, if there was a head
20 injury.

21 So I am there. I don't know Keith Hardie. That was
22 the first time I'd ever met him. I had never met him
23 before, I don't know anything about him, but I knew
24 from -- I knew he was a DCI in the kind of MITs, and
25 there he is at the post mortem as well.

26 Q. Did you invite him to --

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- 1 A. No, I did not. No, absolutely not, no. It's not my
2 place to invite him.
- 3 Q. If we look back at PIRC 04148, this is the note
4 regarding the post mortem dated 5 May, and we can see who
5 was in attendance at the bottom of page 1. We see that
6 there were three police officers there: DC Gilzean,
7 DC Grady and Keith Hardie, and I am interested in why
8 there were police officers there. Given the terms of
9 reference that PIRC are to conduct an independent
10 investigation into the death of Mr Bayoh.
- 11 A. Yes.
- 12 Q. The cause of death, and the events in the hospital are
13 your terms of reference.
- 14 A. Yes.
- 15 Q. You are conducting an independent investigation from the
16 police, but there seemed to be three police officers
17 present.
- 18 Under "Productions" you have John Ferguson and then
19 Gilzean and Grady. Can you explain why it was
20 appropriate for those police officers to be there?
- 21 A. Firstly, the reason why they were all there, I feel that
22 question needs to be posed to Crown, because this is
23 Crown. I didn't invite them. I was aware that there
24 would be -- that the identification was going to be
25 undertaken by John Ferguson and AN Other police officer.
26 I think it was actually Peter Grady, if my memory serves

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1 me right. You may be able to confirm or whatever that.
2 So they were going to be there for the process of the
3 identification of the deceased.

4 I had also asked John Ferguson, as well as that, as:
5 I need you as a production, to undertake to take the
6 productions.

7 Now, Peter Gilzean, my recollection is that he was
8 Police Scotland's production officer for their
9 investigation, or had been designated, you know, right
10 at the start before there was a handover to PIRC, you
11 know, so ...

12 Q. If --

13 A. Sorry, just while I am thinking about it, my
14 recollection is that all three of them were not in the
15 post mortem room, only two were in the post mortem room.
16 There was John Ferguson and AN Other, only two, in the
17 post mortem room. And I think I explained the role of,
18 you know, to take possession of the samples as provided.

19 So I have highlighted them as all being in
20 attendance, but I don't know if all three were involved
21 in productions. I have maybe just typed it up in that
22 manner from that.

23 But as to why the police were there, I can't answer
24 that. I have never had that before, I have never been
25 involved in that. I am not aware of any other PIRC
26 investigation we have had that there has been police

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- 1 involved in the post mortem. But as I explained
2 earlier, that is a Crown process and it is Crown, you
3 know, so ... I don't know.
- 4 Q. You explained earlier that PIRC have a role to play --
- 5 A. Yes.
- 6 Q. -- in relation to the post mortem.
- 7 A. Yes.
- 8 Q. And I am wondering, did you express surprise or
9 challenge the presence of police officers at the
10 post mortem?
- 11 A. I don't remember -- I certainly never challenged it.
12 I never asked Mr Ablett why the police were there.
- 13 I think, reflecting back, that because we had a bit
14 of an investigation, they had a bit of an investigation,
15 we had this untidy investigation process going on, that
16 that was there, but I think Mr Ablett or Mr Green would
17 need to explain that.
- 18 Q. Do you feel, looking back now, that because of this
19 issue regarding your terms of reference --
- 20 A. Yes.
- 21 Q. -- and the -- what has been previously called a parallel
22 investigation with the police and the events leading up
23 to it, that -- did that make you feel a certain way
24 about the possibility of challenging? Did you feel less
25 comfortable or less sure-footed?
- 26 A. No, I -- I certainly don't recall having that feeling.

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1 I certainly -- I am not shy in coming forward, to use
2 an expression of myself. No, I don't recall that.

3 On reflection, and sitting here now at this period
4 of time, not only is that untidy, it throws doubt on the
5 independence aspect of the investigation into the death
6 of Mr Bayoh, yes.

7 Q. Thank you. Can I ask you what your expectations were in
8 relation to -- you ultimately were given information
9 after the post mortem?

