

Transcript of the Sheku Bayoh Inquiry

Wednesday, 14 February 2024

(10.00 am)

MR WILLIAM LITTLE (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning Mr Little.

Ms Grahame.

MS GRAHAME: Good morning. I would like to start by correcting something I said to you yesterday. I was under a misunderstanding in relation to information I had, which was my fault. I had said to you on -- that there had been a meeting on 14 May --

A. Yes.

Q. -- 2015 which was attended by the Lord Advocate and Kate Frame of the Commissioner. And at that meeting attended by Kate Frame, there had been a reference to the question of race, these elements should be looked at by PIRC. I asked you if you had any recollection of that, if there was any reference in your -- I think you looked at your notebook and your daybook?

A. I did, yes.

Q. Now, you had said:

"Answer: I don't remember anything about that and there is no reference in my books."

A. Yes.

Q. I have now on reflection had the chance to look through

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1 everything, and I realise that I was mistaken, there
2 were two meetings on that date, one involving PIRC where
3 there was no mention of the question of race, one
4 involving the family, where there was a question of
5 race.

6 A. Right, okay, thank you.

7 Q. So I apologise for suggesting to you the position.

8 A. Thank you.

9 Q. Can I ask you to -- let's look back at the policy log,
10 PIRC 04153. If we could look at reason 64. Just to
11 recap, we looked at this yesterday, this was the day
12 after a letter had come in from Crown Office, that was
13 24 August --

14 A. Yes.

15 Q. -- letter. And there was an entry in John McSporran's
16 log on the 25th setting out what he understood the Crown
17 Office instructions to be. We looked at that yesterday,
18 and realised he had probably taken those instructions
19 from the letter that Mr Anwar sent direct to PIRC.

20 A. Yes.

21 Q. And there was the Chief Constable letter that Mr Anwar
22 had written which was attached to the Crown Office
23 covering sheet, do you remember?

24 A. Yes.

25 Q. From 25 August, item 64 there, it would appear that

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1 Mr McSporran noted that PIRC would progress those main
2 lines of enquiry, and raise actions. And that related
3 to number 1, you see "Race"; 2 was the Professional
4 Standards Department, regarding a matter of race; and
5 then if we can move up the page, you will see two
6 others, one was examining the history of PC Paton.

7 A. Yes.

8 Q. And 4 was undertaking an audit of Police Scotland IT
9 systems in relation to matters regarding the nine
10 officers and other officers.

11 So can we understand from this document that from --
12 whatever the Crown Office terms of reference or the
13 basis on which it was noted, from that date in August
14 actions were instructed, lines of enquiry began to be
15 pursued in relation to race?

16 A. Yes. I obviously erred yesterday when I have said
17 2 July and that is -- I have noted within my Rule 8 I am
18 unsure if -- I think I alluded yesterday that I had
19 taken that from the PIRC report of August 2016
20 when I was answering that. I don't know if I have typed
21 that in wrong and I have made a mistake, I have no
22 access to any information so I don't know if the date in
23 the report is incorrect but these actions were
24 undertaken, I undertook a lot of these actions, yes.
25 And I see I have been provided with a copy of my

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1 daybooks and I have a quick flick through there and
2 I don't see any reference -- as I said yesterday, on the
3 25th I was down in London, so I don't see any reference
4 in my daybook of any of that information on the
5 25th/26th, you know, in that week, in respect of that.

6 So ...

7 Q. So although it appears in the policy log that
8 Mr McSporrán has been writing --

9 A. Yes.

10 Q. -- were you tasked with moving these lines of enquiry on
11 from that date or on your return from holiday?

12 A. I wasn't on holiday, I was in London on enquiries.

13 Q. Oh, you said that.

14 A. On enquiries related to this investigation. Exactly
15 when I commenced these actions, at this moment I can't
16 say. You know, it may be further on in my statement it
17 will allude to when I did certain actions. Yes, but
18 I think we can take it from that that the 25th and that
19 is when we undertook matters into race.

20 Q. Right. At some point after you had completed your
21 enquiries down south, you returned and then moved on
22 with other enquiries after that?

23 A. Yes. But -- yes, I did. But I have got no reference to
24 that in the days just immediately after that and I was
25 conducting matters you know in respect of this

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- 1 investigation although I had another investigation
2 ongoing at the same time as this, at that time. Yes.
- 3 Q. We will maybe see things as we move forward. As
4 I understand your evidence yesterday, you said there was
5 no attempt to go back to the police officers who had
6 been at Hayfield Road to explore issues of race with
7 them at that stage.
- 8 A. No.
- 9 Q. I think you talked about that yesterday. Was there any
10 attempt to investigate the social media of the officers
11 or WhatsApp or anything of that sort?
- 12 A. Of the officers' accounts?
- 13 Q. The nine officers who attended Hayfield Road, was there
14 any attempt to look into their social media presence?
- 15 A. I can't recall. I would need to -- I would imagine if
16 that was -- if that was set out there would be an action
17 in respect of that. I can't recall.
- 18 Q. Is it possible someone else would be responsible for
19 doing that?
- 20 A. Yes, yes, if that was undertaken, yes.
- 21 Q. There may be other evidence available to the Chair
22 suggesting that there was some sort of request in
23 relation to Police Scotland perhaps monitoring social
24 media. Do you know anything about that?
- 25 A. Well, at the outset of the investigation we have no

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1 capability of monitoring social media, we didn't have at
2 that time, so Police Scotland were asked if they could
3 review social media, just open social media -- just, you
4 know, social media in general. That was with
5 a viewpoint of identifying any potential witnesses,
6 anybody posting up any videos or items that were
7 relevant to the investigation, if they could identify
8 that for us and capture it, then we would look to trace
9 the persons who have posted it, if there was a video
10 posted or whatever.

11 Q. Did you from your own knowledge at any point undertake
12 any investigation into the nine attending officers'
13 social media?

14 A. I can't recall.

15 Q. You don't remember anyone in PIRC organising that?

16 A. I can't, sorry after this passage -- I can't recall that
17 specific action.

18 Q. You said a moment ago PIRC had no capability at the
19 time --

20 A. Yes.

21 Q. -- to monitor social media. Was that in general?

22 A. That is in general, yes.

23 Q. Why was that?

24 A. We had no technical capability at that time. As
25 I expressed last week is we were a very small

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1 organisation, we were in our infancy in respect to that
2 so anything relating to a technical matter we had -- we
3 had the capability to capture CCTV but what I mean is
4 going to grab the CCTV. On some occasions, on other
5 occasions we required SPA's assistance in relation to
6 seizing that product and for example, I required SPA
7 assistance to remove the CCTV system from Kirkcaldy
8 Police Office.

9 Q. SP~...?

10 A. SPA. Yes. I think it was SPA ... or was it
11 Police Scotland's technical support? Anyway, I required
12 assistance so we couldn't do that. We have a technical
13 capability now, we have staff who will undertake
14 retrieval of CCTV, make compilations of CCTV, court
15 compilations and other products in that respect but at
16 that time we had no capability of that. And we had no
17 capability of looking at social media unless one of the
18 investigators logged on to their own social media
19 account and then looked across social media that way and
20 we couldn't have that, we can't have somebody accessing
21 their own personal account and ask them to look across
22 social media.

23 Q. So at that time you were reliant on technical experts
24 within Police Scotland or the SPA?

25 A. Yes.

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1 Q. Do you have any recollection from around this time in
2 2015 whether you received any information from SPA or
3 the police technical staff?

4 A. In respect of the officers' --

5 Q. The social media, WhatsApp messages --

6 A. In respect of the officers' social media?

7 Q. The nine attending officers who had been at
8 Hayfield Road, their social media presence, their
9 WhatsApp messages; anything of that sort?

10 A. I don't recall at this moment in time.

11 Q. Thank you. If we can look at your Inquiry statement for
12 a moment at paragraph 203, so that is 421,
13 paragraph 203. There we are. You say here:

14 "Following this instruction and in the course of
15 conducting further investigation ..."

16 This relates to race and conduct you will see.

17 A. Yes.

18 Q. "... additional statements were taken from a number of
19 witnesses."

20 I am wondering if you can give us a little more
21 detail. You have explained you didn't go back to the
22 officers who had attended Hayfield Road but who were the
23 additional statements taken from?

24 A. These were the statements taken from primarily the
25 Police Scotland officers who undertook research into

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1 like the carrying out an audit, the examination of --
2 providing the police officers' conduct records, the full
3 conduct records. Also identifying how many incidents of
4 race had been identified through their complaints
5 procedure.

6 Q. Was there statistical analysis done?

7 A. There was statistical analysis done. That was --
8 I didn't undertake this statistical analysis, I think it
9 was Ms Scullion that undertook the statistical analysis
10 and she went back a good number of years, not only
11 looking at Fife but looking across Scotland in general.
12 That is my recollection.

13 Q. So without going back to the policy log, there was
14 reason 64, from 25 August, the actions that would be
15 raised regarding race, identifying the Professional
16 Standards records involving any racist or discriminatory
17 behaviour?

18 A. Yes.

19 Q. The history of PC Paton and the audit of Police Scotland
20 IT systems. Were witness statements taken in relation
21 to those actions?

22 A. That is correct, yes.

23 Q. Thank you. Moving on to 2 September 2015 can we look at
24 paragraph 221. We touched on this at the close
25 yesterday. It says here -- so this is a number of

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1 months later, 2 September, Crown Office wrote to the
2 Commissioner and you were asked if you were aware of
3 this correspondence. Could we look that the letter,
4 please. COPFS 02557. You will see that this is
5 a letter to Kate Frame, the Commissioner from the Crown
6 Office, dated 2 September 2015. Do you see that?

7 A. Yes, I do, yes.

8 Q. I would like to go through some of the content of this
9 letter with you. So it relates to -- the Lord Advocate
10 had a meeting with the family and the solicitor at
11 Crown Office on 26 August 2015. That was a meeting to
12 update the family on progress and respond to a number of
13 issues that they raised with the Lord Advocate. It then
14 says:

15 "The following matters require further investigation
16 in this regard."

17 So this was another letter of instruction to PIRC.

18 A. Yes.

19 Q. This letter is five pages long and sets out some
20 detailed instructions.

21 A. Okay.

22 Q. Was this the type of letter that you would have expected
23 from the Crown? I think yesterday afternoon you
24 mentioned the covering letter with Mr Anwar's 31 July
25 letter attached.

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1 A. Yes.

2 Q. I think you expressed surprise at the way that --

3 A. Yes.

4 Q. -- had been sent. So looking at this the Crown have
5 instructed that:

6 "A detailed analysis should be prepared covering the
7 accounts given by all officers and civilian witnesses in
8 relation to the restraint process from beginning to
9 end."

10 And it sets out some details of what that analysis
11 is expected to cover.

12 A. Yes.

13 Q. Did that result in an action being created for that work
14 to be done?

15 A. I would presume so. You know, what action it was,
16 I can't recall at this time but, yes. I mean, we were
17 obviously getting further instruction from the Crown,
18 so ...

19 Q. The next bullet point:

20 "That account must thereafter be analysed and
21 commented upon by an independent expert~..."

22 A. Yes.

23 Q. "... who is qualified to comment on restraint techniques
24 that were employed."

25 A. Yes.

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1 Q. This is a level of detail in terms of the instruction
2 which -- the previous letter seemed much shorter?

3 A. Yes.

4 Q. Briefer. Was this the most detailed letter of
5 instruction that the Crown sent in relation to what was
6 expected of PIRC?

7 A. It certainly is detailed in what they are asking us to
8 do, so yes.

9 Q. Then there is a number of bullet points, a couple of
10 bullet points where they are asking for an independent
11 expert's view to be taken on different matters:
12 deployment of the sprays, and matters along those lines.

13 A. Yes.

14 Q. Then towards the bottom of page 2 do we see they were
15 asking for a toxicology expert to be approached to give
16 advice on alpha-PVP, which I think you mentioned
17 yesterday. Then the final bullet point on that page:

18 "It will be essential to establish precisely what
19 information was conveyed and received to each individual
20 officer in relation to the incident prior to their
21 attendance."

22 And:

23 "For the avoidance of doubt, this information is
24 entirely separate from evidence that is now available in
25 relation to Mr Bayoh's actions from various civilian

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1 witnesses and their respective accounts."

2 So PIRC had already created a summary or something,
3 gathered in evidence about the 999 calls, the emergency
4 calls, but this was now focused in relation to what the
5 officers -- the information they had received en route
6 to Hayfield Road?

7 A. Yes.

8 Q. Was that from Airwaves and STORM cards, things like
9 that?

10 A. Yes.

11 Q. And then page 3. There was mention of instructing
12 a pharmacist, and the Crown asking to have sight of
13 instructions to the pathologists who have been
14 approached to provide expert evidence on the cause and
15 mechanism of death.

16 A. Yes.

17 Q. So was it PIRC who were providing the instructions to
18 the experts and Crown were asking to review that?

19 A. My recollection is that this was done in conjunction
20 with Crown. This was an area that I -- I finalised --
21 I remember I finalised the letters for the instructions,
22 these instructions, not the initial instructions to
23 Dr Payne-James and Dr Karch, my recollection is that
24 Keith was involved in that, and this was a matter that
25 Ms Scullion was undertaking with Crown in respect of the

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1 letter and what exactly the instruction was.

2 Q. When you say Ms Scullion, was that exclusively in
3 relation to the pathologists or more widely in relation
4 to instruction of experts?

5 A. No, the instruction of the experts actually looked at
6 the -- basically the subject matter. We were saying: we
7 would like to you examine in respect of this ... and
8 this is what we would -- you know we would like you to
9 undertake, so the kind of~...

10 By my understanding is that was done in conjunction
11 with Crown. We see there it does lay that out, it does
12 say obviously that -- and I can't remember who is that
13 letter from, is it -- you know, but whoever the letter
14 is from --

15 Q. It is from Les Brown --

16 A. Okay.

17 Q. -- the head of the Criminal Allegations Against the
18 Police Division?

19 A. Thank you. So it's basically saying they wanted to
20 review that, so there would have been -- no letter would
21 have gone to any expert identified and engaged --
22 bearing in mind it is Crown that engaged the expert
23 witnesses, it is not PIRC -- before that instruction was
24 sent to them.

25 Q. When we arrived this morning you said you had been down

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1 I think was it in London or down south?

2 A. It was, yes.

3 Q. Dealing -- was that to deal with an expert?

4 A. It was, yes. That was to see Dr Karch.

5 Q. Dr Karch. Had he not received any letter of instruction
6 and his expert witness package before you went to see
7 him?

8 A. He had, yes. Yes.

9 Q. Had Crown had some involvement in that prior --

10 A. Oh, yes. They had the same involvement as -- my
11 understanding is that because although I wasn't involved
12 in any of the process to identify Dr Karch, but Dr Karch
13 was engaged by Crown, and there was a letter of
14 instruction to Dr Karch.

15 Q. So when they say here:

16 "I require sight of the terms of your instructions
17 to the pathologists~..."

18 Does that mean the Crown had seen the letters to the
19 pathologists and had some input, or they were simply
20 asking because they hadn't seen the letters to the
21 pathologists?

22 A. No, my understanding is they had seen the letters, and
23 had real input into the letters.

24 Q. But in any event they are asking for sight of the terms
25 of the instructions to the pathologists who have been

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1 approached to provide expert evidence. They note that:
2 "... at page 54 of your report that there is
3 confirmation that Mr Bayoh was handcuffed to the front
4 and had leg restraints applied on his arrival at
5 hospital. I require confirmation that all of the
6 pathologists instructed have been advised of this fact
7 and have been asked to comment upon the significance of
8 this evidence and in particular whether such restraint
9 could have contributed to any positional asphyxiation
10 given the fact these restraints continued to be applied
11 after he became unresponsive and following resuscitation
12 attempts."

13 Then they also ask matters in relation to the
14 fractured rib --

15 A. Yes.

16 Q. -- and the most likely mechanism as to how that injury
17 was sustained.

18 A. Yes.

19 Q. The reference there to your report, yesterday you spoke
20 about sending reports on a --

21 A. Yes.

22 Q. Is that one of the reports that they are referring to?

23 A. I would presume that that would be the report we sent
24 in August 2015.

25 Q. Right. That was an interim update --

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1 A. Yes.

2 Q. -- as such?

3 A. Yes. Primarily connected with the events that occurred
4 at Hayfield Road, you know, the events there.

5 Q. Thank you. Then they ask for an update on the forensic
6 work and ask about the comparison in relation to
7 the knife.

8 A. Yes.

9 Q. And then there is comment about the Health and Safety
10 Executive here.

11 A. Yes.

12 Q. Tell me what you remember about any involvement or
13 otherwise with the Health and Safety Executive?

14 A. I don't -- I don't remember myself being involved in any
15 engagement with the Health and Safety. I don't recall
16 that.

17 Q. It does mention John McSparran. Perhaps he is more in
18 a position to help us with that. Then at the bottom of
19 this page 3:

20 "Previous correspondence instructed PIRC to examine
21 whether there is any evidence of an unauthorised access
22 to and interrogation of the information systems of the
23 Police Service of Scotland and if so whether this could
24 constitute a breach of data protection legislation.

25 This investigation should be carried out as

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1 expeditiously as possible."

2 We saw in the policy log reference to examining or
3 analysing the IT systems to look for unauthorised
4 breaches of data protection.

5 A. Yes.

6 Q. Were you -- you were involved in that? We will come on
7 to that later.

8 A. Yes.

9 Q. Page 4:

10 "I require confirmation from the Commissioner that
11 issues of race and whether there is any evidence of
12 racial motivation is a primary focus in the PIRC
13 investigation. The investigation should examine whether
14 there is any evidence that any of the officers involved
15 has expressed any racist views or opinions in the past.
16 In particular... indicated that officers from within
17 the Fife area had been investigated for texting racial
18 slogans and that one of the officers was referred to
19 him. The family have enquired as to whether any of
20 those officers apparently involved in that Inquiry were
21 in the group of officers engaged with Mr Bayoh."

22 So for the first time in the Crown letters of
23 instruction there is a specific entry in relation to
24 race?

25 A. That is correct.

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1 Q. And requiring confirmation that issues of race and:

2 "... evidence of racial motivation is a primary
3 focus in the PIRC investigation."

4 What was your understanding of this suggestion of
5 primary focus; is that in relation to the PIRC
6 prioritising different lines of enquiry?

7 A. Reading it now as a primary focus I will go back to the
8 policy entry that was made in the first few days of the
9 investigation that we would take cognisance -- I can't
10 remember how it is phrased -- we would take cognisance
11 of race --

12 Q. We can look at that now --

13 A. -- if it emerges, so --

14 Q. Let's go back to the --

15 A. Although we were mindful of race, we were being mindful
16 of race, as I said yesterday we hadn't received
17 an instruction on race. This is quite clearly
18 an instruction on race. And in my Rule 8 this is
19 obviously the letter I am referring to, I have said
20 2 July, it is 2 September. I have obviously typed a 7
21 rather than a 9 in my response in respect to that.

22 So here basically, you know, we have been asked to
23 put front and centre, you know -- you know, to
24 investigate race and I think that is detailed in the
25 policy log and that was detailed in my Rule 8, you know,

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1 the matters of race. I would say it is not saying here
2 as a primary focus, I take that -- my reading on that is
3 yes it's a primary focus but so is the examination of
4 data protection, the -- the identifying and instruction
5 of expert witnesses in conjunction with Crown. So, you
6 know, there is all these areas to be looked at. So my
7 reading of that is that is not to say we have to devote
8 every resource we've got to race and then we will move
9 on to the other matters, we have to keep all the other
10 matters moving along.

11 Q. Thank you. Then the next paragraph:

12 "Associated with this aspect of the enquiry, I have
13 already been in correspondence with you regarding the
14 investigations that have been instructed~..."

15 And those related to PC Paton and a history of --
16 a possible history of racism?

17 A. Yes.

18 Q. Now, can I ask you to look at 66 in the policy log. So
19 reason 66. PIRC 04153 and go down 66. This is dated
20 3 September, so the day after the date of the letter
21 from the Crown.

22 A. Yes.

23 Q. It says:

24 "Instruction from [Crown].

25 "Additional investigation and request for

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1 information."

2 And a number of items are listed there:

3 "Detailed analysis of accounts given by all officers
4 and civilian witnesses in relation to restraint~..."

5 Expert opinion matters:

6 "Establish what information was provided to each
7 officer prior to arrival at the incident via
8 Airwave~..."