10 A. Yes.

11 Q. What were your expectations about how the police
12 officers present would share that information, or would
13 they share that information? Did you have any
14 expectations about them keeping that to themselves?

15 A. I don't -- I don't think at that time I had -- I think
16 because it was so -- it was such an unusual
17 circumstances on that is I -- I didn't at that time warn
18 them in respect of, you know, the interim findings,
19 right? I didn't -- I didn't warn them about that
20 aspect, not to divulge that to anybody. Now with that,
21 yes, I didn't -- I didn't. On reflection, should that
22 have happened? The problem being is they were aware of
23 it. You know, they were back at the Police -- they were
24 back at Kirkcaldy or they were away before I -- you
25 know, apart -- even Keith Hardie I think was away by the
26 time I got finished and moved away, you know, so I just

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1 take back through as ... it throws doubt on the
2 independence, and they were aware of the interim result,
3 and it was just an interim result, you know, of the
4 post mortem. Yes.

5 But I also do remember, and I can't remember who was
6 present, I do remember asking Ms Shearer in respect of
7 any impact on -- blunt-force trauma having on the
8 initial post mortem and an initial understanding of her
9 findings.

10 Q. Was that after she had concluded the --

11 A. That was after we concluded, yes.

12 Q. Is that when you were told by Dr Shearer that that
13 wasn't something she -- as part of her findings?

14 A. Yes, her initial findings, but obviously we were waiting
15 on further investigations being carried out.

16 Q. We have heard from Dr Shearer that it was pending
17 various investigations, including toxicology --

18 A. Yes.

19 Q. -- and things like that.

20 I think you have touched on this earlier in your
21 evidence today. At the time post mortem went ahead,
22 there were no hospital records?

23 A. Yes.

24 Q. And I understand that they had to be searched for in the
25 hospital?

26 A. Yes.

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- 1 Q. And you appointed two people I think on 4 May?
- 2 A. I appointed two people on 4 May to go and get the
3 records and get them to the post mortem, and the
4 feedback I had from them was they couldn't find the
5 records.
- 6 Q. That was the hospital records --
- 7 A. The hospital records, yes. And ultimately a number of
8 phone calls, or I remember even the next day saying,
9 look, we can't find the records, and my instructions to
10 them were to go and search the hospital, there has to be
11 records. And it transpired Mr Bayoh's hospital record,
12 nobody put his name on it, so it had been filed in
13 an area where records were kept with no name on it. But
14 it took a number of days for us to identify the records,
15 because ideally -- or not "ideally" -- I would say that
16 on every occasion I am aware of is you want the hospital
17 records there, and the ideal one would be ideally the GP
18 records there, if you can identify. In some cases and
19 some deaths you can't identify a GP until much later.
- 20 And that was one of the challenges as well with no
21 family liaison officer having been appointed and met
22 with the family, so we had no record of who the local GP
23 was.
- 24 Q. So no hospital records for the post mortem, no GP
25 records for the --
- 26 A. No.

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- 1 Q. -- and a lack of contact between the FLO and the family
2 to work out even who the GP was?
- 3 A. Yes.
- 4 Q. I think you mentioned earlier, no sudden death report at
5 the outset --
- 6 A. Not at the post mortem, and my recollection is I phoned
7 Pat Campbell about that.
- 8 Q. I think you read out an entry where you --
- 9 A. You know, I phoned Pat Campbell: where is the sudden
10 death report, because the pathologist needs that, you
11 know. And that is Police Scotland's duty to prepare
12 a -- and I expected them to have that, to provide that.
- 13 Q. I understand from your statement that ultimately you did
14 get a sudden death --
- 15 A. Yes, we got one faxed through.
- 16 Q. And was that at some point when --
- 17 A. At some point. I can't remember if it was prior, during
18 or after. I am sorry, I can't recall.
- 19 Q. I think in your second Inquiry statement at
20 paragraph 49, we don't need to have it on screen, that
21 you say:
- 22 "Police Scotland did produce a sudden death report.
23 There was a delay in this being available. It wasn't
24 available at the start of the post mortem."
- 25 A. Yes.
- 26 Q. In your first statement, you said that your recollection

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1 at that time was that maybe a fax was received?