9 And obtain a pharmacist. So it doesn't seem to
10 appear to be a complete number of the items mentioned in
11 the letter, but certainly it does mirror some of
12 those --

13 A. Yes.

14 Q. -- items in the letter. Can we go back to the letter
15 and just complete that for the moment. So this is
16 COPFS 02557 and we were on page 4. We had just finished
17 the paragraph relating to Mr Paton and then:

18 "The family once again raised the question of
19 whether there was evidence of officers inappropriately
20 conferring prior to the provision of statements~..."

21 There is an issue about PC Paton and his weight.
22 There's reservations being expressed regarding the
23 expert pathologist by the family, and an acknowledgement
24 of the amount of work that still requires to be done but
25 encouraging PIRC to be as thorough as possible and

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1 address the family's concerns.

2 Then over the page just completes the letter and we
3 see it is from Les Brown.

4 A. Yes.

5 Q. Going back to the policy log and looking at 66 again,
6 which was the entry from 3 September, it certainly
7 listed the Crown Office instruction but what actions
8 were then instructed after that letter from the
9 2 September from the Crown?

10 So that is item 66 which deals with the letter and
11 then if we can move on down that page, keep going,
12 please. We don't see any specific actions listed there
13 under the information about the letter. Can you help us
14 with that?

15 A. Could you scroll up a wee bit again, please, just to 67.

16 Q. Yes, of course.

17 A. Is the matter of HSE, is that one of the points at 66?

18 Q. Yes, it's --

19 A. I know it is a point in the letter but I am just
20 wondering if -- (overspeaking) --

21 Q. Yes, it was a point in the letter but if we move up to
22 66 you will see that it wasn't actually mentioned there.

23 A. No, but obviously there has been some communication with
24 HSE which makes 67, so that is -- it's -- what actions
25 were actually raised in the CLUE system? I would need

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1 to examine the CLUE actions.

2 Q. So from your understanding, after 2 September were
3 actions ordered and steps taken in line with the
4 Crown Office letter of instruction?

5 A. My understanding, yes.

6 Q. You were still the deputy at that stage?

7 A. I was, yes.

8 Q. A few moments ago you mentioned the earlier passage in
9 the policy log. I will just ask you to look that
10 the now for completeness. It's number 21, I think, so
11 if we can go back to 21. This was at an early stage, as
12 you said. I think it is dated 9 May.

13 A. Number 21, yes.

14 Q. It talks about:

15 "Cultural and religious issues.

16 "PIRC FLOs will establish the religion and sect of
17 the deceased and any cultural issues, seeking support
18 where necessary from ScotGov lay advisers in order to
19 provide appropriate support, advice and assistance to
20 family of the deceased. Although not directed by
21 [Crown Office] at this stage, take cognisance of any
22 issues of race if they emerge."

23 A. Yes.

24 Q. Then the reason given is:

25 "Provide appropriate support taking cognisance of

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1 cultural and religious issues. Address family concerns
2 in a supportive and sympathetic manner."

3 A. Yes.

4 Q. When you were talking about PIRC taking cognisance or
5 being mindful of race, was it this reference that you
6 were referring to?

7 A. It was, yes.

8 Q. Was this in relation to -- mainly in relation to
9 the family and FLOs?

10 A. No, I would -- I would take that -- so the first aspect,
11 the first paragraph, is in respect of the FLOs engaging
12 with the family. Then -- and then the second part:

13 "Although not directed by COPFS at this stage, take
14 cognisance~..."

15 I take that as a separate -- and that is for the
16 investigation as a whole to take cognisance of race.

17 Q. In what way did PIRC take cognisance of any issues of
18 race?

19 A. It was just to be aware, make sure you keep an open mind
20 and have awareness.

21 Q. Did any issues of race emerge prior to 2 September when
22 Crown Office instructed PIRC to consider issues of race?

23 A. Not that I recall.

24 Q. No. Would it be fair to say that at this point in the
25 investigation that although you were being mindful and

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1 taking cognisance of any issues that emerged, that race
2 only became an active part of the PIRC investigation
3 after instructed by the Crown on 2 September?

4 A. Yes. And that is where I made a mistake yesterday
5 saying 2 July. Yes.

6 Q. Thank you. So in relation to race being a primary
7 focus, was that largely after the 2 September letter of
8 instruction?

9 A. Yes.

10 Q. Thank you. After that letter of instruction on
11 2 September, obviously the terms of reference have
12 expanded --

13 A. Yes.

14 Q. -- for PIRC. What additional resources were you given
15 at that time to allow you to pursue those lines of
16 investigation?

17 A. None. And in fact it would be fair to say that actually
18 the resource deployment had decreased by that time
19 because we had a number of other death investigations
20 that needed -- I think I said right at the very start
21 when this incident first occurred we assisted all -- all
22 live investigations, we assisted them all. But as time
23 moved on -- and I can't recall the date of the M9
24 incident but by the time we got to 2 September the M9
25 incident had occurred, so we were having to resource

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1 that. From myself personally, I was dealing with
2 another death in custody as well, so I was -- you know,
3 so~...

4 But we had no other resources to get. You know, you
5 can only use what you have and you have to deal with the
6 matters in front of you, and we couldn't keep -- all the
7 other matters and investigations, we couldn't keep them
8 assisted, not now we are into September. This occurred
9 in May, that would be just totally unfair to the
10 families of other deceased people.

11 Q. Can I get you to help with the resources.

12 A. Yes.

13 Q. You talked about coming in on 4 May and essentially
14 using everyone?

15 A. Bar one.

16 Q. Bar one?

17 A. Yes.

18 Q. And then you said at some point after that you had
19 actually asked for additional resources and I think you
20 said you got around another six or seven members of
21 staff from a different department?

22 A. Yes, from the only other department there is, yes. But
23 I was provided with them for the specific purpose of
24 getting the house-to-house enquiries finished, I think
25 I alluded to yesterday the house-to-house enquiries are

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- 1 very important, really important, in investigations
2 where something happens out in the street. But they
3 take a long time because, as I said yesterday, people
4 aren't just sitting in the house waiting on us, we have
5 to repeatedly go back and forth, go back and forth.
- 6 Q. Do you remember when or roughly around what time did you
7 get those additional resources for the house-to-house?
- 8 A. It'd be fairly early on, it would have been the first
9 few weeks of the investigation. Certainly I would say
10 it would be May and at the most into early June.
- 11 Q. How long did you have those additional resources at that
12 point?
- 13 A. Not long, not long. It is not like I had them for weeks
14 and weeks. I can't remember how long I had them but it
15 wasn't long, I didn't have them for weeks and weeks and
16 weeks to continue because vice versa they have got all
17 their other -- they've got their matters to deal with.
- 18 Q. So by 2 September they were long gone?
- 19 A. They weren't with us, no. They weren't with us, no.
- 20 Q. You have talked about other investigations commencing,
21 other --
- 22 A. Yes.
- 23 Q. -- important matters arising from PIRC. Obviously on
24 4 May you had everybody bar one?
- 25 A. Yes.

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1 Q. When had that altered and what was -- you have said by
2 2 September resources had actually gone down?

3 A. Yes.

4 Q. Can you help the Chair understand --

5 A. I think the overriding factor was the -- as I referred
6 to, the M9 incident. The death following the road
7 accident that was undiscovered. Again, that was --
8 attracted a lot of media attention. Yes, so we had to
9 resource that as well.

10 Q. So by 2 September can you recall how much you had by way
11 of resources?

12 A. No, I don't know if I have marked it up in my daybook
13 but what I recall, and I think what you will see from
14 there is a lot of additional work being undertaken was
15 being undertaken by myself, you know, in respect of
16 these -- you know, particularly the aspects around about
17 the data protection, aspects around about the expert
18 witnesses, once they were instructed, engaging with the
19 experts and making arrangements to go and see them and
20 such like. And John as well. So how -- how many staff
21 I had at that point, I don't know. I couldn't put
22 a figure on it, I am sorry.

23 Q. Can you help the Chair understand roughly, the sort of
24 ballpark figure?

25 A. Sorry, if I could refer to my daybook. I know you have

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1 printed them off -- (overspeaking) --

2 Q. Of course you can.

3 A. I think I make reference, and I can't remember what
4 number the point is, that actions were allocated on
5 8 September in respect of the further instruction.
6 (Pause).

7 It is actually ... I don't know if it is Wednesday
8 8th or Wednesday 9th, I have overwritten -- I don't know
9 if I have overwritten the 8 and put the 9. But it was
10 on the Wednesday following this letter.

11 Q. So the Wednesday after 2 September?

12 A. Yes. So I have a wee list here:

13 "Further letter of instructions to SK/PJ."

14 I think that is maybe Steven Karch. PJ, Payne-James
15 maybe.

16 Q. Right, and in terms of the --

17 A. So I have some actions there:

18 "Meeting set for Friday am re DC involved in
19 criminal allegation - Zahid Saeed.

20 "Admin taking on the redaction process for all the
21 witnesses mentioned in the expert witness packages."

22 So we were redacting statements for the expert
23 witness package because I think the first expert witness
24 package didn't have a number of redacted statements, and
25 following this instruction and I think the aspect you

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1 are asking about, "The experts must be aware of what was
2 in the officers mind and what they were doing", is
3 statements were added in respect of that, redacted
4 statements. And:

5 "Action to John Ferguson: identify forensic
6 pharmacist.

7 "Action to Keith Harrower: ID and interpret experts
8 regarding restraint, baton, use of PAVA, guidance of
9 PAVA.

10 "[Brian Dodd] B Dodd: race issue. ID what was
11 exactly passed to officers.

12 "Weight: John Mitchell write to PSD."

13 And then I have:

14 "Email to Les MacLeod~..."

15 Who is one of the Chief Inspectors at Professional
16 Standards:

17 "... re allegation concerning Paton, file re
18 Zahid Saeed~..."

19 I can't even read my own writing in the other part
20 there:

21 "... and data protection."

22 So if you look at that, there is myself,

23 John Ferguson, Keith Harrower, Brian Dodd.

24 Q. And you mentioned Mr McSporran?

25 A. John and I went and saw a couple of the expert witnesses

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1 when we -- you know, when we briefed them in respect of
2 what the instructions were.

3 Q. And you also said John Mitchell was going to contact the
4 Professional Standards Department as well?

5 A. I have --

6 Q. You said John Mitchell PSD.

7 A. John Ferguson, Keith Harrower, Brian Dodd. Yes, sorry
8 "JM to PSD". That was the matter of the weight of the
9 officers, yes.

10 Q. So five investigators by then and John Mitchell making
11 some calls to PSD to pursue that line?

12 A. Yes, involved in this aspect, yes.

13 Q. So you had moved back down to roughly five, perhaps six
14 investigators helping at that stage?

15 A. There may have been others, there may have been others
16 still involved. We certainly -- I certainly had to
17 allocate resources to the examination of the CCTV system
18 from Kirkcaldy Police Office and I think I made mention
19 that I required technical support and I went for the
20 technical support because we -- we had had technical
21 services take an image of the CCTV systems, but we
22 couldn't get that -- we couldn't get that to play once
23 we started to examine it. And that was a very, very --
24 once -- so I took the systems out and we placed the
25 systems. So just to preserve the integrity of that

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1 evidence, I made the decision to take the systems out,
2 and we -- and they were replaced, you know, the hard
3 drive that gathers the data from the cameras, and that
4 was a very, very lengthy process because I think there
5 was -- again, I would need to refresh my memory but
6 I think there was 16 cameras attached to that system,
7 one was inoperative and had been inoperative for a long
8 time, the one that covered the backyard, so you've got
9 15 cameras, 24 -- so you've got this long period. So
10 even 15 cameras, and if you look at the officers started
11 duty about half six in the morning and didn't leave
12 until -- looking at -- I can't remember the timeframe
13 I used but midnight; how many hours of sitting going
14 through that and creating a timeline and a dialogue of
15 what occurred and who met who. So that was a job that
16 took months and months.

17 Q. Who was allocated that job?

18 A. I think in the first instance I allocated it to --
19 I think I allocated it to Lorraine, who I didn't
20 mention. I remember she worked with us for a small
21 time. She'd actually been the auditor in the PIRC and
22 we brought her on in the investigation. I can't
23 remember Lorraine's second name but she had had no
24 experience of doing that and I had to replace her and it
25 was Kareen that took on -- Kareen Pattenden that took on

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- 1 the main aspect of that, but she would be assisted by
2 other people because it was a huge task.
- 3 Q. Right. Thank you.
- 4 A. So it wasn't just the people I have listed there, that
5 is people -- you know, that is me allocating actions or
6 identifying people to undertake the actions concerning
7 the letter of the 2nd.
- 8 Q. So there may have been other investigators helping out
9 at that stage?
- 10 A. Yes, absolutely. But what I can confirm is we didn't
11 have everybody in PIRC working solely on this
12 investigation and I think you will appreciate the
13 rationale why.
- 14 Q. So it was no longer the position that you had everybody
15 bar one person?
- 16 A. No, absolutely not. Absolutely not. And I think there
17 is an entry in my book that you asked me -- in the
18 Rule 8 that actually explains the division of resources.
- 19 Q. Thank you. Could we look at paragraph 223 of your
20 Inquiry statement. So SBPI 0421. Go back to
21 paragraph 223. You mention a meeting on 3 September
22 with the family and the Commissioner. And you describe
23 the family as having a degree of frustration?
- 24 A. Yes.
- 25 Q. You say:

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1 "I took no additional notes, my recollection of the
2 meeting was that it was an opportunity for the family of
3 the deceased and their lawyer to meet with Ms Frame.
4 I do recall a degree of frustration from the family
5 during the course of this meeting but I understood why
6 this was as they were looking for definitive answers
7 which at that time could not be answered."

8 A. Yes.

9 Q. "I do believe that at that time the family advised that
10 they retained faith in the PIRC investigation.

11 "This was also to the best of recollection the first
12 time that the matter of race had been raised by either
13 the family or their lawyer in a meeting that I had been
14 in attendance at. My recollection for this is that
15 Mr Anwar brought up the subject using the terminology
16 which was similar to 'Can we discuss the elephant in the
17 room'? The meeting finished on a cordial note."

18 So, as well as the letter of 2 September, this was
19 a face-to-face meeting with the family where the issue
20 of race was discussed?

21 A. Absolutely, yes.

22 Q. You were actually present at that?

23 A. Yes, I was.

24 Q. But you say that is the first time you remember being
25 present during a discussion of that type?

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1 A. Yes.

2 Q. Right. Thank you. I would like to ask you some
3 questions about the investigation into race in terms of,
4 for example, your experience in relation
5 to investigating deaths where the issue of race is
6 a factor.

7 A. Yes.

8 Q. Prior to 3 May 2015, and either as a police officer
9 because you had a lot of experience as a police officer,
10 or as a PIRC investigator, what experience did you have
11 of investigating deaths in police custody or deaths
12 after police contact where the deceased was black?

13 A. I had none in respect of that, I had dealt with
14 an unexplained death involving a black person when I was
15 a Detective Inspector at Partick. I had dealt with
16 that, but following -- a death in custody, a death
17 following police contact, no.

18 Q. Nothing. Tell us about this experience you had in
19 Partick?

20 A. Yes, it was a female from -- she was from Somalia and
21 she resided in the high flats in an area of Partick with
22 her two children, and the report was -- the report was
23 there was blood all at the bottom of the high flats, and
24 then there was no body, and then there was a blood trail
25 going into the high flats, going into the lifts, coming

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1 out of the lifts on the floor, going back into the lift,
2 back up, back out the lift and then a trail to her
3 house.

4 So I sent -- we became aware of it, I sent a team
5 down to try and establish what happened, we forced entry
6 into the house and the lady was found dead inside. The
7 post mortem revealed she had suffered injuries
8 consistent with falling from a great height, and yes,
9 and once we seized the CCTV we were able to say that.

10 But the conundrum was that another female had come
11 over from -- I think it was the Netherlands she came
12 from and she was saying she was the sister of the
13 deceased and they came to visit the deceased, and part
14 of the issue was the two children that we believed to be
15 the children of the deceased, she says, "No, they are
16 not her children, they are my children and I let her
17 have my children when they entered the UK because it
18 would help her get accommodation and benefits". And she
19 came back to take possession of the children again.

20 Ultimately the investigation identified that the
21 deceased female committed suicide but we then had the
22 conundrum of trying to identify who actually was the
23 mother of these children, you know. So it was quite
24 an unusual -- to say an unusual death, I don't know if
25 that is the right expression to use. But it was quite

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1 an unusual set of circumstances.

2 Q. Thank you. Turning back to your experience since --
3 let's look at paragraph 364 of your Inquiry statement,
4 please. Prior to 3 May 2015 you were asked about
5 experience you had in relation to investigations.
6 Looking at your response you say:

7 "My recollection is that prior to this incident
8 I had no experience of dealing with such a matter in
9 which the deceased was from an ethnic minority or have
10 done since 3 May 2015."

11 So does that mean you have no experience over the
12 course of your career of dealing with a death in
13 custody, a death following police contact, in which the
14 deceased was someone from an ethnic minority?

15 A. Not personally as the SIO. In respect of my time
16 since -- I have to say I can't give you an example from
17 when I have sat as a senior investigator within PIRC of
18 being the manager of -- of -- the SIO of a -- so no.
19 No.

20 Q. Thank you. 365, you were asked:

21 "Prior to 3 May 2015, had PIRC ever considered the
22 issue of race within an investigation?"

23 Your answer is:

24 "I have no recollection or awareness of PIRC ever
25 having considered race during the course of any

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1 investigation with the exception of this investigation."

2 So the investigation into the death of Mr Bayoh, is
3 that right?

4 A. Yes.

5 Q. That is the position. 366:

6 "Do you have any experiences of racism (or the race
7 of the victim) being a factor, in any way, in a death in
8 custody or death during or following police contact?"

9 And again you say you have no experience of that.

10 A. No.

11 Q. Then 367:

12 "On or before 3 May 2015, had PIRC ever considered
13 the issue of race when dealing with a death in custody
14 or death during or following police contact?"

15 You say:

16 "This is the only investigation that I am aware of
17 that PIRC has had to consider the issue of race as
18 directed by [Crown Office]. However as highlighted at
19 [an earlier response] it was recorded within the PIRC
20 Management Policy book that we would take cognisance of
21 any issues of race if they emerge and that is the same
22 for all our investigations."

23 Is that reference reason 21 that we looked at --

24 A. Yes. I was going to look but it is, yes.

25 Q. Yes. Then just for completeness, 368 you are asked if

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1 race or ethnicity of a deceased is automatically
2 considered as part of an investigation. You say:

3 "The race or ethnicity will always be considered to
4 ensure that an open mind is maintained as to what may or
5 has occurred. In addition race or ethnicity in
6 particular can have a direct bearing in dealing with
7 families of the deceased especially in respect of
8 cultural issues."

9 Can I ask you about that?

10 A. Yes.

11 Q. Is this again focusing on issues that may impact on
12 dealings with the FLO or communication with the family
13 rather than -- or is it in addition to lines that could
14 be important to an investigation?

15 A. I think it is all-encompassing. I think -- I think
16 something very, very early in the investigation you must
17 be aware of is the cultural issues in respect to the
18 family and the deceased from that. But I think it is
19 just keeping an open mind and be alive -- just keep
20 an open mind. You know, obviously going back to any
21 equality and diversity training, that is something I do
22 recall, that that is something you must do, you must
23 keep an open mind, don't be closed to -- you know, be
24 alive to what may be there.

25 Q. Can we look at paragraph 217, please.

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1 A. Yes.

2 Q. I think 217, thank you. Maybe that is not the
3 correct ... let's leave that for a moment I think that
4 is the wrong number.

5 In 2015, as I understand it, you didn't have any
6 guidance in PIRC for investigators who may have been
7 faced with investigating a death in custody in relation
8 to a person of an ethnic minority or a black person?

9 A. No.

10 Q. There was none. As I understand the position, there
11 were no reference materials that were available to PIRC
12 investigators if they were tasked with looking at
13 an investigation of that sort?

14 A. No.

15 Q. Was there any attempt by you or anyone else in PIRC,
16 after instructed by the Crown on 2 September to
17 investigate issues of race, was there any attempt by to
18 you reach out to third parties or other organisations to
19 seek guidance or materials that would assist PIRC
20 investigators?

21 A. Not that I recall, no.

22 Q. Was there any additional training given to PIRC
23 investigators in relation to investigating the death of
24 a black man after police contact?