2 A. I think it came through the fax, yes. I think that's
3 actually how it arrived, yes.

4 Q. If the post mortem had been delayed in accordance with
5 the family's wishes, presumably these things could have
6 been resolved?

7 A. Yes. Yes.

8 Q. Can we go back -- we touched on this earlier when I was
9 asking you generally about your day and your notes. We
10 looked at your notebook and we looked at the entry in
11 relation to you going back to Kirkcaldy and you had
12 a meeting.

13 Can we start with something else before we look at
14 your notebook. Can I ask you to look at a Gold Group
15 meeting minute timed 12.30 on 4 May. Sorry, that is
16 PS03161. This is just to give some context to the
17 questions.

18 We have heard this was the fourth Gold Group
19 meeting, it was on 4 May at 12.30. We have heard
20 a number of witnesses give evidence about this meeting.
21 It was at Kirkcaldy Police Office. There is no list at
22 the beginning that says "In attendance", but
23 can I assume, as you were heading to the post mortem,
24 you were not in attendance at this meeting?

25 A. No.

26 Q. We've heard from others that -- well, we've heard from

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- 1 Keith Harrower that he was not in attendance at the
2 meeting.
- 3 A. No.
- 4 Q. And we have heard from others that no one from PIRC was
5 in attendance at the meeting.
- 6 A. Okay, yes.
- 7 Q. Were you aware of this meeting taking place when you
8 took over as lead investigator?
- 9 A. No, I was not, no.
- 10 Q. The minutes from the previous meeting the previous
11 evening -- which we have also looked at, and I don't
12 need them on the screen; this was a meeting after, well,
13 8.15 the evening before -- indicate that the next
14 Gold Group meeting was to be at 11 o'clock on 4 May, but
15 these minutes appear to be 12.30 on 4 May.
- 16 A. Okay.
- 17 Q. Had there been any intimation at all to you on 4 May
18 that this meeting was to take place?
- 19 A. No. I had no knowledge of this taking place.
- 20 Q. Can you explain to us how, as lead investigator, you
21 would normally be made aware of meetings with the
22 Gold Group? How would that information normally be
23 passed to you?
- 24 A. At that time it obviously -- it would be twofold. On
25 3 May we had staff at Kirkcaldy, I can't recall who was
26 that. I presume there was somebody at the Gold Group

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- 1 meeting on 3 May.
- 2 Q. Yes, we have heard that evidence.
- 3 A. So if it had been diaried for a second Gold Group
4 meeting, I would have thought that would have been
5 communicated potentially on the kind of briefing note
6 that Keith Harrower prepared. So you would maybe be
7 made aware of a diary entry and you would do your best,
8 if I was unable to attend, to ensure we had
9 a representative there. But I wasn't aware of that.
10 And that was then, but now it completely different.
11 Now, you know, we have moved on a great deal in respect
12 of attendance at Gold Group meetings, and technology has
13 allowed us to do that.
- 14 Q. How is that done now?
- 15 A. You would dial in, no matter where you were, on a Teams
16 meeting.
- 17 Q. I think we have heard evidence from Mr Harrower to the
18 effect that he wasn't aware this meeting was going on?
- 19 A. Okay.
- 20 Q. Although the meeting time is given in the minutes, but
21 we understand they might have been prepared at a later
22 stage, typed up. Had you known about this meeting in
23 Kirkcaldy on the 4th, would you have sent someone from
24 PIRC to attend?
- 25 A. I would have done my best to send somebody, bearing in
26 mind the limitations on our staff and the actions that

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1 I had given out to people to do, but I would have --
2 I would have -- yes, and I would have consulted with
3 Irene Scullion in respect of somebody attending that
4 meeting.

5 Q. All right. You have talked about having around 20
6 people --

7 A. Yes.

8 Q. -- in your team at that stage. Would there have been
9 somebody available to go to Kirkcaldy for this meeting?

10 A. Yes, we may have had actually somebody in Kirkcaldy.
11 Brian Dodd and his team might have there at that time
12 and they might have been in the office.

13 Q. So could you have arranged to have someone --

14 A. Absolutely.

15 Q. -- take this task on as well?

16 A. Absolutely, yes.

17 Q. Can we have a look at page 2 of this minute. You'll see
18 just above item 4 -- so it's part of item 3, "The
19 Investigative Process". There we are.

20 There is in blue bold the word "Task", and the first
21 task there says:

22 "Advice to be gained from PIRC regarding the
23 disclosure of the PM results to the officers involved in
24 the incident. Supervisor to be identified to carry this
25 disclosure out."

26 That, we have heard, was a discussion that was

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- 1 ongoing at the Gold Group meeting?
- 2 A. Yes.
- 3 Q. When did you become aware that this was something that
4 was being discussed?
- 5 A. When I read these Gold Group meetings, you know, many,
6 many days later when we got them. I was unaware there
7 was any such discussion taking place. I think you
8 obviously go into my disclosure of the kind of
9 post mortem and my viewpoint in making that decision.
- 10 Q. I will go through that with you.
- 11 A. Yes. But I was totally unaware in respect to that. And
12 the item underneath, the media to be aware of
13 the post mortem results. I am unaware why that would
14 even be considered by the police because this is a PIRC
15 investigation. And any media release has to be run
16 through -- it's a PIRC investigation directed by Crown.
17 If we were making any media, or wished to consider
18 making any media disclosure we would contact Crown and
19 run it through Crown, and we would ask Police Scotland
20 that they must run anything past us and Crown. So that,
21 I find that quite surprising.
- 22 Q. When you say "surprising", how appropriate do you
23 consider that entry there, that task to be?
- 24 A. It depends on the context of doing it, but to make your
25 media staff aware of the results of the post mortem,
26 which it says there, because there, because it could

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- 1 have been quite definitive results provide by
2 Ms Shearer, I have never been made aware of anything
3 like that in any investigation I have been involved in.
- 4 Q. Is that something you would have supported if you had
5 been at the meeting?
- 6 A. Oh no, absolutely not. Absolutely not. And I would
7 have reinforced exactly what I just said there, that if
8 they are concerned -- first of all, my viewpoint is
9 media should not be made aware of that. That is -- that
10 is -- I am going to use the words "confidential
11 information", but obviously I went on to disclose that,
12 so I understand -- and I have a rationale why I did
13 that. But that is confidential information. Why would
14 you release that to your media staff who are dealing
15 with the media? I can't -- I can't fathom that out.
16 Sorry, Ms Grahame, I can't fathom that one out.
- 17 But also I was really surprised when I saw the
18 previous entry in respect of that they were discussing
19 disclosure of the post mortem results to the officers,
20 even while the post mortem -- before even the post
21 mortem -- sorry, what time is that? 12.30?
- 22 Q. This is a meeting at 12.30.
- 23 A. So the post mortem hadn't started yet. So they are
24 discussing that before ... I find that quite surprising.
- 25 Q. When did you become aware that this topic of
26 conversation was being discussed? Not necessarily from

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1 the minutes, but in your involvement on the 4th May,
2 when did you become --

3 A. I wasn't aware at all that that had been discussed on
4 4 May. I had no knowledge of any discussion round about
5 that.

6 Q. Did you become aware later on 4 May?

7 A. No. No.

8 Q. Can I ask you about that meeting you had after the
9 post mortem --

10 A. With Mr Campbell.

11 Q. -- when you returned to Kirkcaldy Police Office, and
12 I think you said earlier Mr Pat Campbell, the SIO, was
13 there?

14 A. Yes.

15 Q. Keith Hardie was there. He had been at the post mortem.
16 Yourself. Was Casey there?

17 A. He was.

18 Q. And I can't remember if you said someone else --

19 A. I think Stuart Wilson was there. My recollection is
20 Stuart Wilson was there.

21 Q. Right. At this meeting, was this topic about disclosing
22 the PM results to the officers raised at that meeting?
23 So this is the meeting after the post mortem --

24 A. Yes.

25 Q. -- in Kirkcaldy on 4 May.

26 A. Yes. So I -- I asked -- I asked to speak with

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1 Pat Campbell that evening in respect of we had these two
2 investigations ongoing, and so I was wanting to get
3 a wee bit of clarity around about who was doing what,
4 when they were doing it, the information they had that
5 related to our side of the investigation, how we got
6 that information, who was his sort of principal people,
7 by that I mean who was his office manager, who was his
8 production person, who was his CCTV, all the
9 co-ordination bits, and the scene manager co-ordination.
10 I think I maybe knew it was Stuart Houston at that time
11 but I wanted to know who these people were so I could
12 have my people liaise with them.