25 A. There is -- there is guidance within PIRC now in respect

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1 of matters and it is certainly available on our local
2 intranet, and yes, it is -- it is part of undertaking
3 an investigation of that nature now, you know, that
4 there are certain areas that we need to look at. Just
5 from the top of my head -- I am not part of the
6 organisation now, as you know, but from the top of my
7 head is, you know, what was the perception of witnesses
8 when they were dealing with the person, what was the
9 engagement, you know. Yes.

10 Q. We have looked at guidelines which we have heard from
11 Mr Harrower are available now.

12 A. Yes.

13 Q. I will just try and find the document ID so we can put
14 that on the screen. I will come back to that in
15 a moment. Let's try paragraph 226, please. Yes. You
16 were asked if you had received any training or guidance
17 in relation to the role of a PIRC investigator following
18 a death in police custody, and you had said there had
19 been no training on that matter, either matter you said.
20 Is that correct?

21 A. Well, it's not because there is the guidance in respect
22 of that document.

23 Q. Nowadays, but in 2015 --

24 A. No.

25 Q. -- there was no training --

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1 A. No.

2 Q. -- or guidance. Can I ask you about paragraph 224. You
3 mentioned previous training you had had with the police.
4 I think this issue begins with:

5 "Alistair Lewis noted that the 'Commissioner assured
6 family all investigators are diversity trained'. Can
7 you provide details as to what this training comprised?"

8 I think you say here:

9 "As detailed within my response ... I provided
10 details of the training I could recall that I had
11 undertaken with PIRC. This included training in
12 Equality and Diversity."

13 I think you gave evidence about that previously.

14 A. Yes.

15 Q. "Prior to joining PIRC I also undertook training on this
16 matter with Strathclyde Police but I am unable to
17 provide exact details when this occurred and content of
18 training I received both with the police and also with
19 PIRC by 3 May 2015."

20 So you had had some training with
21 Strathclyde Police?

22 A. Yes.

23 Q. Do you remember much about the content of that?

24 A. No, not exactly. My recollection is it did form part of
25 module within some of the management courses that

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1 I took. Whether that was in -- on the SIOs course or
2 the Deputy SIOs course and also the other management
3 course that I undertook, but there was definitely, you
4 know, at that time definitely training in respect of
5 equality and diversity.

6 Q. Let's look at this set of guidelines, please.

7 PIRC 04724. We have heard some evidence from
8 Mr Harrower about these guidelines. In any event, you
9 can see they've got a purple front sheet.

10 A. Yes.

11 Q. And you have mentioned them.

12 A. Yes.

13 Q. As I say, Mr Harrower indicated that this guidance is
14 now available to investigators.

15 A. Yes.

16 Q. They are guidelines for dealing with allegations of
17 discrimination when undertaking investigations and
18 complaint handling reviews. We have got them here on
19 screen. And I think with Mr Harrower we looked at
20 section 6, "Conducting an investigation", and it started
21 at page 30 or 31, I think from memory. It went through
22 the terms of reference, at the top of page 31. Here we
23 are. And these now provide guidance for investigators
24 who may have been tasked with investigating a death or
25 serious injury that raises issues of discrimination, and

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1 we heard from Mr Harrower that this is guidance that is
2 relied on by investigators now. Have you relied on this
3 in any investigations you have looked at since May --

4 A. I think I said to you that, you know, I haven't been
5 involved in any investigations where issues of
6 discrimination or, you know, any allegations were
7 raised.

8 Q. When these came in did you receive training in them?

9 A. I don't recall specific training but I was aware that
10 this had been, you know, produced -- I wasn't involved
11 in the production of it -- and reading it, and being
12 mindful of it.

13 Q. Thank you. When you began the process of investigating
14 race on the instructions of the Crown in September 2015,
15 did you consider how you would go about investigating
16 the issue of race? We have heard comments from I think
17 it was Lesley Boal --

18 A. Yes.

19 Q. -- at a previous hearing who said it is difficult to
20 investigate what is in people's minds.

21 A. I can't recall how we -- you know, how we arrived
22 at -- you know, how we undertook that. I have to be
23 honest with you, you know, on reading that letter of
24 2 September now there is guidance from Crown how -- in
25 the matters to undertake, thinking about, you know, the

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1 matter that was -- that was allocated to Brian Dodd to
2 look at in respect of the matter of what actually
3 knowledge did the officers have, you know, what
4 awareness did the officers have, and pulling that aspect
5 together.

6 So other than the actions that we undertook, you
7 know, looking at complaint records, looking at
8 statistical returns, you know having a general
9 awareness, then no, I can't -- I can't recall any
10 sitting down, you know, in depth discussion with --
11 between John and I or involving Mr Mitchell or
12 Ms Scullion in respect of -- or Ms Frame -- how we would
13 actually go about that other than the actions that we
14 raised.

15 Q. So there was no particular strategy developed amongst
16 your team?

17 A. No. If there was -- other than what John has put in the
18 policy book, then no.

19 Q. Did you consider evidence from which you could perhaps
20 draw inferences or indirect discrimination?

21 A. No. And ... By that I think you are maybe referring to
22 information provided in statements which had already
23 been taken. You know, in respect of that, I can
24 recall -- I can recall, you know, the fact is all the
25 statements from the principal witnesses were with Crown.

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1 If Crown wished us to go back into that matter I would
2 have expected some form of instruction or guidance from
3 Crown in respect to that. I think, as I have said --

4 Q. I don't believe there was anything like that in the
5 2 September letter.

6 A. No, I don't believe there is, you know, to do
7 a backtrack, other than the action that Brian Dodd had
8 in respect of what was the understanding and what was
9 the information available to people.

10 Q. Would it be fair to say that PIRC at that stage looked
11 at what was set out in the terms of the 2 September
12 letter from Crown and dealt with those matters?

13 A. Yes.

14 Q. But did not look much beyond that letter?

15 A. That is -- yes, that is --

16 Q. Is that fair?

17 A. Yes, it is.

18 Q. So no suggestion of anyone in PIRC going and looking at
19 other enquiries or --

20 A. No.

21 Q. -- looking at reports or~...?

22 A. No.

23 Q. Nothing like that. Or seeking advice from anyone who
24 had --

25 A. No.

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1 Q. -- professional experience?

2 A. No.

3 Q. Was any further guidance sought from Crown about this
4 aspect of the investigation?

5 A. Not by me.

6 Q. No. Could I ask you about the use of language.

7 A. Yes.

8 Q. I know you have been asked about this in your Inquiry
9 statement. Could we look perhaps at paragraph 208 of
10 your Inquiry statement, 421. I am interested -- you
11 were asked a series of questions about PIRC were
12 obviously investigating racial implications of the
13 death, and whether you went back and looked at the
14 officers' statements at that time to look at their use
15 of language to see if anything arose out of that that
16 might give rise to any implications of racism.

17 So paragraph 208 relates to PC Kayleigh Good.

18 A. Yes.

19 Q. And the PIRC statement she provided on 4 June. She had
20 attended Hayfield Road --

21 A. Yes.

22 Q. -- and had given a statement. You were asked about her
23 use of the word "coloured" to describe Sheku Bayoh. She
24 also -- having looked at her statement, there is a quote
25 on page -- part of her statement on page 7 which is PIRC

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1 274, I don't need it to go on the screen. She said, and
2 I quote:

3 "I was also thinking at that point of the Lee Rigby
4 incident in London, mainly due to the fact of the
5 coloured male and the potential terrorist connotations."

6 That was a statement taken by Maurice Rhodes and
7 Kareen Pattenden.

8 A. Yes.

9 Q. And it was taken on 4 June, would you have been aware of
10 the content of that officer's statement around about
11 that date?

12 A. Yes, I think I have responded there. Looking at my
13 daybook I have read the principal officers' statements
14 on 5 June, so the next day. But I wasn't -- that aspect
15 wasn't brought to my attention on the 4th. I read it on
16 5th, the statement.

17 Q. So you are aware of the content of the statement on
18 5th June?

19 A. Yes.

20 Q. From 2 September PIRC have received the instruction from
21 Crown.

22 A. Yes.

23 Q. You have said:

24 "I have no recollection around this at the moment
25 used in PC Good's statement and I did not raise

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1 an action for all statements to be checked in a manner
2 you prescribe. If the use of this word in this context
3 was deemed to be considered in a racial manner I would
4 have expected some instruction or guidance from [Crown]
5 as they had copies of all the statements."

6 So from that answer essentially is it correct for me
7 to understand that there wasn't any analysis done of the
8 officers' statements in relation to race?

9 A. No, there was not. No.

10 Q. At the time that -- obviously you are taking
11 cognisance --

12 A. Yes.

13 Q. -- and mindful --

14 A. Yes.

15 Q. -- from the outset of the enquiry. Can you explain why
16 a reference such as Kayleigh Good made in her statement
17 on 4 June was not actioned or dealt with in any way? In
18 relation to that comment that she was:

19 "... thinking about the Lee Rigby incident in
20 London, mainly due to the fact of the coloured male and
21 the potential terrorist connotations."

22 A. Okay, first of all it is not up to the PIRC
23 investigators to question the words used by a witness in
24 their statement. It is their statement and it is their
25 words and the words they use. That is always -- that

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1 was the way I was trained and that is the way statements
2 are taken in respect of that. I read all the
3 statements, so I am reading I think it was eight
4 statements, very lengthy statements, taken that day.
5 Do I recall making any note of or highlighting that
6 two-word phrase, if we take what is deemed as
7 an unacceptable use of language, not the Lee Rigby part,
8 not the terrorist part? No, I do not. But -- and I go
9 back to what we discussed yesterday, the fallback
10 position is Crown is like a fallback position for us
11 because we work under their instruction, we send the
12 information to them. They came back to us in respect of
13 the matter of some of the officers' minds and making
14 comment about the Lee Rigby incident and the terrorist
15 incident, and we re-interviewed the officers on that
16 aspect. Okay?

17 So particularly in relation to what you alluded to
18 this morning, there was a meeting at Crown by the
19 Lord Advocate and they were saying matters about race,
20 I would have expected, sitting here now, and obviously
21 this all being highlighted, that as well as being
22 instructed to go back to them in respect of their
23 mind -- what was in their mind when they were travelling
24 to that incident about Lee Rigby, about a terrorist
25 incident, then why was that not based to them.

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1 And I go back -- yes, I say we were being mindful of
2 race, yes that was in that statement but I -- when
3 I read it, and bearing in mind all the senior managers
4 within PIRC read these statements, including
5 the Commissioner, you know, nobody highlighted to me:
6 are you not aware of that, are you not alive to that?
7 So~...

8 Q. So the reference to Lee Rigby, the reference to
9 "a coloured male" and the link with potential terrorist
10 connotations, that was not noticed by anybody in PIRC
11 who read these statements?

12 A. Yes, it was -- you know, obviously I read it, I read it.
13 Yes, and the decision was made that the statements go
14 ASAP to Crown, given the time we have been waiting on
15 the statements. But as I said we received further
16 instruction from Crown to interview the officers who had
17 made reference about the terrorist part and where was
18 that information from and for us to identify what
19 briefings had been given in respect of the threat level,
20 the terrorist level. But we were not asked in respect
21 of the use of that language to probe that further.

22 Q. All right. Thank you. Can I ask you about Maxwell. We
23 have heard evidence from Acting Police Sergeant Maxwell
24 in relation to his actions on 3 May. In his self-penned
25 statement -- you weren't asked specifically about this

Transcript of the Sheku Bayoh Inquiry

1 in your Inquiry statement, but in Maxwell's self-penned
2 statement, it is undated but on page 2 of this statement
3 roughly paragraph 4 up from the bottom of that page, he
4 says, and I quote:

5 "On arrive at locus I witnessed a black coloured
6 male~..."

7 Was there any work done by PIRC in relation to
8 Sergeant Maxwell?

9 A. Not that I am aware of.

10 Q. And no one drew that to your attention? You didn't
11 notice the reference to "coloured male"?

12 A. I would have read the statement so I have read that,
13 yes.

14 Q. In his statement Sergeant Maxwell also said:

15 "A part of me considered this to be
16 a terrorism-related incident based on recent
17 intelligence and the threat level to serving officers in
18 the UK."

19 That is on page 4 of his statement. But he did go
20 on to say his risk assessment at the time did not take
21 terrorism into account, and only would have if credible
22 evidence was available. So again, I think your previous
23 answer probably will explain, you were asked by Crown to
24 go back at a later stage and ask about --

25 A. Yes, I can't remember if we went back to

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1 Sergeant Maxwell but that would be in the record if that
2 was one of the officers we went back to regarding that.

3 Q. Okay. Then can I ask you about Inspector Kay. We
4 talked about him yesterday, and he was recorded as
5 saying to Inspector Stewart, who was from the ACR, and
6 describing Mr Bayoh as, "He's the size of a house". Was
7 there any consideration given by PIRC to comments which
8 weren't perhaps directly related to the colour of
9 Mr Bayoh's skin but perhaps to things like, "He's the
10 size of a house", perhaps giving rise to inferences of
11 racial stereotypical language?

12 A. No, as I said in one of my earlier answers, that is
13 a witness description and that is the witness, that is
14 the words they are using so we have to record that,
15 I would expect my investigators to record that.

16 Q. Nicole Short talked about Mr Bayoh being "deranged with
17 superhuman strength" in her PIRC statement. And she
18 also made reference to "a wee Pakistani doctor". Did
19 PIRC, being mindful of these issues and taking
20 cognisance of these issues, were they alerted to any
21 issues regarding race or the language used by the
22 officers in their statement?

23 A. No.

24 Q. No. Did PIRC -- before the instruction came from the
25 Crown, did PIRC consider whether officers had made

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1 a connection between Mr Bayoh being black and being
2 a terrorist?

3 A. No.

4 Q. We've heard evidence there was nothing to suggest this
5 was a terror-related incident. If I am right, I think
6 you mentioned that last week, you didn't see anything to
7 do with terrorism in the events?

8 A. No.

9 Q. Looking back now, obviously with the benefit of
10 hindsight --

11 A. Yes.

12 Q. -- looking at the references I have referred you to
13 today and the statements from the officers, if PIRC was
14 being mindful and taking cognisance of possible issues
15 of race, racism, do you think that these are matters,
16 looking back now, that PIRC could have addressed further
17 with the officers or gone back to the officers about?

18 A. Yes, I think that is -- yes, that is very relevant, and
19 I think the new policy we have in PIRC would address
20 that, you know. Yes, that --

21 Q. These guidelines --

22 A. The guidelines, yes.

23 Q. -- and the investigation chapter?

24 A. Yes, because I am aware, I am aware that, you know, not
25 an investigation I have undertaken but I am aware that

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1 people have gone to the witnesses and asked specific
2 questions in relation to the ethnicity of the person:
3 did that have any bearing on what you did? You know.
4 So we are alive to that.

5 Q. And these guidelines --

6 A. But in 2015, as you have highlighted, we weren't alive
7 to it.

8 Q. But these guidelines are helping investigators now to
9 be --

10 A. Yes.

11 Q. -- more mindful now --

12 A. Yes.

13 Q. -- of these issues than perhaps they were in 2015?

14 A. Yes, absolutely.

15 Q. Can I ask you about a couple of things that are
16 mentioned by you. Can we look at 421, paragraph 84,
17 this is your second Inquiry statement. Paragraph 84.
18 You were asked about a note that you had made where you
19 say, "Refugee status!!"

20 Can I ask you what relevance or importance of
21 refugee status was to your investigation?

22 A. I didn't know, this was something that Irene Scullion
23 asked for, Irene was alive to this matter and asked me
24 to find that information out. It was not something that
25 would have jumped out at me to find out and I have

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1 obviously written "refugee status", question mark
2 question mark -- sorry, exclamation mark, and I have
3 got, "Let Cabinet Secretary know". So the inference
4 being is Irene has been -- somebody has contacted or
5 Irene was aware of the need that the Cabinet Secretary
6 should be made aware of ... to whether somebody from the
7 Cabinet Secretary's office has contacted PIRC in respect
8 of that and we have been tasked to find out, or whether
9 Irene was aware of the need to kind of brief the Cabinet
10 Secretary, on that particular issue or provide
11 a briefing, I don't know.

12 Q. So this was tasked to you by Ms Scullion?

13 A. Yes.

14 Q. And can you explain why that has two exclamation marks
15 next to it?

16 A. No, I am writing scribbles down. It is mostly because
17 it is -- it is not something I was aware that we really
18 needed to do. Maybe further down the line there might
19 have been an aspect, but -- that is just me because
20 I have been like: oh, right, okay. It's just very rough
21 scribbly notes, you know.

22 Q. Nothing of significance?

23 A. No, not -- not to me.

24 Q. Then can we look at paragraph 26 in your first Inquiry
25 statement, which is 255, paragraph 26. Obviously I have

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1 been going through the issues about the use of language
2 and there is a reference in here to the phrase which
3 probably everyone in the room will have heard at some
4 point in their lives "Chinese whispers". You have been
5 to equality and diversity training now, and I am
6 wondering what does that phrase mean to you?

7 A. Just what I have explained there; getting told something
8 by somebody who has been told something by somebody
9 and it's all just kind of ...

10 Q. So it's not a racist term in the way that you use it?

11 A. No. No.

12 Q. Thank you. Can I ask you if, as part of your
13 investigation, PIRC considered the speed at which events
14 played out on Hayfield Road on 3 May. By that I mean we
15 have heard evidence that the officers arrived in a van,
16 the first officers arrived at 7.20.

17 A. Yes.

18 Q. And within a short period of less than 75 seconds
19 certainly, Mr Bayoh had been -- or attempts had been
20 made to spray him six times with CS and PAVA spray. He
21 had been batoned two or three times to the head, he had
22 been batoned similar to the body, and he had been
23 shoulder charged to the ground with the use of force
24 with multiple officers in that area. I am interested
25 did PIRC consider that aspect, the duration of -- or how

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1 quickly things happened in terms of the use of force
2 with regard to race and whether that gave rise to any
3 possible inferences?

4 A. I don't think -- I don't think we examined it
5 specifically with regard to race, we examined what was
6 a very fast-moving flowing incident and that is not
7 unusual, you know, that is -- an occurrence like that,
8 you know, the police will attempt to gain control of
9 a situation as soon as possible, the officers made the
10 decision that they needed to use a level of force in
11 respect of that. But consider that, you know, race --
12 just because it was a black person they were dealing
13 with, no. No.

14 Q. I put -- I was talking to Lesley Boal about hypotheses
15 and a race hypothesis which I think I mentioned to you
16 on Friday and I put that scenario to her and asked if
17 from that evidence whether that would permit
18 an investigator to rule out the race hypothesis, and her
19 reply on Day 65 of the Inquiry was:

20 "Answer: To rule it out, no. I would be putting
21 that potentially supporting -- potentially supporting
22 the suggestion."

23 So she thought that may be evidence that may support
24 one of the hypotheses regarding race. Did you consider
25 any of that at all?

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1 A. Yes, yes.

2 Q. That is fine. If we can look at the pdf page, I think
3 it's 34, page 239 on the actual PIRC report. So you see
4 here on the screen section 16 of this report:

5 "Allegations of potential Data Protection Act
6 offences."

7 16.1 repeats that:

8 "On 18 August 2015, Mr Aamer Anwar, Solicitor for
9 the family ... made a number of allegations against the
10 nine initial police officers who attended and dealt with
11 Sheku Bayoh on the morning of ... 3 May~..."

12 And:

13 "[He] alleged that the officers detailed below who
14 had been at the incident at Hayfield Road on [that date]
15 had unlawfully undertaken checks on police computer
16 systems in breach of the Data Protection Act 1998. He
17 communicated these allegations in letters to the PIRC
18 and to the Lord Advocate. The Lord Advocate directed
19 the PIRC to investigate the allegations."

20 So this became part of your investigation --

21 A. Yes.

22 Q. -- in connection with Mr Bayoh's death. For those
23 members of the public who are listening, can you just
24 briefly explain what all this means. What is the
25 problem in relation to data protection?

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1 A. Well, obviously Police Scotland -- they hold a huge
2 amount of data and personal data on individuals and
3 lawfully hold it in respect of that. The data is held
4 on different systems for different reasons, you have the
5 criminal history system, which as it says is a record of
6 people who have been convicted of criminal offences, and
7 what that offence is and when it occurred. That will
8 also hold information in respect of pending cases, and
9 if that pending case is -- they are found not guilty,
10 that will disappear from that record.