13 There was a bit of me was hopeful, when I arrived
14 there, that the reluctance of the principal officers to
15 give statements had been resolved, because I had never
16 come across that, and I have never, ever come across
17 that in any investigation I have been involved in, and
18 they confirmed that they hadn't provided statements.

19 So I had -- reflecting back, I had been weighing up
20 in my head: how do we resolve this? Not having these
21 statements which I have alluded to previously was
22 significant hampering the investigation, you know.
23 I was like: how do we resolve this? Because we need to
24 resolve this. In my viewpoint, it can't go on, it just
25 can't go on. And given -- given the interim result of
26 the post mortem as ascertained, pending further

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1 examination, which included toxicology, and my specific
2 question I had asked of Ms Shearer, if blunt-force
3 trauma -- about blunt-force trauma, I made the decision
4 to -- bear in mind Pat Campbell knew that. Keith Hardie
5 knew it. I presume he had told Pat Campbell before
6 I got there. I am unsure if he knew about
7 the blunt-force trauma bit. But I made the decision, in
8 hearing that, to disclose that information to them, and
9 I have to say it is something I have never done
10 previously, I hadn't done prior to that in anything
11 I had been involved in, and I haven't done it since, so
12 it wasn't a decision I made lightly. But I thought
13 and I hoped that that would actually break this deadlock
14 of the officers not providing statements, and that was
15 my rationale for doing it.

16 And -- and -- I was aware from my earlier
17 conversation with Alistair Lewis that I had advised
18 Alistair, and Alistair had told me he had been in
19 contact with the family's solicitor, and the family's
20 solicitor confirmed he was the single point of contact,
21 and I had updated that information to Alistair to be
22 passed on to the family solicitor.

23 So it wasn't like I was making this decision without
24 the family, in my understanding at that time, being made
25 aware of that decision.

26 Q. When did you update Alistair Lewis?

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1 A. I updated when I spoke to him.

2 Q. Was that the entry we looked at earlier at 17.50?

3 A. Yes.

4 Q. Was that when you asked that he pass on that information
5 to --

6 A. Because Alistair -- there was -- the topics we had was
7 around about kind of getting access to the house, which
8 I was surprised that was getting referred to me because
9 that was their scene.

10 Q. That was Collette Bell's house?

11 A. Yes. Police Scotland would have made that decision to
12 seize that house. Crown had confirmed, and that
13 Police Scotland's partner in the investigation. And --
14 but they were asking me whether Ms Bell could get access
15 to the house, and to me that was just absolutely. If I
16 had been in control of that scene, absolutely Ms Bell is
17 getting access to that house. Or if concerned about
18 contamination, then somebody needs to go into that house
19 and need to get what the baby needs. There is no two
20 ways about that, you need to get what baby needs.

21 So, you know, I was surprised. So that kind of --
22 I would say that maybe dominated the kind of
23 information. Then Alistair told me he spoke to the
24 solicitor appointed by the family, and I says, well,
25 here's the result of the post mortem, and it's
26 unascertained pending toxicology, and the fact that

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1 blunt-force trauma had not played a ...

2 I can't remember the words Kerryanne said. At this
3 moment in time, I wish I had written all that down,
4 exactly what Kerryanne said to me. But yes, so that was
5 in the conversation with Alistair around about 17.50 or
6 before or whatever.

7 Q. You mentioned hoping that intimating the interim result
8 from the post mortem to the officers would break the
9 deadlock?

10 A. Absolutely.

11 Q. Was there any basis for that hope?

12 A. Yes, because what Mr Campbell alluded to me was that
13 the Area Commander was in the office, he was going to
14 phone all the principal officers and advise them of the
15 information I had provided, and -- and he gave me the
16 impression that we would have their statements within
17 the next day or the day after. That is the impression
18 I had.

19 So I left there saying, okay, I did something
20 unprecedented, something I never did before, but we are
21 breaking the deadlock here, because we have got no
22 information about what these officers did, why they did
23 it, what they encountered. We have no information. It
24 was all just kind of milling about, as maybe what
25 Keith's initial briefing paper kind of provided.

26 Q. In terms of your reasoning and the way you were

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1 thinking, did Pat Campbell tell you or reassure you that
2 you would get the statements if you did it before you
3 made the final decision, or did he reassure you after
4 you had made that final decision?

5 A. I wouldn't -- I don't know if I would use -- I do not
6 know if I would use the word "reassured". I had
7 certainly got a positive impression from him that we
8 would have the statements.

9 Q. So was that before you made your final decision or
10 after?

11 A. I think it was after I made my decision.

12 Q. Right.

13 A. I think it was after. Because I had realised, you know,
14 this was, as I said, unprecedented, but I was -- it's
15 maybe not the right choice of words, but I was taking
16 a chance here that we could break this deadlock.

17 Q. And this was something independent that you came up
18 with --

19 A. Yes.

20 Q. -- as a possible solution to the difficulties?

21 A. Yes, yes. As at that time being the lead investigator,
22 I made that decision to reveal that information, totally
23 unaware that this discussion had been taking place in
24 Police Scotland. Totally unaware of that.

25 Q. So you had heard nothing of this discussion that was
26 taking place --

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1 A. No.

2 Q. -- in the Gold Group meeting?

3 A. No. None whatsoever.

4 Q. Had anyone spoken to you about this as a possible
5 solution?

6 A. No. Nobody had. I am actually, you know, I am a wee
7 bit dumbfounded that it actually was getting discussed
8 with Police -- because I am not aware in my experience
9 of that ever occurring previously, you know. It's not
10 something I would have told -- if I was in a homicide
11 investigation, that I would have told a witness.

12 LORD BRACADALE: Can I just clarify, who, at that meeting
13 with Campbell and the others, who first raised the issue
14 of disclosing to the officers the results of the
15 post mortem?

16 A. My recollection, your Honour, is that I asked about the
17 statements: where are we in respect of the officers'
18 statements? And basically my recollection of the
19 response is: we don't have them, they've not been
20 provided. And that is when I decided that I would
21 reveal.

22 I had been -- my recollection again is in the
23 journey I had been contemplating this as a means of
24 breaking the deadlock, because at that time my opinion
25 was that this deadlock with the police officers was
26 causing untold harm, not only to the investigation, but

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1 I would envisage -- I envisaged that when sat down with
2 the family, and we hadn't the statements, the untold
3 damage it would do. I can understand the family upset
4 and the concern. And also from a point of view of it
5 was really, really hard to take this investigation
6 forward.

7 Yes, we are taking on -- you know, we're going to
8 let them give us Airwave, give us STORMs, give us that,
9 but we had nine police officers who had been attending
10 at that incident and we didn't know what happened.

11 Unprecedented is how I describe it.

12 MS GRAHAME: Can I ask you to look at your first Inquiry
13 statement, this is 255, at paragraph 63. It begins:

14 "At this stage, I didn't even know the sequence of
15 who arrived first ..."

16 And such like.

17 A. Yes.

18 Q. I am interested in the latter half of this, where it
19 takes about:

20 "I recall that they said to me 'You'll have your
21 statements by tomorrow'."

22 And that is in quotation marks.

23 A. Yes.

24 Q. "So I was fairly confident we were going to have these
25 statements. The situation can't continue, was the way
26 I felt about it."