11 The police have other systems, they have the
12 Scottish Intelligence Database where intelligence is
13 held on individuals. Just as it sounds, it's
14 individuals who are believed to be held in criminality
15 and there is a formal process of -- that has to go
16 through before police will be able to record that as
17 intelligence on the system, there is a recognised
18 process from that sort of thing.

19 There will be a number of other systems, off the top
20 of my head here I can't remember them but -- so Mr Anwar
21 made an allegation that the nine officers had -- he
22 believed they had been unlawfully undertaking checks on
23 the police computer systems in respect of the -- and
24 after the list of the officers there is a list of named
25 persons who he believed are in the main, it was members

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1 of the Bayoh family and himself and other principal
2 witnesses, I think Zahid Saeed was there.

3 Q. We will come on to that.

4 A. Yes.

5 Q. Am I right in thinking the police in their role as
6 police officers are permitted to access that personal
7 data for police reasons: investigations or matters of
8 that sort?

9 A. Yes, there has to be a policing purpose for accessing
10 it, and there's different levels of access.
11 Everybody -- every police officer has not got
12 unrestricted access to all that material, particularly
13 if you consider the Scottish Intelligence Database
14 because there will be intelligence there on organised
15 crime groups and suchlike. So, there is --

16 Q. It would be sensitive data --

17 A. Yes.

18 Q. -- that is held?

19 A. Absolutely. It's all sensitive but some may be classed
20 as more sensitive and there is classifications regarding
21 that. I have to say, John McSporran is more the person
22 in respect of asking round about that because John was
23 the project manager for the Scottish Intelligence
24 Database in the police. So, yes there was -- we had no
25 evidence that that had been undertaken by the officers,

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1 what Mr Anwar, what -- what his allegations were that he
2 thought that this had happened, I don't know. But the
3 Lord Advocate instructed us to examine that aspect of
4 it, and that is what we did.

5 Q. So it became part of your terms of reference?

6 A. Yes.

7 Q. You were obligated to look into that and investigate it?

8 A. The Lord Advocate has directed, so yes.

9 Q. That is the Lord Advocate, and where we have referred to
10 Crown Office, that is synonymous with an instruction
11 from the Crown?

12 A. Yes, it is. Yes, yes.

13 Q. So you have talked about the policing purpose?

14 A. Yes.

15 Q. So different officers have different levels of clearance
16 or access?

17 A. Yes.

18 Q. But all officers have to have a reason, a justification,
19 for accessing what can be personal or sensitive data?

20 A. Yes, yes. Sorry, not all the officers have access to
21 every system. There is only -- if I take CHS, Criminal
22 History System, there is only a certain amount of people
23 trained to access that, so not every officer has -- is
24 able to access it, they need to be trained and they need
25 passwords and suchlike to get into the system.

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- 1 Q. So accessing any of this data is tightly controlled?
- 2 A. Yes.
- 3 Q. Am I correct in saying that if you access potentially
4 sensitive or personal data and you don't have that
5 authority, then that could amount to a criminal offence?
- 6 A. Yes, it could, and you don't have a lawful reason to be
7 accessing it, yes.
- 8 Q. So the absence of a lawful reason or a policing
9 purpose --
- 10 A. Yes.
- 11 Q. -- could end up with serious consequences for officers?
- 12 A. Yes, that is my understanding. You can't just go in
13 because you want to go in and have a nosey.
- 14 Q. Then, as you said, if we look down that page the
15 officers who were named were the nine officers who
16 attended at Hayfield Road on 3 May.
- 17 A. Yes.
- 18 Q. And a list of names and a personal details were given in
19 relation to some family members of Mr Bayoh?
- 20 A. Yes.
- 21 Q. His partner Collette Bell?
- 22 A. Yes.
- 23 Q. And then also people we have heard were friends of
24 Mr Bayoh, so Kirsty MacLeod, Martyn Dick, Zahid Saeed.
25 Lorraine Bell, who is the mother of Collette Bell, we

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- 1 have heard about her.
- 2 A. That is correct.
- 3 Q. And the final name there is for Mr Anwar, who is the
- 4 solicitor for Mr Bayoh's family.
- 5 A. That is correct, yes.
- 6 Q. So you were given all of this detail and it says there:
- 7 "Audits were conducted on the following police
- 8 computer systems for the period 3 May 2015 to
- 9 18 August 2015."
- 10 So you covered that period after the death of
- 11 Mr Bayoh?
- 12 A. Yes, yes.
- 13 Q. If we move on to the next page. You list the databases,
- 14 and then in addition to that matter it says at 16.2:
- 15 "Mr ... Anwar further alleged that unnamed staff of
- 16 Police Scotland may have unlawfully undertaken checks on
- 17 police computer systems on the persons listed in the
- 18 last section ..."
- 19 That we saw.
- 20 A. Yes.
- 21 Q. Again, that would be in breach of data protection rules.
- 22 So it was not just the nine officers who had attended
- 23 Hayfield Road?
- 24 A. No.
- 25 Q. It was a wider search?

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1 A. Yes, it was twofold basically, yes.

2 Q. To see not just that the individual officers had done
3 any checks but people who may have done those broader
4 than that --

5 A. That is correct, yes.

6 Q. -- immediate list. If we can move on please. I don't
7 need to look at the details of the databases. So we can
8 move right on.

9 So:

10 "On 19 August 2015, Detective Sergeant
11 Katrina Thompson ... Police Scotland was instructed to
12 carry out an audit of the above police systems to
13 establish who had accessed the records of the
14 individuals listed above between the periods specified,
15 and in particular to establish if any of the nine police
16 officers listed above had accessed any of the records
17 and, if so, to establish if this was for a legitimate
18 policing purpose."

19 A. Yes.

20 Q. So an officer from Police Scotland was tasked with
21 carrying out that audit. Now, you have said to us on
22 Friday that PIRC, at that time at least and I think you
23 said even now, have no access to Police Scotland IT
24 systems?

25 A. No.

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- 1 Q. So you did not have the necessary authorisation or
2 access to do that audit yourselves?
- 3 A. No.
- 4 Q. So am I right in saying that is why a Police Scotland
5 officer was tasked with that audit?
- 6 A. Yes.
- 7 Q. So this was the first audit carried out.
- 8 A. That's correct.
- 9 Q. You were provided with a report of that audit, which
10 I think we can find on page 245 of the -- which may be
11 page 40 pdf. Can we go to the top of that page,
12 thank you. You were advised that in relation to those
13 nine officers each of the systems had been checked but
14 they had not been searched by any of the nine named
15 officers who had attended Hayfield Road?
- 16 A. That is correct, yes.
- 17 Q. If we can look at page 246, page 41 pdf. It says:
18 "On 5 November Police Scotland were further tasked
19 with carrying out an audit in respect of Mr Anwar, the
20 solicitor for the family."
- 21 A. Yes, I think the first audit because there wasn't a year
22 of birth, they were unable to identify properly. So
23 there was a further audit requested in respect of that.
- 24 Q. So the first audit is carried out by an officer from
25 Police Scotland. You get a report saying there is

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1 nothing?

2 A. Yes.

3 Q. Then a second audit is carried out, again by
4 Police Scotland?

5 A. Yes, DS Stephen Clarke.

6 Q. For the same reasons and this was in relation to
7 Mr Anwar?

8 A. That is correct.

9 Q. It says here that:

10 "This identified that Mr Anwar was recorded on one
11 of the systems."

12 A. That's correct, yes.

13 Q. If we can look at page 247. We see there the response
14 to the first audit, none of the nine officers had
15 conducted a search on the system:

16 "A search of the systems identified that
17 the following officers had accessed [one of the records]
18 pertaining to Mr Anwar."

19 So there are names there, they are redacted. It is
20 not relevant for my questioning to name the individual
21 officers. But there were three bullet points there,
22 regarding three officers who had accessed records in
23 relation to Mr Anwar?

24 A. That's correct.

25 Q. So the next step, as I understand it, that was taken by

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1 PIRC is at the bottom of the page:

2 "Following the provision of this information,
3 Police Scotland were asked to provide statements from
4 every serving police officer and a member of staff in
5 relation to each of the checks identified through all
6 the audits giving their reason for undertaking the
7 checks in accordance with the Data Protection Act."

8 So two audits, both carried out by Police Scotland?

9 A. That's correct.

10 Q. Because essentially PIRC don't have the -- they don't
11 have the access?

12 A. No, no, we can't access it.

13 Q. So, although you have been tasked with carrying out
14 an independent investigation --

15 A. Yes.

16 Q. -- you are required to rely on the support of
17 Police Scotland officers?

18 A. Yes, and that is still the case now for something like
19 that.

20 Q. It's still the case now?

21 A. Yes.

22 Q. Is there any facility that allows you to check the work
23 being carried out by Police Scotland officers in doing
24 this audit? Do you sit on their shoulder?

25 A. No, I didn't sit on their shoulders. I didn't --

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1 bearing in mind they're checking across four systems and
2 suchlike~... I have to be honest in my police career
3 I only had access -- I certainly didn't have access to
4 CHS myself, I had access to SID to a certain level in
5 respect of that, so yes. And there was a large number
6 of officers had access to systems in respect of the
7 names, not the nine officers but then there was -- and
8 I can't remember, I think it was maybe 75/76, if
9 I remember rightly --

10 Q. We will come on to that.

11 A. My apologies. So, apart from, as you identified, once
12 the audit is done actually going back to them and
13 saying: right, okay show me what you did. How did you
14 do it, why did you do it? I didn't do that, no.

15 Q. Is that something that would have been permitted given
16 that these systems are protected, and the information is
17 protected?

18 A. I would -- in respect of SID and the entries to
19 Mr Anwar, I don't know if I would have been permitted,
20 and you might come on to that, I don't know. But
21 I don't know if I would -- because I don't have the
22 authority to view that, so I -- it is not something
23 I did, it's not something that I have asked previously
24 to sit on the shoulder in respect of this system.
25 Because it is controlled, it is managed, and it is

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1 limited access once you start getting to the more
2 sensitive aspects. So did I have the authority to do
3 that?

4 Q. So as a police officer you didn't have the authority --

5 A. No --

6 Q. -- and as a PIRC investigator you are not -- is it fair
7 to say you are not sure whether that would have been
8 permitted, you would have the authority to do that?

9 A. I never asked so I wouldn't know what the answer is, but
10 I certainly -- I wouldn't envisage Police Scotland
11 saying, "Yes, that's fine, just come in and look that",
12 because it was at the higher level of access.

13 Q. Thank you. We heard evidence previously, I think I took
14 you to documents at the very beginning of your evidence
15 last week where we looked at the importance of
16 Article 2 --

17 A. Yes.

18 Q. -- of ECHR and the five principles.

19 A. Yes.

20 Q. And there was guidance at the outset of PIRC that one of
21 those principles was independence?

22 A. Absolutely.

23 Q. I think we have heard evidence that that was emphasised
24 to investigators and it was seen as a very significant
25 part of the investigation.

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1 A. Yes.

2 Q. Thinking back now to these two audits that were carried
3 out, do you have concerns about them being an example of
4 the police investigating questions about the police?

5 A. I think I have alluded on a number of occasions is we
6 require the assistance of policing bodies to conduct
7 investigations. You know, we require assistance at --
8 you know, when an incident happens because it takes us
9 time to get there, we are only based in the one place in
10 the country. We're only available -- there's only staff
11 Monday to Friday, 8 to 4 with a limited out of hours.
12 We don't have access to sensitive material. Would we
13 all get access to the sensitive material? I doubt we
14 would. Maybe if we could get ourselves access to the
15 systems we could train one or two people up that
16 would -- to a certain level that they could do that
17 checks for the moment.

18 There is challenges in us -- in PIRC maintaining
19 that complete independence where we would have no
20 reliance on Police Scotland -- I am saying
21 Police Scotland because they are the biggest
22 organisation. We have other challenges if you take any
23 investigation we do with the Ministry of Defence,
24 British Nuclear, these are all kind of guarded sites,
25 getting access to them, suchlike. But for this -- and

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1 although I said earlier in my evidence about, you know,
2 we were promised -- well, I would say we were promised,
3 my understanding is we were going to get one of these
4 systems as view only so to a certain level we could look
5 at it and here we are ten years past we've still not got
6 access to it.

7 Part of that is not just -- Police Scotland are
8 happy for us to get access to that, that view only.
9 They are happy for that. It's a technical issue and how
10 PIRC sits in the Scottish Government framework whereas
11 Police Scotland have their own individual framework,
12 it's different is my very limited knowledge of the
13 challenges.

14 So it's all very well saying: well, you should.
15 Yes, we should, we should. We should have independent
16 access but we wouldn't get independent access to the
17 higher levels of the Scottish Intelligence Database.
18 Because I could not envisage an investigation that would
19 merit that, unless there was something to do with
20 an organised crime thing, a terrorist. And we do
21 deal -- we do get access to ... there's other sides of
22 information that we deal with, you know, and not just in
23 this -- Police Scotland have other systems that are
24 very, very secure and very closed, that we have had to
25 gain access to. An example I would give would be in

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1 respect of a covert human intelligence source. I dealt
2 with an investigation regarding a covert human
3 intelligence source that died. Now, that was all
4 kept -- you know, that was a very closed investigation
5 from PIRC's point of view, but I had to rely on
6 Police Scotland giving me that because I couldn't go in
7 and ask -- you know, search about that system.
8 Absolutely not because then you would have absolutely
9 a major risk to the lives of these people.

10 So I take your point about independence but I don't
11 know how we would actually get that. I don't know how
12 we would get it.

13 Q. Is this an issue that perhaps the Commissioner herself
14 would have been dealing with at that time regarding
15 access to police systems?

16 A. I don't know.

17 Q. You don't know?

18 A. I don't know. But it is still an issue, you know if
19 I asked -- I'm not there anymore but if I had
20 an investigation today and I went and asked for that
21 I couldn't go and do that. I couldn't go and do that.

22 Q. Thank you. On page 247 of the report, which I think is
23 page 42 of -- yes, we are on that. There is a section
24 that says:

25 "Following the provision of this information ..."

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1 A. At the top.

2 Q. "Following the provision of this information,
3 Police Scotland were asked to provide statements from
4 every serving police officer and member of staff in
5 relation to each of the checks identified through all
6 the audits giving their reason for undertake the checks
7 in accordance with the Data Protection Act ..."

8 Was this in order to identify -- how did you
9 describe it -- policing purposes?

10 A. Yes, why were they carrying out that check, what was the
11 purpose of it? Yes.

12 Q. Then:

13 "Statements were not requested from those officers
14 now retired who had carried out checks, nor from
15 officers/members of staff from organisations not members
16 of Police Scotland."

17 Why was this approach taken? Why was it agreed that
18 retired officers would not be asked, officers or members
19 of staff from organisations not members of
20 Police Scotland? Why was that approach taken?

21 A. I have no power to investigate retired police officers,
22 PIRC has no power to investigate retired police
23 officers, so if we are conducting an investigation and
24 that police officer retires we can't go forward with
25 that.

Transcript of the Sheku Bayoh Inquiry

- 1 Q. Does that remove them from your jurisdiction?
- 2 A. Yes. Yes, I can only deal with police officers or
3 members of police staff who are currently serving, and
4 only in respect of from 1 March 2013 -- 1 April, sorry,
5 when we went live. So if it was anything that pre-dated
6 that, I had no jurisdiction there.
- 7 Q. Was your views about that; could that be improved as far
8 as PIRC is concerned?
- 9 A. I think if we have commenced an investigation and then
10 the person retires during the course of that
11 investigation, we should be allowed to continue that
12 investigation. That is my own personal view.
- 13 Q. At the moment you are not?
- 14 A. I am not allowed to, no. No.
- 15 Q. So could in theory a significant amount of resources and
16 effort be put into an investigation but if the officers
17 you are investigating retire --
- 18 A. Yes.
- 19 Q. -- that means that is the end of all of that work that
20 you have done?
- 21 A. Yes.
- 22 Q. Has that -- have you experienced that?
- 23 A. I don't think I have personally experienced it but it
24 has happened within the organisation on a very high
25 profile investigation.

Transcript of the Sheku Bayoh Inquiry

1 Q. As well as -- you have spoken about the retired
2 officers, when it comes to members of staff from
3 organisations who are not members of Police Scotland, is
4 the position the same, that they are outwith your
5 jurisdiction?

6 A. Well, if they are not members of policing bodies that
7 the legislation allows us to investigate.

8 Q. So in relation to a situation where there is a matter
9 you are investigating which does encompass actions both
10 by officers and people who are members of another
11 organisation, does that hinder your investigation?

12 A. Well, I -- I can't progress that side of it, and it
13 would need to be -- you would need to highlight that to
14 Crown and Crown would need to make a decision whether
15 they want Police Scotland to investigate that or
16 instruct another policing body. And actually in respect
17 of that aspect, I have had an investigation and
18 Police Scotland brought in Merseyside Police to do that
19 side of the investigation. That was -- my apologies,
20 that was in respect of retired officers, I forgot about
21 that. Yes.

22 Q. So again, you had what I think you described last week
23 as a parallel investigation between PIRC and the police?

24 A. Yes.

25 Q. But on this occasion the parallel police investigation

Transcript of the Sheku Bayoh Inquiry

- 1 was dealt with by a completely different area --
- 2 A. Yes, a force external to Scotland actually, yes.
- 3 Q. Thank you. Then the next paragraph -- sorry, so where
- 4 in this situation we may have heard that officers
- 5 retired, perhaps on medical grounds?
- 6 A. Yes.
- 7 Q. Does that also bring your jurisdiction in the matter to
- 8 an end?
- 9 A. It would. I think we were able to conclude this
- 10 investigation or the report was submitted prior to
- 11 retirement, if I remember rightly.
- 12 Q. Right, thank you. It then goes on to say:
- 13 "This resulted in the submission of 69 statements."
- 14 A. Yes.
- 15 Q. "Examination of the statements raised some concerns
- 16 regarding the justification of the checks outlined
- 17 below, as an immediately apparent reason for officers or
- 18 staff undertaking the checks or accessing the records
- 19 was not evident. On 29 January 2016, the PIRC asked
- 20 Police Scotland to supply additional statements from
- 21 these officers/members of staff in order to clarify
- 22 concerns."
- 23 A. Yes.
- 24 Q. So you were given 69 statements to review?
- 25 A. That is correct, yes.

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1 Q. And someone in PIRC, or a number of people in PIRC
2 reviewed those?

3 A. Yes.

4 Q. And as part of that review, some concerns were raised
5 regarding the justification or the policing purpose --

6 A. Yes.

7 Q. -- for each of these searches. Then in January of 2016
8 PIRC then went back to Police Scotland and asked that
9 they supply additional statements?

10 A. That's correct.

11 Q. Was that in relation to the officers or the staff who
12 were -- whose justifications were causing concern?

13 A. That's correct, yes.

14 Q. If we move on from there, we see that contact was made,
15 and a letter was sent saying:

16 "... Police Scotland would not be approaching the
17 identified officers or members of staff for
18 clarification for the following reasons ..."

19 Lets just go through those:

20 "1. The officers and staff were not provided with
21 the audit record to allow them to give more precise
22 information about their policing purpose. A number of
23 the systems require a reason code to be input which
24 provides the policing purpose and would have assisted in
25 the compilation of the statements. Staff provided

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1 statements without this information."

2 Can I go through each of those sentences with you:

3 "The officers and staff were not provided with the
4 audit record to allow them to give more precise
5 information about their policing purpose."

6 Who would have been responsible for giving these
7 officers the audit record to allow them to give precise
8 information in their statements?

9 A. Police Scotland.

10 Q. We've not approached Police Scotland in this regard.

11 Are you aware of any reasons why the audit record was
12 not provided to all 69 officers?

13 A. No, I am not.

14 Q. "A number of the systems require a reason code to be
15 input which provides the policing purpose and would have
16 assisted in the completion of the statements."

17 Who would have been responsible for providing the
18 reason code to the officers?

19 A. Again, that would be Police Scotland.

20 Q. Again, we have not specifically gone to Police Scotland
21 to ask. But are you aware of any particular reason why
22 a reason code was not given to each of these officers?

23 A. No.

24 Q. Then:

25 "Staff provided statements without this

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1 information."

2 In relation to this reason, do you have any other
3 information that you are aware of that would explain the
4 background?