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- 1 A. Yes.
- 2 Q. And when you say "they said to me ..." A moment ago
3 I think you said it was Pat Campbell you were talking
4 to. Is "they" a reference to Pat Campbell or to all of
5 the people who were at that meeting?
- 6 A. No, it's a reference to Pat -- they didn't all say that.
7 That's maybe not clarity there. And I know I said that
8 I was hopeful we would get the statements the next day
9 or the day thereafter, but it was the fact that they
10 were telling me the Area Commander was in the office and
11 he was going to be phoning all these officers.
- 12 Q. Do you remember the name of the Area Commander?
- 13 A. It is Garry McEwan.
- 14 Q. Garry McEwan. The comment there in quotation marks, is
15 that what you recalled Pat Campbell saying?
- 16 A. That is -- yes, yes.
- 17 Q. So when you left that meeting, having taken this
18 unprecedented decision, when did you believe you would
19 be getting the statements?
- 20 A. I believed I would get them the next day or -- sitting
21 here on reflection, a day thereafter. But the
22 statements would be forthcoming sooner rather than
23 later.
- 24 Q. Of course, we know that wasn't the case --
- 25 A. No, absolutely it is not.
- 26 Q. You mentioned earlier that you had set out your

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1 rationale in your statement?

2 A. Yes.

3 Q. Can we look at your second Inquiry statement. This is
4 421, at paragraph 67. If we look at your response
5 there --

6 A. Yes.

7 Q. -- you comment:

8 "They still hadn't provided statements ... unheard
9 of."

10 Then you talk about your rationale to try and break
11 the deadlock and get those statements. You were aware
12 your actions were unprecedented but you thought, in the
13 situation you were in that moment, it was appropriate.
14 You then I think set out a number of reasons -- if
15 I could summarise these as factors you took into account
16 in making that decision?

17 A. Yes.

18 Q. The first is:

19 "I had earlier spoken to Alistair Lewis and provided
20 him with an update."

21 And:

22 "This information was passed to Amer Anwar who was
23 then representing the family at 17.40 hours that day."

24 We had looked at your notebook and your reference to
25 a call with Alistair Lewis?

26 A. Yes.

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- 1 Q. Your understanding then was that Mr Lewis would share
2 that with Mr Anwar?
- 3 A. Yes.
- 4 Q. You have put in 17.48 there?
- 5 A. Yes.
- 6 Q. Where did that time --
- 7 A. That's came from the FLO log.
- 8 Q. That was from Mr Lewis?
- 9 A. That's came -- when I changed the FLO log when
10 I answered this, so that I was able to definitively say
11 that that is the time that Alistair put in the log.
- 12 Q. So I think in your notebook it was 17.50 --
- 13 A. I've got 17.50 telephone call --
- 14 Q. Is there anything in that differential between the times
15 there?
- 16 A. No, I don't think so. I have marked up that time 17.50.
17 That is when I'm writing up that note. I had spoke to
18 Alistair Lewis prior to that note and then I had made
19 the note afterwards when I had a minute to make the
20 note, you know. So ...
- 21 Q. Okay. So you spoke to Alistair Lewis, gave him the
22 update?
- 23 A. Yes.
- 24 Q. As you understand it, he was to call Mr Anwar?
- 25 A. Yes.
- 26 Q. And then did he call you back to confirm that? Or was

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- 1 that just a --
- 2 A. I can't recall. I can't recall. I will just check ...
- 3 I've got my book still. I can't recall. Alistair also
- 4 made me aware he was going to visit -- he had a meeting
- 5 arranged with the family, which was going to be his
- 6 first physical meeting with the family at I think about
- 7 18.30 that night, so I can't recall if I had a further
- 8 conversation to confirm. But I had Alistair saying
- 9 that -- that he was going to pass the information. He
- 10 has recorded it within his FLO log as passing the
- 11 information and I knew he was going to meet the family.
- 12 Now, the family knew the post mortem was taking place
- 13 because there had been the three different contacts with
- 14 them between -- twice on the 3rd and Keith Harrower
- 15 phoning them on the 4th. So to me there was no doubt
- 16 that they knew the post mortem was taking place,
- 17 and I cannot imagine it was a conversation Alistair had
- 18 with the family and they weren't made aware of the
- 19 interim result of the post mortem, just the basic
- 20 unascertained.
- 21 Q. We have heard evidence in relation to this, but really
- 22 in terms of your own expectations, am I correct in
- 23 understanding your expectation was that the family would
- 24 be told about this?
- 25 A. Yes, absolutely.
- 26 Q. By Mr Lewis?