5 A. No. I mean, if we go back -- I can't remember if it was
6 I or John that communicated the request for the
7 explanation, you know, or for the initial statements.
8 My recollection is it was quite clear the purpose of
9 what we were asking for, you know, so why the staff were
10 not provided with this additional information that would
11 have assisted them to provide a fuller picture of their
12 rationale and reason for accessing the systems~...

13 Q. "2. Officers and staff are not routinely required to
14 provide statements justifying their access and there is
15 no policy which requires them to keep a record of each
16 check they make, therefore it is not surprising that
17 individuals who work on numerous systems on a daily
18 basis have no recollection of why the checks were made.
19 This does not infer that they have acted criminally."

20 Again, can we have a look at that. So this was
21 information -- if we can move back up the page this was
22 information you were provided that there is no routine
23 requirement to justify access and keep a record of that.
24 Is that your understanding?

25 A. That is -- that's what they are saying there but my

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1 understanding is there is a requirement -- there is
2 a requirement within the system: why are you checking
3 this?

4 Q. Is that a prompt that requires that during the system,
5 or do you know anything about it?

6 A. I am not too sure, I think it is codes. I think it is
7 a code, that they put in a code.

8 Q. Thank you. Let's move on to the next section of this
9 response:

10 "There is no allegation or evidence that any member
11 of staff has acted illegally in accessing systems and
12 none of the audit checks reasonably infer that any
13 checks have been other than for a policing purpose.
14 There are, therefore, no grounds to interview under
15 caution or indeed make an approach for further
16 statements. Indeed any approach would be unfair as the
17 officers are neither subject officers nor witnesses."

18 That speaks for itself.

19 A. Yes.

20 Q. "If PIRC considers that there are any ulterior motives
21 for the checks being carried out, then further
22 statements cannot be obtained from staff and instruction
23 will be required from CAAPD to interview the individuals
24 under caution, in the same way PSD would deal with
25 an 'on duty inference of criminality'. From the

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1 information already gleaned there are no grounds, in my
2 opinion, to interview anyone under caution."

3 Looking at that response the police have obviously
4 said: we do not wish to give you those additional
5 statements that you have requested.

6 A. Yes.

7 Q. So the PIRC investigation directed by the Crown has
8 reached a barrier?

9 A. Yes.

10 Q. Can I ask you in relation to this, we have looked at
11 Article 2.

12 A. Yes.

13 Q. We have looked at the importance of an adequate
14 investigation by PIRC.

15 A. Yes.

16 Q. In terms of thoroughness or completeness of the
17 investigation, where did PIRC consider they were in
18 relation to this aspect of the Crown's direction?

19 A. We obviously hit a kind of block, a hurdle here.
20 I can't remember all the discussion around about it,
21 I must admit I was very surprised when this letter came
22 in, in particular the -- it is fair enough to say the
23 tone of it in respect of if you are -- basically if you
24 are wanting to interview the staff then you will need to
25 do it under caution, you know, from that point of view.

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1 I can't remember what discussion there was with --
2 with Crown in respect of this, I have to be honest with
3 you. We didn't get these statements. I can recall
4 that, and we -- we criticised and -- I say criticised,
5 in the report we highlighted that this created an issue.

6 As I said, not throwing it back it John, but John
7 has a better understanding of these systems than me
8 because he was the head of intelligence where a lot of
9 these systems are all kind of used in, and he understood
10 the legality better than me in respect of what codes are
11 required, when they need to put the codes in. So we
12 reported this to the Crown and I think if -- if you go
13 to our findings there is critical comment made in the
14 report about that, but we were never asked to pursue
15 that by Crown is my recollection.

16 Q. We will come on to this. Did you have any concerns in
17 relation to the Article 2 five principles, about whether
18 there was a sufficient element of in a sense public
19 scrutiny in regard to this? Did you feel satisfied that
20 the public would be satisfied your investigation had
21 been completed?

22 A. No, because it hadn't been completed, you know, so it
23 hadn't been completed. Personally what did I think at
24 the time? I remember the words I used, I remember being
25 surprised and disappointed in -- in this challenging

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1 approach because I thought what the request, what was
2 being asked, once the Lord Advocate instructed it then
3 it is -- to me it wasn't a difficult question to be
4 answered. Why did you access; what was the policing
5 purpose? The inference there is that a number of staff
6 are not recording their policing purposes, people who
7 are routinely doing checks, because as I said there is
8 only a certain amount of people that have the authority
9 to do checks, so they will have multiple checks to do
10 daily, I understand that. But if the system requires it
11 and there is a lawful rationale why it's there, then it
12 should be recorded and I think that -- if I remember
13 rightly, I think that is the kind of -- you know, in our
14 findings that we were critical of.

15 Q. The Chair obviously can consider the PIRC report in its
16 entirety --

17 A. Yes.

18 Q. -- in due course. Can I ask you now to look at page 249
19 of volume 3 which is I think pdf page 44. Can we move
20 down the page, please. You will see that there is
21 reference there to statements and some further
22 information that was provided to you by Police Scotland.

23 A. Yes.

24 Q. Then we come to the section, "Access to records of
25 Mr Anwar".

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1 A. Yes.

2 Q. There is reference here, we noted above there were three
3 officers that you were looking for more information
4 from:

5 "The statements provided by~... raised a number of
6 concerns in relation to the gathering of and retention
7 of intelligence on Mr Anwar, which would appear to be
8 linked to his employment as a criminal lawyer and his
9 activities as a campaigner for Human Rights. It also
10 gave rise to a more general concern on why
11 Police Scotland was holding intelligence on Mr Anwar."

12 Then it says:

13 "On 28 January 2016, the contents of each of the
14 statements by the aforementioned staff ..."

15 That will be the three whose names are blacked out?

16 A. Correct, yes.

17 Q. "... and their reasons for accessing or gathering and
18 processing intelligence on Mr Anwar was raised by PIRC
19 investigators McSporran and Little at a meeting~..."

20 That is a meeting that you had with some senior
21 police officers --

22 A. It was, yes.

23 Q. -- in relation to this specific issue?

24 A. That is correct, yes.

25 Q. What were your concerns at that time about these records

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- 1 that were retained by Police Scotland?
- 2 A. That Police Scotland never had a lawful purpose for
3 retaining -- for keeping such a record.
- 4 Q. Did you want to check the position --
- 5 A. We -- we wanted to explore why. Again, I am going to
6 defer to John, John has more knowledge in that area
7 because this was in respect of one system that, as
8 I said, John had been the project manager of, so he knew
9 the system inside out. But the lawfulness of why that
10 was kept, then yes, there were concerns about that so we
11 asked for a meeting with Police Scotland to explain
12 this.
- 13 Q. We've heard evidence from Pat Campbell, who was the SIO
14 from the police perspective --
- 15 A. Yes.
- 16 Q. -- and he talked about intel and the significance of
17 intel information --
- 18 A. Yes.
- 19 Q. -- in relation to a police investigation into
20 an unexplained death.
- 21 A. Yes.
- 22 Q. He explained that counter terrorism was very quickly
23 ruled out in this situation with Mr Bayoh.
- 24 A. Yes.
- 25 Q. He indicated that, having ruled that out, there wasn't

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1 really any other reason why this type of intel would
2 assist an investigation that he was carrying out into
3 the death of Mr Bayoh.

4 From your experience, Mr Little, do you think in
5 terms of an investigation into the death of Mr Bayoh,
6 that searching for intel in relation to the family of
7 Mr Bayoh would be of assistance in relation to any sort
8 of investigation into his death?

9 A. No. You have got to have a -- we have got to have
10 an investigatory reason why we would be doing that,
11 okay? In this instance yes, we did ask the question in
12 respect of Mr Bayoh, in respect of that, yes. But there
13 was nothing in Mr Bayoh's background on records held by
14 Police Scotland -- and they did hold records -- held by
15 Police Scotland in respect of Mr Bayoh that would --
16 that I believed -- and I think, you know, it is my
17 belief and John's -- that, you know, that raised any
18 concerns regarding terrorist activity. There was
19 nothing -- nothing there is my understanding of -- you
20 know, of a terrorist or potential terrorist incident.

21 Q. We have heard that.

22 A. Yes. So for what reason then would that then progress
23 on to conducting checks against the whole family?
24 I have got -- my argument is I have got to have
25 an investigatory reason and rationale to take the next

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1 step, I can't just say: I will go and do that because
2 there might be something there. I have to have
3 a rationale and reason for doing it.

4 Q. In terms of your role in the PIRC investigation, did you
5 have any reason to carry out checks of that sort or to
6 request checks of that sort be carried out for the
7 purposes of your investigation?

8 A. Against the family?

9 Q. Yes.

10 A. No.

11 Q. Now, there was also an issue, as I understand it, in
12 relation to paragraph 266 in your Inquiry statement. If
13 we can leave this report to one side at the moment, and
14 turn to your Inquiry statement and look at paragraph 66.
15 So it's 421. I think here you say that there was -- the
16 meeting covered a number of points and there was
17 an issue with Police Scotland releasing telephone
18 records that they held?

19 A. Yes, that's correct.

20 Q. And also identifying a suitable person who could explain
21 why Police Scotland had raised and held intelligence on
22 Mr Anwar. So two aspects there: telephone and
23 getting -- I think it became known as an overarching
24 statement?

25 A. Yes.

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1 Q. Can we deal with the telephone first of all.

2 A. Yes.

3 Q. Can you explain what the issue was in relation to that
4 matter?

5 A. That was in respect of another -- one of
6 the instructions from the Lord Advocate on this
7 2 September, and that was instructing us to look at --
8 it was an ongoing criminal investigation being conducted
9 by Police Scotland against three of their police
10 officers -- their own staff, three police officers, and
11 it related to racist -- apparent racist communication
12 between the three via WhatsApps and text messages
13 I think it was, so~...

14 So there were three officers and they were based at
15 Kirkcaldy, where the nine principal officers were, so
16 we -- we asked Police Scotland to examine the records in
17 respect of that investigation, which they permitted us
18 to do. And it was identified that they had seized
19 telephones, mobile phones from two of the officers, so
20 I then asked I could have a copy -- well, I asked them
21 if they had done an analysis of the telephones, and they
22 said -- they told me they had done an analysis of one of
23 the telephones, and I asked for access to that data.

24 My intention was, and my rationale and reasoning for
25 that was I was going to get the data and I was going to

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1 cross-refer that data against the telephone information
2 we had in the nine police officers to see if there was
3 any cross communication between the two of them.

4 It was a huge amount of data, I think it was
5 57,000 pages or something like that, telephone data is
6 monstrous. So I asked -- said about, you know -- and
7 this is not just one conversation, this is over a series
8 of conversations, emails, and I asked about the second
9 and they said, "No, we don't have that". But I had
10 a previous email from them which said they did have that
11 data, so I said, "Well, I have got this email which says
12 you do have the data from this other officer", and then
13 it came to light and they said, "Yes, we do have it",
14 although they told me they didn't have it. They said,
15 "We do have it but we don't think you are entitled to
16 it."

17 That's a different issue there, that is not you
18 don't have it, that's what you do have. So part of this
19 conversation round that was getting access to the
20 telephone records, we eventually got them, and it became
21 like the -- the legal side of Police Scotland became
22 involved with that, and it was -- they had taken it for
23 a particular policing purpose, and I understand, that
24 policing purpose, we were requesting it under our powers
25 but they felt -- and I think it was a legal stance, they

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1 felt that well, we've taken it from that, that does not
2 allow us to hand that over to you, so how do we find
3 a mechanism of doing that.

4 One of the things I was surprised about is well this
5 was -- theirs was a Crown directive, it was a criminal
6 investigation so it was under direction of Crown, is
7 approaching -- I did approach Crown in respect of how do
8 we get this data and it was, I think, more
9 a conversation, because I think, well it was taken for
10 that purpose, that policing purpose, I understand that,
11 but it is now held in evidence that Crown have got,
12 Crown you've directed us to conduct this investigation,
13 we have got an instruction from the Lord Advocate to
14 investigate that particular incident, but I can't get
15 the data that would allow me to establish if any of the
16 nine principal officers were in telephone communication
17 with these three officers who were, you know, alleged to
18 have committed a racist crime.

19 Q. Right. So you wanted it to progress in a sense the
20 racism part of your investigation?

21 A. Yes.

22 Q. It sounds like a very complicated issue involving
23 a legal matter?

24 A. Yes.

25 Q. But ultimately that was resolved and you did get the

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- 1 records you needed?
- 2 A. We did get them. We eventually got them, yes.
- 3 Q. So that aspect of your investigation, a line was drawn
4 under that?
- 5 A. Yes, it was. Because I cross-referred -- as I said, it
6 was tens of thousands of pages of records
7 and I cross-referred it against the mobile and home
8 telephone numbers of the nine principal officers.
- 9 Q. I think ultimately there wasn't any connection?
- 10 A. No, there was no connection.
- 11 Q. But that investigation was concluded --
- 12 A. So that side, yes, we couldn't conclude that there was
13 any kind of ...
- 14 Q. Then, in addition, the other matter that you mention in
15 paragraph 266 is identifying a suitable person with
16 Police Scotland who could explain why Police Scotland
17 had raised and held intelligence on Mr Anwar?
- 18 A. Yes.
- 19 Q. Again, I think there were issues in securing what came
20 to be known as an overarching statement?
- 21 A. Yes, there was.
- 22 Q. As you have done already with the telephone records,
23 could you generally give us a summary of the
24 difficulties you experienced there?
- 25 A. Yes. So we did meet and we discussed with that -- I see

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1 Duncan Campbell is there. I think he was the head of
2 legal at Police Scotland at the time. We discussed this
3 matter of the intelligence held in respect of Mr Anwar
4 and the rationale and the legality of it, and we said --
5 we asked somebody, "Can you please explain to us why you
6 view this as being lawfully and legally held?" I think
7 at that meeting there was a consensus: we shouldn't hold
8 this intelligence. I think there was a consensus of
9 that, but we still needed somebody to explain why they
10 had it, because they did have it, and we had the
11 records. So at that time it was identified that --
12 I know it says Detective Sergeant Dewar in the question
13 that you asked me but he was a Detective Superintendent
14 Dewar at the time and my understanding he was deputy
15 head of the National Intelligence Bureau at that time,
16 that he would supply such a statement. That didn't
17 happen, because Mr Dewar retired shortly after that
18 meeting. What was disappointed was he knew at
19 that meeting that he was retiring and we didn't get
20 a statement from Mr Dewar. So when I asked about
21 the statement Mr Dewar saying -- when I asked Mr Dewar
22 basically he said, "I'm finishing up in a couple of
23 days' time, I'm not doing a statement."

24 So then it became a case of who is going to give us
25 a statement. So we then approached the new deputy head

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1 of National Intelligence Bureau and she was not long in
2 position at the time and she deferred that to a member
3 of her staff. I contacted that member of staff and
4 I arranged a time to go up and see him and meet with
5 him, and I went and met that member of staff and when
6 I explained what it was he says, "I'm not giving
7 a statement". He refused to give a statement; "that's
8 not my position to give a statement." So we then became
9 in this kind of where are we getting a statement from,
10 because we require a statement to be able to explain to
11 the Lord Advocate why you are holding this intelligence.

12 Q. And ultimately I think you did receive a statement --

13 A. Ultimately -- well, we received a statement in the first
14 instance from a Detective Sergeant, and again I will
15 defer to John on that, but that statement told us how
16 the Scottish Intelligence Database worked, it didn't
17 tell us the rationale and the reason why they were
18 holding that intelligence. So we put that back again to
19 the head of the National Intelligence Bureau and says:
20 no, this is not suitable. We then received a statement
21 from I think it was a DI at the time, Ramsey Wilson, and
22 we got a statement, and again because of John's
23 excellent knowledge of the Scottish Intelligence
24 Database system we said: no, that's not suitable, we
25 hear what you're saying but you need to clarify these,

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1 so I think we went back -- we went to him saying: no,
2 you need to fill in, there's other points here, and he
3 gave us a statement in respect of the holding of that
4 intelligence. So that was many, many, many weeks down
5 the line we kind of back and forth --

6 Q. So again a complicated issue --

7 A. Yes.

8 Q. -- which took time --

9 A. Absolutely.

10 Q. -- to resolve, but ultimately did you receive
11 a satisfactory statement at the end?

12 A. We did, yes.

13 Q. So there was resolution there. Do you feel that you
14 received -- the investigation from your perspective was
15 completed and it was completed in a satisfactory way?

16 A. Eventually, yes. A number of hurdles, as I have just
17 explained; we don't have it, well, we do have it but we
18 are not giving you it. That kind of ...

19 Q. Thinking about the delays which you experienced in
20 regard to these aspects, and obviously Article 2
21 requires reasonable promptness, you have mentioned the
22 delays here, looking to the future, do you see a way
23 that this type of issue could be resolved more quickly?

24 A. The debate round about the legal holding of -- you know,
25 data taken for one purpose, one investigative purpose,

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1 one investigative purpose and another investigatory
2 purpose, you know, seeking it for rationale, and I go
3 back to the fact it was two investigations under the
4 Lord Advocate. There must be a -- you know, there must
5 be a legal framework, mechanism, to say: no, no, that
6 can be handed over timeously. There must be a legal
7 framework in respect of that. The matter round about --
8 the matter round about the intelligence held on
9 Mr Anwar, in my understanding, that intelligence was --
10 as soon as Police Scotland realised they held it, they
11 agreed it wasn't -- it was deleted, in my understanding.
12 I don't know that for sure because I can't go in and
13 check that, is they -- anybody who was asked to do -- to
14 provide a statement was extremely reluctant to provide
15 a statement because -- because I believe they realised:
16 we shouldn't hold this, this is not legal that we are
17 holding this and it has not been -- yes, it has not been
18 put through the process, you know, and -- yes, and there
19 was rationale -- comments on why it was being held as
20 well, which was just ...

21 Q. Can I ask you about -- do you remember you have given
22 evidence about the different types of investigation
23 where it can be Crown-led?

24 A. Yes.

25 Q. And it can be directed by the Chief Constable?

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1 A. Yes.

2 Q. If it is the Chief Constable-led then you have powers to
3 demand documents or statements or such like?

4 A. Yes.

5 Q. But you don't have the same powers if it is Crown-led?

6 A. No.

7 Q. You have talked about this being a Crown-led
8 investigation?

9 A. Yes.

10 Q. If you had had the same powers in this situation as you
11 would in a Chief Constable-led investigation would that
12 have resolved matters more quickly than they were in
13 reality?

14 A. I don't think so in this instance, because
15 Police Scotland were quite adamant: we got this under
16 this powers and our legal advice is that is not
17 compatible with being able to hand over that
18 information. I do recall that when I spoke to Mr Brown
19 in respect of -- head of Criminal Allegation against the
20 Police Division, I spoke to him and I advised him of the
21 challenges with the aspect regarding the second mobile
22 phone data, and I did say to him, I says: look, the only
23 way -- if we keep going on like this, the only way I can
24 see resolving this under the legal framework is
25 I approach you for a warrant and serve Police Scotland

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1 with a warrant in respect to this, and his answer was:
2 you can just use -- the Commissioner's got powers, just
3 use the powers. And I was like: I don't know what
4 powers you think we've got here, you know. Because we
5 certainly didn't have powers as you have described, you
6 know, like we have under a Chief Constable's referral.
7 So I think -- my -- the mechanics of it I don't think
8 would be as simple as just saying -- because what would
9 happen with that I'm quite certain is we would request
10 of it, they would say we will not be getting of it and
11 the mechanics for that is then we would need to go to
12 the Court of Session. So, again, we are just kind of
13 going round here without getting the data.

14 Q. In terms of the suggestion about seeking a warrant, was
15 that done with a view to trying to resolve matters.

16 A. Yes, it was. I was -- I was -- I'm going to use the
17 expression I was "bouncing off" Mr Brown. Within my
18 head I'm saying, "How do we resolve this? We can't keep
19 going on on this, we can't keep going round in circles."
20 My view point was -- you know, is the matter to resolve
21 if you can't get hold of information or data is you
22 serve up a warrant. So I would be serving up a warrant
23 on Police Scotland to hand over that data.

24 Q. And that was done or suggested in a view to eliminating
25 some of the legal issues which you've touched on.

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1 A. Yes, yes, yes. It may not have alleviated but you had
2 to be seen to be taking something forward it. I can't
3 just be: well, we're not going to give you it. That's
4 unacceptable.

5 Q. You have described this discussion with Mr Brown. Did
6 he have any other constructive suggestions about
7 solutions --

8 A. No, not that I recall. Not that I recall. I do
9 remember coming away quite disappointed: that was not
10 a great deal of help there, you know.

11 Q. Equally did Police Scotland any suggestions about
12 possible solutions about how this hurdle could be
13 overcome?

14 A. Not that I recall.

15 Q. Then I think ultimately you eventually went to the
16 Information Commissioner via the Crown --

17 A. Yes.

18 Q. -- to resolve matters.

19 A. Well, that was more -- we reported the -- we reported --
20 it all formed part of the report which you showed
21 earlier that went to Crown, and Crown -- Crown actually
22 came back and gave us an instruction, a Crown
23 instruction, to investigate I think it was -- yes, it
24 was a (b) (i) investigation, so it was a criminal
25 investigation into the actions of Police Scotland

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1 holding that information.

2 Q. That related to Mr Anwar?

3 A. That related to Mr Anwar. So I remember John and

4 I having a discussion about how we were going to take

5 this forward in respect to that, and we set up a new

6 operation which we locked down to just John and I and

7 selected others, because this was quite unprecedented,

8 so we were a bit ... and I can't remember if we went as

9 far as serving a legal notice on Police Scotland that we

10 were going to undertake this investigation at Crown

11 direction, but Crown came back to us basically saying:

12 stop that, and they were in discussion with the

13 Information Commissioner. Now, whether we suggested the

14 Information Commissioner or not would be a better route

15 than a criminal investigation I was unsure of that, but

16 ultimately what happened is Crown directed -- I don't

17 know if Crown can direct information route, but the

18 Information Commissioner agreed to look at the

19 circumstances and establish if there was any criminality

20 that formed under their powers. So ultimately John and

21 I had a meeting with the Information Commissioner. We

22 handed information over to the Information Commissioner

23 and I later, much later, became aware that the

24 Information Commissioner had written directly to Crown

25 and advised that there was -- going to use a phrase "no

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1 proceedings" or it was not taken any further. But then
2 we were later advised that the Information Commissioner
3 were back looking at it again and then we were later
4 advised that that was -- you know, so there was ... yes.

5 Q. So ultimately a route was found to resolve this --

6 A. Yes.

7 Q. -- issue through the Information Commissioner?

8 A. Yes.

9 Q. Not really through the Crown or Police Scotland?

10 A. No.

11 Q. Or PIRC?

12 A. No, and that operation that we started we just shut
13 down.

14 Q. Then that meant that it was -- the investigation to that
15 extent was re-routed to an outside body?

16 A. Yes.

17 Q. And it was removed from PIRC?

18 A. Yes, well yes, because -- well, we had reported the
19 circumstances and then that aspect, we were not asked to
20 take forward --

21 Q. You had given them all the information you had --

22 A. Yes.

23 Q. -- to assist them?

24 A. Yes.

25 Q. And ultimately, as I understand it, the Information

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1 an officer retires they are no longer part of the
2 investigation, if there is an investigation ongoing it
3 would have to come to an end --

4 A. Yes.

5 Q. -- that remains the same if they resign?

6 A. Yes.

7 Q. Can I ask you about -- you have talked to us and
8 explained the statutory framework for PIRC becoming
9 involved in a Crown-led investigation?

10 A. Yes.

11 Q. And I think you gave evidence previously about (b) (i)
12 and (b) (ii). So the Crown can ask -- a Crown-led
13 investigation can either be into alleged criminality on
14 the part of a police officer or into the circumstances
15 of a death which has maybe involved an officer or
16 officers?

17 A. Yes.

18 Q. That would be investigating the circumstances?

19 A. Yes.

20 Q. That is the investigation that you were involved in, in
21 relation to Mr Bayoh's death?

22 A. Yes.

23 Q. As opposed to a (b) (i), which is an investigation into
24 criminality?

25 A. That's correct.

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1 Q. If you are instructed by the Crown to do a (b) (i)
2 investigation into criminality, alleged criminality on
3 part of a police officer, and you are investigating that
4 matter, but the officer involved then retires or
5 resigns, what happens to that investigation?

6 A. Well, we can -- we can't continue, you know, and that
7 would be reported -- the circumstances we had would be
8 reported to Crown and Crown would have to make
9 a decision who takes forward that investigation.

10 Q. Would that go back to a police force of some description
11 likely?

12 A. Yes.

13 Q. Right. Thank you. Can I ask you about -- we are likely
14 to hear evidence in the future that there was a leak at
15 some point about the decision taken by the Crown to not
16 prosecute any of the officers. I think in your
17 statement, 421 at paragraph 353 you explain that -- so
18 353, you say in conjunction with ...

19 (Pause).

20 353. Thank you. Towards the end the first line
21 you:

22 "... do not recall that we took any action to
23 investigate the source of the leak of this
24 information~... and we were never instructed to
25 undertake such enquiries. [You] had no knowledge of the

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1 apparent leak."

2 You say:

3 "I have no views on this matter other than it was,
4 in conjunction with all the previous press speculations
5 and media programmes, unhelpful to the investigation and
6 I am sure caused undue stress to the family and their
7 understanding of exactly what had occurred that day."

8 Could you help us by explaining in what way was this
9 unhelpful to the investigation being carry out by PIRC?

10 A. We had -- I can't remember when the last sort of enquiry
11 we undertook in respect to this, again it will be kind
12 of documented in respect to that. I think in respect of
13 that unhelpful investigation, I am talking about all the
14 other previous speculation, media programmes that were
15 taking place, and I think I said yesterday, you know,
16 that the Lord Advocate and the Justice Minister had come
17 out and asked for it to stop. It was being unhelpful.
18 So I think that is the aspect I am referring to there.
19 But certainly the latter part in respect of Crown's
20 decision appearing in the media before the family became
21 aware of it would undoubtedly cause distress to the
22 family, absolutely.

23 Q. Thank you. Then can I ask you to look at paragraph 357
24 and 358. This relates to the PIRC itself. You will see
25 in 357 it says:

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1 "In August and September 2019 there was reporting
2 that purported to reveal aspects of the PIRC's
3 investigation and content of the Report, specifically in
4 relation to PIRC's investigation of intelligence held by
5 Police Scotland in relation to ... [Mr] Anwar."

6 A. Yes.

7 Q. You say:

8 "I have no idea how this matter was obtained by the
9 media."

10 And you were asked:

11 "What steps, if any, did you and your colleagues at
12 PIRC take to investigate the source of the leak~..."

13 You say:

14 "I did not take any steps to investigate the source
15 of the leaks of information to the media, other than
16 remind my staff of the need to maintain
17 confidentiality."

18 A. Yes.

19 Q. Those answers, together with your previous answer, would
20 you require a letter of instruction from the Crown in
21 order to investigate leaks, either from your
22 organisation or any other?

23 A. I would expect that. I would expect that, rather than
24 us just charging on and doing that. You know,
25 particularly -- as I said, during the course of this

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1 investigation there was just constant commentary in
2 respect of the matter under investigation, so yes,
3 I would have expected that.

4 Q. Albeit there was not necessarily a police officer to be
5 the focus of that investigation in relation to PIRC or
6 Crown?

7 A. Well, we wouldn't know. You know, there was no
8 enquiries undertaken so who was ... There was a number
9 of I would say organisations had access to information
10 and private individuals who had access to information,
11 so ...

12 MS GRAHAME: All right. Thank you. Could you give me
13 a moment, please. (Pause).

14 Thank you very much Mr Little. I have concluded my
15 questions. Thank you.

16 LORD BRACADALE: Thank you. Are there any Rule 9
17 applications? Yes.

18 Mr Little, would you mind withdrawing to the witness
19 room while I hear submissions.

20 (The witness withdrew)

21 LORD BRACADALE: Ms Mitchell.

22 Rule 9 application by MS MITCHELL

23 MS MITCHELL: The first issue is that Mr Little stated that
24 the PIRC identified information was inaccurate and he
25 said that that was disappointing, but wasn't a huge

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1 surprise because the principal officers had given no
2 statements. I have asked to ask this question of
3 a previous witness, as the Inquiry knows, but the
4 question that I want to ask is the fact that somebody
5 had said that Mr Bayoh was in receipt of a knife and he
6 was clearly in possession of a knife as he walked
7 towards officers and that changed, did that not prompt
8 him to make enquiries in that regard, particularly why
9 someone would say that he approached him with a knife
10 when that didn't happen and what the purpose of such
11 a statement would serve to do.

12 If he didn't investigate it, why did it not cause
13 him to investigate it.

14 The next issue is the officer has, throughout his
15 evidence, alluded to the fact that without police
16 statements he did not have much evidence to proceed on,
17 that getting police statements was key. In particular
18 he made reference to that around the unlocking of --
19 unlocking of the stalemate during the post mortem
20 discussions that took place.

21 What I would like to explore with him is what
22 in fact he was aware of. For example, firstly he said
23 that because there had been batons lying around he was
24 concerned that Mr Bayoh might have been batoned to the
25 head. Now, what we know, and has already been heard in

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1 evidence by this Inquiry, is that when Sergeant Maxwell
2 arrived at the scene -- and that is SBPI 00044, I don't
3 need anyone to go to that, I am just explaining that is
4 where you would find it -- that Mr Tomlinson told him
5 that he thought he batoned Mr Bayoh to the head.

6 There is also a police statement of Stephen Kay
7 which is undated, that is PS00345, and it states that he
8 spoke to Maxwell and said that the officers were aware
9 of the dangers of positional asphyxia, especially
10 PC Smith who was an officer safety instructor, and also
11 PC Maxwell also stated that PC Tomlinson claimed he may
12 have struck the male on the head with a police issue
13 baton.

14 So my questions in that regard was, was he aware of
15 that through conversation at the station, and if not
16 ought he to have been made aware of that given that that
17 comes from an officer, Stephen Kay, a senior officer who
18 knew that and could have communicated that to PIRC at
19 the time.

20 The second issue in that same regard is the issue of
21 positional asphyxia. The Inquiry will remember that
22 yesterday evidence was led in respect of this witness
23 that really the key to unlocking that particular issue
24 was the outcome of various expert reports and he
25 wouldn't be able to go further until that time. But

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1 what I would like to put to him was that by -- on 3 May
2 there was a statement obtained from Ashley Wyse on
3 Hayfield Road, and her phone was seized, that contained
4 a Snapchat video of the restraint. And then thereafter
5 a second statement was taken from her by PIRC at 7.20 on
6 5 May and the detail of that raises a considerable
7 number of questions.

8 I have a paragraph from that statement and the
9 questions are does the fact that she says they were
10 lying on top of him, would that give him concern about
11 the way the police acted during the restraint?

12 Does the fact that she said they were pretty much
13 covering his body, would that have given him concerns
14 about the way the police acted during the restraint?

15 Does the fact that she says that a police officer
16 was using a baton to hold him down and it was on the
17 upper of his chest towards his throat, does that give
18 him concern about the way they were restrained?

19 And secondly, he had an opportunity presumably to
20 view the Snapchat video which was within the police
21 control on the 3rd, the evening that Sheku Bayoh had
22 died, and thereafter not only did she grant authority
23 for them to look at it but on the 5th she also granted
24 authority for PIRC to look at it as well, which
25 I probably don't think is necessary but PIRC had that

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1 authority on that date. If he did have the opportunity
2 to watch that video, as we all did, when did he first
3 look at it and was there anything that caused concern
4 about the manner in which he was being restrained and
5 the length of time of the restraint? Because that is
6 information he had available to him at the time.

7 The reason for asking these questions is to try and
8 ascertain whether PIRC carried out a proper examination
9 of the evidence it had before it at the time, because it
10 seemed there was evidence before it in relation to
11 whether or not the restraint was lawful and
12 proportionate but that did not seem to cause any further
13 enquiries to be taken at that time.

14 The next question relates to the witness Mr Barrett,
15 who has not given evidence but has provided a statement
16 to this Inquiry. The Inquiry has heard that Mr Paton
17 and Craig Walker returned to the station and said to him
18 that they needed Federation help or advice, and the
19 witness Craig Walker said in the presence of Alan Paton,
20 "We've just killed somebody", and that reference is
21 SBPI00126.

22 My question to him is should he have been told by
23 a serving police officer, Austin Barrett, that day that
24 that was what had been said, and if so again what would
25 that have caused him to have done or thought?

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1 And finally in respect of these matters, putting
2 together the comment "we've just killed him" along with
3 the Snapchat and along with the statement of
4 Ashley Wyse, whether or not all those things put
5 together ought to have been something that would have
6 caused the enquiry perhaps to go in a different
7 direction, ie for him to consider that there may be
8 criminality involved.

9 The next question relates to Ms Swan. My learned
10 friend counsel to the Inquiry covered this at some
11 length. The Inquiry will remember that there was
12 an initial issue between Ms Swan and the statement taker
13 Ross Stewart, and the witness was asked about this.
14 Firstly to ask this witness why isn't there an initial
15 statement about what happened from Mr Stewart? Had it
16 not been for the recollection of others, one wouldn't
17 have been able to tell that there was a statement which
18 started and stopped and then there was a complaint about
19 the behaviour of PIRC officers.

20 So firstly, why wasn't that statement there?
21 Secondly, he said that he thought there was an issue
22 arising because Mr Stewart said that he had asked her
23 something about how could she remember something when
24 she was young. Well, no doubt information can be
25 further got in that regard but in response he said:

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1 "Answer: We sent a separate investigator from
2 a non-policing background."

3 What I would like to ask him is was it not the case
4 that the first issue that Ms Swan had was that they had
5 sent a former police officer to ask these questions
6 before it became more difficult than that, and that is
7 why after Mr Anwar had made a complaint and Mr Stewart
8 had not continued the interview, that they sent another
9 person in from a non-policing background.

10 In relation to the issue of race, it was explained
11 that -- moving on to the issue of race, it was explained
12 that they examined what was a very fast-moving incident,
13 and explained that it was unusual and said that:

14 "Answer: An occurrence like that, you know, the
15 police will attempt to gain control of a situation as
16 soon as possible, the officers made the decision that
17 they needed to use a level of force in respect of that,
18 but consider that, you know, race -- just because it was
19 a black person they were dealing with? No. No."

20 What I want to ask him is at any point in the PIRC
21 enquiry did they not think this is a black man who has
22 died in police custody. We know that there are issues
23 about the number of black that die in police custody.
24 Ought we not to inform ourselves in relation to the
25 background of such matters, such as the increased number

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1 of men, black men, who are in mental health crisis who
2 die in police custody and why is that black men are
3 disproportionately represented in restraints and death
4 in custody. Was there no broader consideration of that
5 issue? Because it is simply not a black man who had
6 died, it was a black man who had died in police custody.

7 I think in the future it may be that the Inquiry
8 will come to hear issues in relation to race from
9 perhaps expert witnesses, and I think with respect this
10 witness could be asked why PIRC didn't look at the
11 broader issues in coming to that view. I very much
12 obviously understand the forensic view that my learned
13 friend took in going through the particular issues of
14 race in -- that could be seen, but why wasn't a step
15 back from that and a broader view taken?

16 The next issue arises from what my learned friend
17 extracted from the witness about data protection. On
18 the face of it there was a breach of the law in respect
19 of information held about Mr Anwar and it was Mr Anwar
20 who asked for these enquiries to be made, so I would
21 respectfully submit a proper question that ought to be
22 asked was: did he tell Mr Anwar what he had found,
23 Mr Anwar being the subject of data, and if not, why not?

24 In respect of race issues at Kirkcaldy, which is
25 another issue which arose, about the texting between

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1 three members where there was allegations about apparent
2 racist communication between the three, this Inquiry has
3 heard repeatedly from officers, and senior officers at
4 Kirkcaldy, that they don't know of any race incidents
5 and they were asked questions about another text message
6 incident in Fife and knowing whether they knew --
7 whether those had taken place and the outcome of this.
8 I respectfully submit that this officer should be asked
9 what the outcome that enquiry was of the three people
10 who are alleged to have been sending racist messages.

11 Those are my questions.

12 LORD BRACADALE: Thank you. If you could return to your
13 seat and if the Dean comes forward.

14 Rule 9 application by THE DEAN OF FACULTY

15 THE DEAN OF FACULTY: I am obliged, my Lord. Two brief
16 areas for discussion from me, my Lord. The first is
17 that we have heard about the PIRC concern about certain
18 statements made to the public from the Federation and
19 I wish to explore that briefly in the context of those
20 statements being reactive rather than proactive, and in
21 particular that which they were reacting to.

22 The second point, my Lord, is that the witness has
23 deponed that Professor Watson made a statement which he
24 knew to be untrue, which is quite a serious allegation
25 to make of a practising solicitor, and I would wish to

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1 explore that fairly briefly with the witness under
2 reference to the contemporaneous documents relating to
3 the period between 7 May and 3 June in order to explore
4 exactly what was being said on behalf of the Federation
5 about the position of the officers and their
6 preparedness to make witness statements.

7 LORD BRACADALE: Thank you. I will adjourn to consider
8 these submissions.

9 (2.26 pm)

10 (A short break)

11 (2.55 pm)

12 LORD BRACADALE: In relation to Ms Mitchell's application it
13 is probably easier if I indicate the subjects that I do
14 not intend to allow further questioning about.

15 The first of these is the Mrs Swan interview. It
16 seems to me I have sufficient material in relation to
17 that and additional exploration would not assist me.

18 In relation to the failure to have regard to
19 a broader range of issues in relation to -- or pointers
20 in relation to race, it seems to me that that has been
21 thoroughly explored by counsel to the Inquiry and
22 I would not be assisted by further exploration.

23 As to advising Mr Anwar of the outcome of the data
24 protection matters, the PIRC are answerable to the
25 Crown, it would be a matter for the Crown if they saw

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1 fit to deal with Mr Anwar.

2 As to the texting case at Kirkcaldy, parties are
3 no doubt well aware that this is a case that has been
4 litigated extensively in the judicial review, and the
5 Inquiry will keep an eye on this matter, but
6 I don't think would be assisted by exploring it with
7 this witness.

8 The other matters which Ms Mitchell raised, I shall
9 allow her to explore. And I will allow the Dean to
10 explore the two matters that he has.

11 Yes, can we have the witness back please.

12 (The witness returned to the stand)

13 LORD BRACADALE: Mr Little, Ms Mitchell KC, who represents
14 the families of Sheku Bayoh, has some questions for you.

15 Questions from MS MITCHELL

16 MS MITCHELL: Mr Little, you have explained to us that you
17 later found out information that was passed to
18 Keith Harrower initially, a lot of this was inaccurate?

19 A. Yes.

20 Q. And you indicated that whilst it was disappointing, on
21 reflection it wasn't a huge surprise because the key,
22 the principal officers had given no statements, they had
23 made no initial accounts, provided no basic facts, so
24 you were working on information -- you said you were
25 working on information, yes, that while you would expect

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1 it to be reliable, you have to take the caveat that
2 no one had provided evidence.

3 Presumably you have identified it as disappointing
4 because this information somewhere had come from police
5 officers; is that correct?

6 A. Well, it must have come from somebody, you know, and it
7 was the police and the Crown that Keith dealt with, so
8 it may have come from -- been relayed by the Crown in
9 the briefing that Crown gave Keith when they phoned him.

10 Q. We have heard evidence at this Inquiry that in fact any
11 evidence in relation to being in possession of a knife
12 or carrying a knife first came from Police Scotland. So
13 the information has come from somewhere within
14 Police Scotland.

15 A. Right, okay. Sorry, I thought you meant the whole part
16 of that briefing paper, my apologies.

17 Q. That perhaps brings me on really to my enquiry, the fact
18 that you don't know whether or where that information
19 came from. Mr Bayoh has been identified, I think my
20 learned friend has carefully taken a few people through
21 this, that the identification of Mr Bayoh having in his
22 possession a knife when the police arrive, or coming
23 towards them with a knife, that aspect identifies him as
24 the aggressor in the situation. You would agree?

25 A. Yes, yes, if that statement was accurate, yes.

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1 Q. So my question is knowing, as you later come to do, that
2 when Mr Bayoh was walking along he was walking along
3 with his hands out and open, ie he had nothing in his
4 hands, did you think to yourself: why would someone say
5 they approached him with a knife; why would someone say
6 that initially when that didn't happen? Did you think
7 that to yourself?

8 A. No, no, I didn't. I didn't immediately think that.
9 Because I think I explained earlier is -- is yes, we
10 have that briefing paper, it's exactly what it says it
11 is, it is brief information based on -- based not on the
12 accounts of the officers, you know, so -- so you have to
13 take the kind of -- the aspect of who has provided this
14 information, where has it -- I agree with you, where has
15 it come from.