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- 1 A. My expectation was the family would be told by the
2 family solicitor.
- 3 Q. By the solicitor and perhaps did you expect Mr Lewis
4 would speak to them when he visited them?
- 5 A. Yes, absolutely, because he was visiting them and he did
6 visit them.
- 7 Q. And we have heard that was a face-to-face visit?
- 8 A. Yes.
- 9 Q. So you would have expected two sources of information?
- 10 A. Yes.
- 11 Q. Two people providing information to the family?
- 12 A. Yes.
- 13 Q. Then look at the next bullet point:
14 "It was as you said the interim result of
15 unascertained pending further examination and not the
16 full result which would be confirmed in the future."
17 So that was a factor in your decision-making?
- 18 A. Yes.
- 19 Q. Your thought process?
- 20 A. It is not laying out the cause of death, you know. So
21 it's not the findings of the post mortem, you know. So
22 it's not laying out ...
- 23 Q. Then:
24 "The pathologist had confirmed that blunt-force
25 trauma had not killed this male."
26 A. Yes.

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- 1 Q. Which you have already spoken of:
- 2 "Police Scotland officers were in attendance at
- 3 this PM so this result was known to a number of
- 4 officers."
- 5 A. Yes.
- 6 Q. And you have talked to us about that, and your thoughts
- 7 about whether that information would be shared with
- 8 other officers?
- 9 A. Yes.
- 10 Q. "Not having any statements or information from the
- 11 attending officers was hindering the investigation from
- 12 the outset."
- 13 A. Yes.
- 14 Q. That was the difficulties which you were experiencing as
- 15 lead investigator?
- 16 A. Absolutely.
- 17 Q. And you wanted to get beyond that.
- 18 Then:
- 19 "This interim result reinforced in my mind that
- 20 the attending officers were witnesses and I wanted it
- 21 confirmed to them and why."
- 22 A. In order to get a statement.
- 23 Q. It was in order to get -- in the hope that this would
- 24 also --
- 25 A. Yes, that they would provide statements, yes.
- 26 Q. Right.

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1 Did you consider, when you were thinking it through,
2 that you would share this information and perhaps not
3 get the desired result?

4 A. That was a chance I took, and ultimately that is what
5 the result was. I made a decision -- I made a decision
6 in my mind, I rationalized it, but there was always the
7 danger that we wouldn't get it, bearing in my mind the
8 backdrop has always been I have never known police
9 officers not to give a statement in respect of
10 an incident they attended. I have never known that.

11 So I was hopeful, by taking this step, that -- and
12 I was hopeful when that information was imparted to them
13 that they realised the seriousness, in my mind, of not
14 providing a statement.

15 Q. Did you -- you were aware at this stage that the
16 officers had been advised to take legal advice?

17 A. Yes.

18 Q. And that was part of their consideration --

19 A. Yes.

20 Q. -- in deciding not to give statements?

21 A. Yes.

22 Q. Did you at any stage consider speaking to their
23 solicitor?

24 A. Not at that time, no. No.

25 Q. In retrospect, do you think that might have been
26 a sensible step given that it was, in part at least,

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1 a desire to seek legal advice that was part of the
2 hurdle towards securing a statement, speaking to their
3 lawyer and saying: if I give you this information, will
4 you give a statement, might have helped?

5 A. No, I didn't consider that. Even if I knew who their
6 lawyer was -- because I didn't know who their lawyer was
7 at that time. I'm quite certain I didn't know who their
8 lawyer was. I knew the Federation had give that advice
9 and they had acted on the Federation advice. I didn't
10 know who the lawyer was as the Federation use a number
11 of lawyers but the base of it was: no, I didn't consider
12 that.

13 Q. Did you consider speaking to the Federation?

14 A. No.

15 MS GRAHAME: I am conscious of the time. I wonder if we
16 should perhaps stop there.

17 LORD BRACADALE: We will continue with your evidence on
18 Tuesday, Mr Little. We will adjourn until Tuesday.

19 (4.17 pm)

20 (The Inquiry adjourned until 10.00 am on Tuesday,
21 13 February 2024)

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MR WILLIAM LITTLE (sworn)1

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