16 Q. Indeed.

17 A. But I was basing on what is evidence, what do we have
18 as evidence, what is actually tangible, written down, to
19 take the investigation forward. Now, it was written
20 down in a briefing paper by Keith, compiled from all the
21 different information he received at different times on
22 the 3rd --

23 Q. Ought not you to have then chased up with Keith: who
24 told you? Who was it that said -- that caused this
25 document to be written in this way to say that this had

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- 1 happened?
- 2 A. No, I didn't because I was basing on the evidence.
- 3 I was taking forward what the evidence -- I am
- 4 investigating the death, I am investigating what has
- 5 happened here, what is the interaction that has happened
- 6 with the police, what has happened beforehand that led
- 7 Mr Bayoh to Hayfield Road, which we ultimately got on
- 8 the 5th, so I am moving -- I am evidence gathering, that
- 9 is my role as an investigator, I am evidence gathering.
- 10 Q. As part --
- 11 A. Now, you are asking me did I then stop and say: oh,
- 12 I wonder who supplied that information that we now know
- 13 is inaccurate. No, I didn't. I didn't. I moved
- 14 forward with the evidence.
- 15 Q. It is not simply inaccurate information, Mr Little, it
- 16 is a serious statement that somebody is clearly in
- 17 possession of a knife, when in fact they weren't. It
- 18 moves from placing Mr Bayoh as the aggressor to Mr Bayoh
- 19 as somebody who is walking along when he is intercepted
- 20 by the police. That is a significant change in the
- 21 position. Why did you not think: I should perhaps
- 22 investigate this, I should find out why somebody has
- 23 said that he was clearly in possession of a knife and
- 24 then that position isn't correct?
- 25 A. Okay. So just as I said, I was moving forward, evidence

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1 base, in respect to the information that Keith had
2 received and had put into the briefing paper we were
3 aware or Keith was aware at that time that members of
4 the public had reported that Mr Bayoh was clearly in
5 possession of a knife.

6 Q. The context of being clearly in possession of the
7 a knife, as I think you know Mr Little, was that it was
8 while he was approaching the police officers he was
9 clearly in possession of a knife.

10 A. That is what was in the briefing paper that Keith
11 compiled, yes.

12 Q. And I am suggesting to you that it would have been
13 appropriate for you to have considered what is the
14 purpose of someone making such a statement; why would
15 someone say that if it is not correct? But that is line
16 of enquiry you didn't follow up?

17 A. No, I didn't follow it up because I was following the
18 evidence of -- I had uncovered that that hadn't happened
19 and I was moving forward with the evidence.

20 Q. There was no curiosity with you about the fact that the
21 position had moved from the briefing note?

22 A. No. No, because as I said that is the whole purpose of
23 conducting an investigation, to understand and identify
24 the true circumstances and move forward with that
25 evidence.

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- 1 Q. On that note, I wonder if I can move on to the next
2 issue that I want to address with you. You said that in
3 respect of the post mortem you were concerned because
4 there had been batons lying round, in particular that
5 you were worried that Mr Bayoh had been batoned to the
6 head. Did you get that information about him being --
7 about batons lying around and the possibility of him
8 being batoned to the head from anyone else? Did anyone
9 talk you to about someone being batoned to the head?
- 10 A. I think the main point -- what I was concerned about
11 when I made the decision to go to the post mortem was
12 that John Ferguson had advised me that when he was
13 involved in the recovery of Mr Bayoh's body from the
14 hospital to the City Mortuary there was blood
15 accumulated in his ear, okay? I had been made aware
16 that that -- whether it was exact facts or whether it
17 was an inference, that batons had been used against
18 Mr Bayoh. So the blood in the ear concerned me that
19 there was trauma to the head, had caused bleeding
20 internally within the head, and that is why I went to
21 the post mortem.
- 22 Q. So nobody spoke to you before you made that decision
23 about the post mortem about the fact that Mr Bayoh may
24 have been bludgeoned on the head by a baton?
- 25 A. Not that I recall. I can't remember word-for-word what

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1 was in the briefing paper but my main concern was the
2 information that John Ferguson relayed to me.

3 Q. That information will no doubt be followed up by this
4 Inquiry. But what I want to ask you is about what you
5 know. The reason I ask you that is that there is
6 evidence before this Inquiry that Mr Maxwell attended
7 the scene and was told almost on arrival by Mr Tomlinson
8 that he had -- that he thought he had batoned Mr Bayoh
9 to the head.

10 That information again was also told from Mr Maxwell
11 to Stephen Kay, we talked yesterday about Mr Kay's
12 statement. In Mr Kay's statement he said he spoke to
13 Maxwell and said that the officers were aware of
14 the dangers of positional asphyxia, especially PC Smith
15 who was an officer safety instructor, and that the male
16 was placed in the recovery position. APS Maxwell also
17 stated that PC Tomlinson claimed he may have struck the
18 male on his head with the police issue baton.

19 So that is a police officer who was involved in the
20 Inquiry on that first day, Stephen Kay, who had been
21 told by one of the officers on the scene that he may
22 have batoned him to the head. Were you not made aware
23 of that information?

24 A. I think I explained yesterday that I can't recall
25 exactly when I got sight of Mr Kay's statement that he

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1 had made, and I think if I recollect correctly the
2 information was that his statement was made in the days
3 after the incident. Now, as I explained, Mr Kay's
4 statement would have gone into the police system first,
5 the police major incident room, and then that
6 information would have been transferred to us. So when
7 I got that information, and I would have got that
8 information, but it was certainly some days after the
9 post mortem, so I wasn't in possession of that
10 information when I went to the post mortem.

11 Q. So despite the fact that you were there, ready to
12 investigate matters, that you were looking for evidence
13 in relation to what had happened, that there was
14 a serving police officer who had been told by a police
15 officer on site that he may have hit Mr Bayoh on the
16 head, you did not get that information because of the
17 circuitous route that has to be done by obtaining
18 statements.

19 A. It is not a circuitous route, that is the route that
20 happens.

21 Q. Well --

22 A. That is the route that happens and I think
23 I explained --

24 Q. Would it have been helpful to your enquiries to have
25 been told that by Mr Kay on the day?

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1 A. I would -- it would definitely have been helpful, yes,
2 because we would then have been in possession of that
3 information and we would have it evidenced because we
4 have it in the statement form that is written down and
5 signed by the officer.

6 Q. Moving on to other information that you may have been
7 aware of at the start of the enquiry, you spoke of
8 positional asphyxia and the fact that in order for you
9 to properly ascertain the circumstances of positional
10 asphyxia, that it was necessary for proper experts to be
11 instructed to look at those things; is that correct?

12 A. I don't particularly remember talking about positional
13 asphyxiation. No, I think I made mention that there was
14 an instruction from Crown in respect of experts to be
15 identified and instructed in different areas. But
16 I don't -- sorry, I am maybe getting mixed up here but
17 I don't recall talking about positional asphyxiation.

18 Q. So what you were looking at when you came to this
19 enquiry was the fact that this man had died in police
20 custody having been retained. Was positional asphyxia
21 a hypothesis that you had?

22 A. Yes, that would be within my mind and that is
23 a possibility. But that is all depending on the
24 post mortem and what the post mortem uncovers.

25 Q. Did you have any other information that may have helped

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1 you in relation to that, as far as you can remember?

2 A. Not that I recall.

3 Q. I wonder if I can remind you of a statement of

4 Ashley Wyse. Ashley Wyse was someone who stayed in

5 Hayfield Road and her first statement was taken on 3 May

6 by police officers. And then her second statement was

7 taken at 7.20 on 5 May. The PIRC reference is 00043.

8 I don't need that up on the screen, I can just read this

9 out. So the PIRC had a statement on 5 May latest and

10 this was in fact the second statement from this witness

11 to say:

12 "I saw a black man in the street, he was nearly down

13 on the ground. He was surrounded by police officers.

14 There was at least six police officers surrounding him,

15 I saw the police officers all over him. What I mean is

16 they were holding him on the ground. What it looked

17 like to me was that I saw police officers striking the

18 man in his legs to get him to go down. I am not sure

19 whether he was completely lying on the ground or was

20 going down at that point. There was at least six police

21 officers lying on top of him. They were crossing over

22 him from both sides, they pretty much covered his whole

23 body. It was only when they moved that I could see his

24 arm and definitely knew it was a black man. It looked

25 like one officer was using a baton to hold the man down,

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1 it was on his upper chest towards his throat."

2 Now, this information came to you or was told to
3 PIRC latest on 5 May, so according to what you said
4 yesterday by 7 May approximately you would have that
5 information before you; is that correct?

6 A. I would imagine so, yes.

7 Q. Does the fact that this witness says that they, the
8 police, were lying on top of him give you concern about
9 the way the police acted during the restraint?

10 A. That would -- that was all part of further investigation
11 and that information that Ms Wyse provided, that was
12 supplied to the pathologist.

13 Q. I am asking you --

14 A. Yes --

15 Q. -- I am asking you whether or not hearing that, that
16 gave you concern about the way the police had acted
17 during the restraint?

18 A. My concern was that what was what we had to look at and
19 identify and evidence in respect of what the police
20 officers' actions were.

21 Q. What was your concern about that, about the fact she
22 said they were lying on top of them?

23 A. There was obviously an engagement and there was actions
24 taken by police officers, and as Ms Wyse said the
25 officers were on top. But how were they on top of

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1 Mr Bayoh? That had to be uncovered and identified, and
2 the effects of the officers' actions and the engagement,
3 that also had to be further explored.

4 Q. If we can just take your first part, what further
5 exploration did you do with Ashley Wyse in respect of
6 her statement that they were lying on top of him?

7 A. She provided a statement that gave us that information
8 and --

9 Q. You said --

10 A. -- she supplied her images she had on her phone.

11 Q. Yes, so you said that the fact they were lying on top of
12 him would cause you to make further enquiries, what
13 further enquiries did you make in that regard with
14 Ashley?

15 A. With Ashley?

16 Q. With Ashley Wyse.

17 A. Not with Ms Wyse, Ms Wyse has given us that information.
18 We then supplied that information to the pathologist who
19 would include it into her findings in respect of her
20 considerations for the post mortem, and --

21 Q. I am asking you, Mr Little, whether or not the fact that
22 she said that the police were lying on top of him gave
23 you concern, as someone investigating the death of this
24 man, about the way the police acted during the
25 restraint; were you concerned when you heard that?

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- 1 A. I have answered that and I said yes.
- 2 Q. Were you concerned -- did the fact that she said they
3 were pretty much covering his body give you concern as
4 well?
- 5 A. Well, yes, it is information I have got but you asked me
6 what did I do with Ms Wyse, and I did not go back to
7 Ms Wyse in respect of that information.
- 8 Q. Does the fact that she says the police officer was using
9 a baton to hold him down and was on his upper chest
10 towards his throat give you have concern?
- 11 A. That was the part of the officers' actions and that is
12 what we had to continue and explore and investigate and
13 find out what effect that had.
- 14 Q. Did that give you concern about the way the police
15 officers had acted during the restraint?
- 16 A. Well, yes, it was information about the police officers'
17 actions, so yes, I was taking note of it.
- 18 Q. Now, she then said that she had a camera and Snapchat
19 and you have alluded to that. When did you first get to
20 see that Snapchat?
- 21 A. After this period of time I couldn't tell you what day
22 I actually saw that information.
- 23 Q. I am asking you approximately: was it a few days after,
24 was it months after, weeks after?
- 25 A. It wasn't months after. It was in the early period we

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1 had access to that information.

2 Q. What do you mean by "early period", if you can help us
3 with that?

4 A. I've said I can't remember exactly, so approximately --
5 you know, in the first week of the investigation. But
6 that is just my recollection now.

7 Q. So early in the investigation --

8 A. Yes.

9 Q. -- within the first week you got to see that. Did
10 anything viewing that cause you concern about the way
11 the police officers had restrained Mr Bayoh?

12 A. No, because I think by that time we knew from the
13 statement we had got from Ms Wyse in respect of -- the
14 officers' position in respect -- around Mr Bayoh that is
15 captured in Ms Wyse's Snapchat video.

16 Q. So Ms Wyse's Snapchat video effectively confirmed what
17 she had already said; is that correct?

18 A. Yes.

19 Q. So you are in a position as the investigating officer
20 who has identified that you had concerns about the way
21 they were lying on top of him, they were covering his
22 body, there was a baton using to hold him down, and you
23 had watched it on the video as well, did -- was there
24 an issue about the manner -- not only the manner of
25 restraint but the length of the restraint, the period of

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1 time that was involved that caused you concern?

2 A. I noted the period of time because we had the CCTV that
3 captured the aftermath of the engagement. But the
4 length of period of time, no. I can't say that -- you
5 know, I reiterate that is all just part of evidence
6 gathering and identifying what has occurred, and
7 supplying that -- and ultimately supplying that
8 information and how it has occurred and what it shows,
9 and allowing the experts to examine that for them to
10 take that into consideration with what was asked of them
11 to establish.

12 Q. The experts would have wanted to know in as much detail
13 as possible what she saw of the restraint, wouldn't
14 they?

15 A. Yes.

16 Q. But you didn't go back to her to flesh out any of these
17 details?

18 A. I didn't see I had to flesh out ...

19 Q. Moving on, there is evidence before this Inquiry that
20 a serving police officer, Austin Barrett, was in
21 Kirkcaldy Police Station when Mr Alan Paton and
22 Craig Walker had come in direct from the incident and
23 said to him that they needed Federation help or advice
24 and in the presence of both Mr Barrett and Mr Paton,
25 Craig Walker said, "We've just killed someone".

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1 So Mr Barrett, a serving police officer, should you
2 have been told that on the day you arrived, that that
3 had been said?

4 A. That would have been helpful, yes.

5 Q. Why would you not have been told something like that;
6 what would be the reason for not telling you that?

7 A. Sorry, I can't answer that. You would need to ask
8 Mr Barrett that, sorry.

9 Q. So if we had -- if you had the fact that somebody who
10 had been at the incident, maybe Mr Walker and Mr Paton
11 had arrived back and said, "We've just killed someone",
12 if you had the information that Mr Tomlinson had said to
13 a third party that he may have batoned Mr Bayoh on the
14 head, and if you had all the information of Ashley Wyse
15 in respect of restraint, why wasn't your initial enquiry
16 all related to whether or not the restraint in the
17 circumstances had been legal, lawful, and proportionate?

18 A. But that all formed part of the investigation, that
19 aspect. As I have alluded to a number of times, police
20 officers have privileged powers in the fact they are
21 allowed to use force, they are actually allowed to use
22 lethal force as long as it -- as you said, it is
23 legitimate, proportionate and necessary.

24 Q. Isn't it in those circumstances all the more important
25 that when that force is used, every avenue of that force

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1 is explored in detail in order to ascertain whether or
2 not they have acted lawfully?

3 A. My recollection now is that is what we did.

4 MS MITCHELL: I am obliged.

5 LORD BRACADALE: Thank you. If the Dean can come forward.

6 Questions from THE DEAN OF FACULTY

7 LORD BRACADALE: Mr Little, the Dean of Faculty represents
8 the Police Federation and several of the attending
9 officers and he has questions for you.

10 THE DEAN OF FACULTY: Mr Little, just two areas I would like
11 to explore with you please. The first is that you were
12 asked to comment on certain press releases --

13 A. Yes.

14 Q. -- by the Federation, and indeed things said by
15 Professor Watson. Am I right to understand that the
16 Federation and Professor Watson weren't just going to
17 the press unprompted, they were reacting to things; is
18 that right?

19 A. I am sorry, Dean, I can't remember the sequence of
20 events. But I think I alluded to earlier there was
21 a lot of commentary around about this investigation, so
22 the actual timing of whatever ... I couldn't say, I am
23 sorry.

24 Q. If we just look to the article you were asked to look
25 at, please. If we go to AAC 00379. You were taken to

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1 what was reported of Professor Watson and the Federation
2 but do we see the sub-headline:

3 "Lawyer tells of grave concerns over events
4 surrounding tragedy"?

5 LORD BRACADALE: We don't have the correct one on the
6 screen.

7 THE DEAN OF FACULTY: Sorry, it's page 7 of the pdf.

8 A. Thank you.

9 Q. It has The Herald 15.05.15 in the margin. Yes, that
10 one. Thank you.

11 A. I think it was a Herald article, if I remember rightly.

12 Q. Yes, that is right. You remember being taken to this
13 and we looked at the sub-headline on the left-hand side:

14 "Lawyer tells of grave concerns over events
15 surrounding tragedy."

16 Do you see that?

17 A. Yes.

18 Q. First paragraph:

19 "The family of a man who died in police custody have
20 called for early answers over the incidents saying they
21 are unable to grieve over their loss."

22 The third paragraph:

23 "The family's lawyer, Aamer Anwar, said officers
24 being investigated by a watchdog ..."

25 That's PIRC, I presume?

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1 A. Yes.

2 Q. "... over the incident should be suspended pending the
3 outcome, stressing there were 'grave concerns' over
4 events that involved a number of police."

5 Does that accord with your recollection that when
6 the Federation and Mr Watson were then commenting, they
7 were commenting in light of calls by the Bayoh family,
8 through their lawyer, that these officers should be
9 suspended?

10 A. I would need to read the whole article for that but what
11 I can confirm is when I was taken to this I was referred
12 to the press statement by Brian Docherty and then to the
13 comments by Mr Watson, I wasn't taken to any other
14 comments during the course of my evidence, my
15 recollection is.

16 Q. Do you remember there been calls by the family --

17 A. Yes.

18 Q. -- that the officers should be investigated or --

19 A. Should be suspended, yes, I remember that because
20 I remember actually having to explain PIRC's role, which
21 we have no role in that, to the family and to
22 the lawyer.

23 Q. So if the Tribunal were to hold that these comments
24 being made by the Federation and by Mr Watson were in
25 response to calls by the family that these officers be

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1 suspended, if that is what they hold, then you are
2 a former police officer, are you not?

3 A. I am, yes.

4 Q. Were you a member of the Federation?

5 A. I was, yes.

6 Q. You are aware of the role played by the Federation?

7 A. Yes.

8 Q. They are there to represent the interests of Federation
9 members?

10 A. They are, yes.

11 Q. You would expect the Federation to defend its members if
12 there are public calls for those members to be
13 suspended?

14 A. If I was one of the officers, I would be expecting some
15 help from the Federation, yes.

16 Q. Thank you.

17 If we move to the second aspect, please. This is --
18 really if follows on from this, but it is the particular
19 aspect of what was said by the Federation and
20 Professor Watson about the willingness of the officers
21 or otherwise to provide statements. By "the officers",
22 I mean the nine, yes?

23 A. Yes.

24 Q. If we have on screen, please in the first instance your
25 Inquiry statement, SBPI 00421. It is page 68 I am

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1 looking for, paragraph 159 that you were asked about.
2 You will perhaps remember being taken to this, with
3 reference to the Federation public statement, and you
4 saying at the end of -- in response at question 159, you
5 found it unhelpful, and then at the bottom at 160 you
6 said you didn't consider the statement to be accurate.

7 Do you remember that?

8 A. Yes, I do, yes, that was just before -- the day before
9 I think we -- you know, the officers provided statements
10 to my staff, yes.

11 Q. The point I want to ask you about is because you went
12 slightly further in oral evidence and you said that what
13 had been said by the Federation and by Professor Watson
14 in this regard was "untrue and known to be untrue". Do
15 you remember saying that yesterday?

16 A. I do, yes.

17 Q. I would just like to explore that a little with you,
18 please. You will be aware, I think, that from very
19 early doors in the investigation Professor Watson and
20 the Federation were keen to understand the status of the
21 officers?

22 A. Yes.

23 Q. And if one thinks about interviews that PIRC might
24 undertake, status makes a difference. Is that fair?

25 A. Absolutely, yes.

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1 Q. Different statutory protections apply depending on
2 whether one is being treated as a witness or as
3 a suspect?

4 A. Absolutely.

5 Q. And you were aware, I think, that the officers had been
6 given legal advice that their status needed to be
7 clarified before they would -- before they should give
8 a statement, yes?

9 A. Yes.

10 Q. And indeed that they were told that they should await
11 the results of the post mortem being clarified?

12 A. I don't remember when that actually became part of the
13 challenge in getting a statement, if I can phrase it in
14 that manner. But I am aware that the initial advice is
15 not to provide statements in respect of -- until their
16 status was clarified.

17 Q. If we could look please just a couple of the
18 contemporaneous documents. The first being PIRC ...
19 I am teaching my granny to suck eggs here for the
20 electronic operators but all of these documents have
21 a dash between PIRC and the number with one exception,
22 I don't know if that is going to cause a problem in
23 finding it. But this one has a dash, PIRC-03710. If we
24 look at this, is this a PIRC record entitled, "Incident
25 message", for 7 May 2015 at 11 am?

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1 A. It is, yes.

2 Q. And it is indicating contact with John Mitchell, is that
3 right?

4 A. Yes.

5 Q. What we see in the box is:

6 "I have spoken with Mr Peter Watson who acts for
7 nine ... police officers involved in the Kirkcaldy death
8 of Sheku ... Bayoh. Mr Watson has advised the officers
9 not to give operational statements until their status is
10 known. He states that this will be the position until
11 full results of the post mortem examination are known.
12 I include a copy email from Mr Watson."

13 Do you see that?

14 A. Yes.

15 Q. And if we scroll down the next page is blank and the
16 next page is that email, I think. It's an email that
17 has been -- at the top of the page we see it has been
18 forwarded to Mr Mitchell, Mr Mitchell of PIRC, and below
19 it seems to have been sent to Mr Hardie, that would be
20 DCI Hardie; is that right?

21 A. Sorry, could you just scroll up a wee bit, please?

22 Q. Sorry, I am not look at your screen, I am looking at
23 mine.

24 A. I see:

25 "Dear Mr Hardie~..."

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1 Yes, I would -- I would take that to be Keith Hardie
2 the DCI, yes.

3 Q. What is said there is:

4 "I represent all of the police officers (9 in
5 number) involved in the incident in Kirkcaldy currently
6 being investigated by PIRC. I have been given to
7 believe that instructions have been given by you or
8 someone connected this inquiry that these officers are
9 to be told that they are 'compelled' to provide
10 statements. As a matter of law that is not correct.
11 You should seek advice on this matter. These officers
12 enjoy the same legal rights as any of the member of the
13 public. You can ask them to provide statements but my
14 advice is they do not do so until their status is
15 clarified. I have spoken with Mr Mitchell in PIRC he is
16 aware of my position. The response each officers gives
17 will be as follows:

18 "On legal advice I decline to provide a statement at
19 this time until my status as a witness or suspect has
20 been confirmed to my legal adviser
21 Prof Peter Watson~..."

22 Yes?

23 A. Yes.

24 Q. So that was known to PIRC as at -- if we just scroll
25 back up just to orientate you in time, that is sent by

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1 Mr Watson to Mr Hardie at 11.29 on 7 May and it is
2 forwarded by Mr Watson to Mr Mitchell of PIRC a minute
3 later; do you see that?

4 A. Sorry I can't see that.

5 Q. Sorry, can we go back up the page, please. Apparently
6 it is not moving. If you could perhaps just take it
7 from me --

8 A. Yes, I am not going to dispute the timings, yes.

9 Q. So it would appear that it is sent, as I say, to
10 DCI Hardie at 11.29 and forwarded to Mr Mitchell at
11 11.30 on the 7th, okay?

12 A. Yes.

13 Q. All right. Do you agree with me that is -- you can see
14 it on screen, the message that is being conveyed there
15 is not, "I won't give you a statement", it is "I won't
16 give you a statement until my status as witness or
17 suspect has been confirmed". Do you agree?

18 A. Yes.

19 Q. Okay. Thereafter we've got a timeline of events that
20 has been described, just for ease of reference, in
21 a letter by the Federation, so I would like you to look
22 at that and see if it accords with your recollection.
23 I'm hoping this works. SPF 00025. You will see this is
24 a letter to Ms Frame of PIRC on 5 June of that year?

25 A. Yes.

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1 Q. If we can go down the page a bit please to the fourth
2 paragraph of that letter, what is said there:

3 "On the 7th May and following receipt of information
4 that the officers involved were to be compelled to give
5 statements an email was sent to [DCI] Hardie in which
6 clarification of the status of the officers' question is
7 sought.

8 "That email is copied to John Mitchell."

9 I think that is what we have just looked at; do you
10 agree?

11 A. I would agree with that, yes.

12 Q. "I am advised that Mr Mitchell subsequently confirmed by
13 telephone that no statements could be compelled and that
14 the status of the officers was fundamental. I am also
15 advised Mr Mitchell himself advised that the status of
16 the officers couldn't be confirmed until such time as
17 the post mortem had been carried out and that he would
18 clarify with Mr Watson when the possession would be
19 clarified."

20 This is perhaps, to be fair Mr Little, more a matter
21 for Mr Mitchell, but there is certainly nothing in the
22 paperwork that I can point you to, and I will be
23 corrected if I am wrong, until 2 June in which written
24 confirmation of status is confirmed. Does that accord
25 with your recollection?

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1 A. When you are saying written confirmation of status --

2 Q. Yes.

3 A. -- I am unsure of -- sitting here at this moment in time
4 I know Mr Mitchell was in various correspondence with
5 Mr Watson regarding this matter, but I do take -- I do
6 take -- you know, so -- on the paperwork you showed me
7 there, Dean, so you have an email to Mr Hardie saying,
8 "until their status had been confirmed", so that was
9 confirmed on the 3rd, that was confirmed by me on the
10 4th, this email from Hardie is the day that we have
11 asked Police Scotland to go round and speak to each of
12 the officers individually and clarify and confirm their
13 position and let them know that their status is that of
14 a witness.

15 So I think some of this is a wee bit at variance
16 because in my mind it is quite clear what the status of
17 these officers are. The challenge, and I think
18 I alluded it in my evidence, is the fact that -- we as
19 PIRC are asking Police Scotland to impart that
20 information, and I think I said I would not do that now,
21 I would go and see the officers.

22 But what you also have -- and it's not relayed to
23 Mr Hardie -- is "until the result of post mortem is
24 known". Now, that then comes into the communication
25 with Mr Mitchell, and this -- and I am not -- and I have

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1 to clarify, I am not aware of this and in reading that
2 last sentence:

3 "I am also advised Mr Mitchell himself advised that
4 the status of the officers couldn't be confirmed until
5 such time as the post mortem~..."

6 That is incorrect. That is absolutely incorrect.
7 Keith Harrower made the decision, based on information
8 he had, that they were witnesses. Following the
9 post mortem and the interim result of the post mortem
10 I clarified that their status is witnesses. When we
11 spoke to Keith Hardie, we spoke to him and I can't
12 remember the date, was it the 6th? We spoke to
13 Keith Hardie personally on the 6th, we confirmed to him,
14 we followed that up with an email to Keith Hardie: their
15 status is witnesses. We need an individual response
16 from each of the officers as to their stance in
17 providing statements.

18 So I think you have got a wee bit of kind of each
19 document you have showed me contains a slightly
20 different message and in my mind -- sorry, if you don't
21 mind, in my mind absolutely the status of these officers
22 were witnesses and remained as witnesses throughout
23 investigation.

24 Q. But as you just recognised, it doesn't appear that there
25 were -- that everyone in PIRC or everyone in PIRC and

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- 1 the police were speaking with one voice on this issue.
- 2 Is that fair?
- 3 A. I can't speak for what Mr Mitchell -- I am surprised at
- 4 that, I'm surprised at that, and Mr Mitchell can
- 5 obviously clarify that when his time comes. But as I --
- 6 in my period as a lead investigator, in my period as
- 7 a deputy senior investigating officer in this whole
- 8 investigation is the police officers were witnesses,
- 9 absolutely witnesses. For reasons and rationales I have
- 10 explained previously.
- 11 Q. If it is correct and subsequently found by the Inquiry
- 12 that Mr Mitchell was confirming that first of all it was
- 13 fundamental to confirm the status of the officers, and
- 14 secondly, that that was something that had yet to
- 15 happen, then PIRC were not speaking with one voice. Is
- 16 that fair, if that is what the Inquiry find?
- 17 A. If that is what the Inquiry find, yes. I mean, that is
- 18 entirely up to the Inquiry. But I am quite clear in
- 19 my mind, in my direction and my instruction that
- 20 the officers were witnesses and that was known to them
- 21 from 3 May.
- 22 Q. So there wouldn't have been any question of you
- 23 subsequently to that recording any doubt about the
- 24 status of these people?
- 25 A. No.

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1 Q. No. Okay. Just sticking with this letter before we
2 move on from it please then:

3 "I am also aware in a number of subsequent telephone
4 conversations Mr Mitchell commented in his opinion the
5 officers were always likely to be considered witnesses
6 but no written confirmation to this effect was
7 received."

8 Now, as I say the first part of that is perhaps more
9 for Mr Mitchell than you, but I think you do agree with
10 me that there was no written confirmation of the status
11 of the officers as witnesses until 2 June?

12 A. Yes, my recollection is that is correct. Yes.

13 Q. "At 10.46 on 2 June Mr Watson received an email from
14 Mr Mitchell seeking his assistance and confirming the
15 officers named were witnesses."

16 And that is the confirmation we are talking about,
17 the written confirmation?

18 A. The written confirmation, yes.

19 Q. "Mr Watson replied at 11.30, thanking for clarification
20 and asking for confirmation interviews would not be
21 under caution. Mr Mitchell replied confirming
22 interviews would not be conducted under caution."

23 Does that all accord with your recollection of how
24 things went?

25 A. Yes.

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1 Q. If we just look at what happened on 2 June, please.
2 PIRC 03726. PIRC 03726, please.
3 LORD BRACADALE: I have a copy, a hard copy which is
4 unmarked which I am content for the witness to have.
5 I take it that is the document you are talking about?
6 (Handed).
7 THE DEAN OF FACULTY: No, it's not actually my Lord. It's
8 a handwritten attendance note.
9 LORD BRACADALE: I have the documents that you sent
10 beforehand, and if I don't have it then it wasn't in the
11 list.
12 THE DEAN OF FACULTY: I see. It is perhaps an attendance
13 note I can just read to you, Mr Little. It is
14 an incident message dated 2 June 2015 at 9.55 by
15 Mr Mitchell --
16 A. Okay.
17 Q. -- of PIRC.
18 A. Yes.
19 Q. It says:
20 "I telephoned Mr Les Brown ..."
21 He was with the Fiscal's office?
22 A. Yes, he was.
23 Q. "... PF to inform him that following discussion with
24 Mr David Kennedy, Police Scotland Federation, and
25 a subsequent meeting between Mr Kennedy

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1 and Mr Peter Watson, solicitor acting on behalf of the
2 police officers involved in the arrest process, it had
3 been suggested by the Federation that the officers would
4 make themselves available for interview if their status
5 was confirmed as that of a witness. Mr Brown agreed to
6 consider the matter, seek further direction from
7 Crown Office and respond."

8 That is noted by Mr Mitchell at 10.05 am on 2 June.

9 Again, it is more a matter for Mr Mitchell but if
10 the Inquiry accepts that that is an accurate record of
11 what happened, do you agree with me that indicates that
12 PIRC were asking for the Fiscal to confirm status as
13 a witness on 2 June?

14 A. That is -- yes, Mr Mitchell. I have no recollection of
15 that taking place. But yes, if that is ... yes.

16 Q. On the same day shortly after that, and hopefully the
17 Inquiry will have this, I think the fact it didn't have
18 last document is my fault. PIRC 04006. If we go to the
19 third page of that, please. What we have got on the
20 third page is there, so this is 2 June 2015 at 10.46, so
21 40 minutes after the attendance note I just read to you:

22 "Dear Professor Watson,

23 "Following discussion with Mr David Kennedy of the
24 Scottish Police Federation I write to reiterate that the
25 [PIRC] investigators wish to interview the following

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1 Police Scotland officers in relation to the ongoing
2 inquiry into the death of [Mr] Bayoh."

3 The officers are then listed:

4 "These officers are, as previously stated, to be
5 interviewed as witnesses."

6 I think you have already agreed this is the first
7 time that is put in writing, yes?

8 A. My understanding, yes.

9 Q. Okay. If we go to the page 2, if that is page 3, go up
10 to page 2. We see Mr Watson responding at 11.30:

11 "Dear Mr Mitchell,

12 "Yes, happy to assist with the SPF. Clarification
13 of the status of the officers is helpful and I take it
14 interviewed will not be under caution."

15 A. Yes.

16 Q. And up that page. Professor Watson:

17 "Thanks for your response. I confirm interviews
18 will not be conducted under caution."

19 And again, do you agree with me that is the first
20 time it was confirmed the interviews would not be
21 conducted under caution in terms of it being in writing?

22 A. Yes.

23 Q. Finally to the first page of that please. Mr Watson,
24 later that day:

25 "I have advised all officers by email that they will

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1 be interviewed as witness and NOT under caution. I have
2 also said they will not by implication be asked any
3 questions which imply any criminal conduct on their
4 part. The [Federation] representatives will obviously
5 continue to have a welfare and support role and we would
6 ask that they are kept abreast of arrangements."

7 Do we see right at the top of that, that that email
8 chain was then passed on to you by Mr Mitchell?

9 A. It was.

10 Q. Am I right in thinking you noted this all in your
11 notebook, and this -- again, we may run into the sand
12 slightly but as it was referred to previously I hope
13 not. It's PIRC 0452 -- this is the document I mentioned
14 that doesn't have the dash, or at least not in my
15 version. So it is PIRC 04521. Could we go, please, to
16 page 46 of that. It should have at the top of it
17 Tuesday 2 June 2015. Do you see that?

18 A. Yes, I do.

19 Q. So just to get the date because it is not on that page
20 I want to ask you about. If we scroll on to pages we
21 will find an entry for 9.40?

22 A. Yes.

23 Q. Can you just read the entry for 9.40 please, there is at
24 least one word I can't decipher?

25 A. Certainly:

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1 "Advised by J Mitchell that he had a T/call
2 conversation with David Kennedy who will be meeting with
3 Peter Watson and will seek to have the officers make
4 themselves available for witness statements ..."

5 I've got:

6 "JM email David Kennedy to confirm ..."

7 Q. Their status?

8 A. "... their status."

9 Yes, sorry, thank you. I can't even read my own
10 writing after all this time. Yes.

11 Q. You did indicate earlier there would be no suggestion of
12 you noting any doubt about status but is this not
13 exactly what we have in your notebook? At 9.40 on
14 2 June 2015 you noted -- it must have been important so
15 you noted it -- you noted that it was necessary to email
16 David Kennedy "to confirm their status", yes?

17 A. Yes, I have, yes.

18 Q. In light of all of that, please, can we go back to your
19 Inquiry statement SBPI 00421. Again, paragraph 159,
20 which was page 68 of the PDF. Paragraph 159. If we
21 just look at what it was you said was not only untrue
22 but knowingly untrue.

23 A. Yes.

24 Q. "The officers involved have never refused to provide
25 statements."

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1 Now, in terms of a blank refusal, you would agree
2 with that, would you not? They never did refuse to
3 provide statements?

4 A. Yes, they did. Sorry, right, okay. Right, the blank
5 refusal.

6 Q. Yes.

7 A. Yes.

8 Q. You agree with me? There was never a blanket refusal?

9 A. No, but -- well, they did, because when Keith Hardie
10 went to see them, their status is, "On the advice of
11 my lawyer I'm not providing a statement until my status
12 is ...", so there are conditions.

13 Q. Yes. It wasn't a blanket refusal, it was "until my
14 status is confirmed." Do you agree?

15 A. Yes.

16 Q. "It was agreed at the outset with PIRC that they would
17 revert to us when they wanted statements and when they
18 were clear on the basis that statements were to be
19 given."

20 Yes? Now, on the basis of what we have seen, it was
21 understood throughout, was it not, that, until it was
22 clear as to the basis, and by "basis" I mean the status,
23 under which statements were to be given, until that was
24 clarified, statements would not be given. That was made
25 clear, was it not?

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- 1 A. Yes, but the status was never in doubt, Dean.
- 2 Q. That is a matter for the Inquiry to determine. You have
3 agreed I think that it was only confirmed in writing on
4 2 June? Agreed?
- 5 A. By the Federation --
- 6 Q. By PIRC.
- 7 A. Police Scotland confirmed -- Keith Hardie confirmed it
8 in writing too, by email to myself and John McSporrان.
- 9 Q. It was only confirmed to PBW Law in writing on 2 June,
10 yes? You have agreed with that already.
- 11 A. Yes, I have. Yes.
- 12 Q. And you have noted in your own notebook that on 2 June
13 status needed to be confirmed, yes?
- 14 A. That is -- I have got "JM", John Mitchell, "email
15 David Kennedy to confirm their status."
- 16 Q. To confirm their status, yes. So on 2 June that needed
17 to be confirmed, yes? That is what you have written?
- 18 A. Yes, I have, yes. That is -- John Mitchell decided he
19 needed to confirm that status. Yes.
- 20 Q. So when the statement said that statements would only be
21 given when they were clear on the basis that statements
22 were to be given, ie the status, that is not inaccurate,
23 is it?
- 24 A. In my mind it is, because we have gone through all this
25 process -- now, I can only remember the 3rd, 4th and 7th

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1 with Keith Hardie and then the information coming back
2 and then Mr Mitchell took on -- or the action to engage
3 with the Federation. So I, as the lead for the time
4 I was lead, and then when John McSporran became the
5 lead, their status was in no doubt and that had been --
6 well, Police Scotland had told us that they had
7 communicated that information to the officers about
8 their status.

9 Q. You have been a police officer and then a PIRC
10 investigator for many years, Mr Little?

11 A. Yes, I have, Dean.

12 Q. I assume you would describe yourself as a fair man.

13 A. I would hope so, yes.

14 Q. Okay. Put yourself in the shoes of somebody who
15 understands that there is an ongoing doubt about status.
16 Right? Stick with me. Put yourself in the shoes of
17 someone who has been asking for written confirmation of
18 status and who only gets it on 2 June. Yes? In that
19 situation it is not inaccurate, let alone knowingly
20 inaccurate, to say: we didn't refuse to give statements,
21 we only said we will give them once status has been
22 confirmed, is it?

23 A. That doesn't say "when status has been confirmed in
24 writing", Dean.

25 Q. It says "once the basis upon which statements ..." or

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1 "when they were clear on the basis that statements were
2 to be given." That is referring to status, yes?

3 A. Yes, and that was quite clear from day one.

4 Q. If the Inquiry holds otherwise -- if the Inquiry holds
5 otherwise that it is not clear, for all the reasons we
6 have just been looking at, then that is not inaccurate
7 let alone knowingly inaccurate, is it? If you are being
8 fair.

9 A. You are asking me -- but that is for the Inquiry to
10 decide.

11 Q. Indeed.

12 A. My position is it was quite clear what the status of
13 the -- and I can only state my position, Dean.

14 Q. Yes, and said your position is it was knowingly
15 inaccurate, which is accusing a lie, and I am putting to
16 you that, if the position is as I have described it,
17 that wouldn't be knowingly inaccurate, would it? If you
18 are being fair.

19 A. I still revert back to Keith Hardie going and seeing all
20 the officers and speaking to them individually and
21 telling them what their status and asking for
22 operational statements.

23 Q. Mr Little, just try and stick with me, okay? If the
24 Inquiry holds as I have suggested -- if, so forget what
25 you might think happened with Hardie, if the situation

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1 is as I have suggested, that statement is not
2 inaccurate, let alone knowingly inaccurate, is it?

3 A. Well, that is for the Inquiry to find. That is -- you
4 are supposing what is going to happen here, Dean.

5 I can't -- I can't account and clarify my position in
6 respect of what the Inquiry might decide. I can only
7 give you what --

8 LORD BRACADALE: I think I have the point now, Dean. It
9 wouldn't assist you to proceed further.

10 THE DEAN OF FACULTY: I am obliged. If your Lordship would
11 just give me one second. I think that will suffice.

12 Thank you, Mr Little.

13 A. Thank you.

14 LORD BRACADALE: Mr Little, that is the end of your
15 evidence. Thank you very much for coming to give
16 evidence to the Inquiry over three days. I am very
17 grateful for your time. We are about to adjourn and you
18 will then be free to go.

19 A. Thank you, your Honour.

20 LORD BRACADALE: The Inquiry will adjourn until tomorrow at
21 10 o'clock.

22 (3.53 pm)

23 (The Inquiry adjourned until 10.00 am on Thursday,

24 15 February 2024)

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