

# Transcript of the Sheku Bayoh Inquiry

Tuesday, 13 February 2024

(10.00 am)

MR WILLIAM LITTLE (continued)

Questions from MS GRAHAME (continued)

LORD BRACADALE: Good morning Mr Little.

Ms Grahame.

MS GRAHAME: Thank you. On Friday we were talking about your decision to disclose the fact that blunt force trauma had not been the cause of death.

A. Yes.

Q. And you spoke to us about your rationale and we went through the reasons that you had taken into account when you made that decision. This was on your Inquiry statement SBPI 421 at paragraph 67 I think.

If we look at your response, you say you are aware your actions were unprecedented, and you explain your reasons and I think if we move up the page, you set out the various factors that you took into account. I think we went through those on Friday afternoon.

A. That is correct.

Q. That is just to let you see what we had talked about. Did you consider when you were making this decision whether taking a view -- telling the officers about the post mortem interim preliminary information that you had had from the pathologist and taking a view on their

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1 status was perhaps premature at that stage?

2 A. I think as I explained on Friday, everything was kind of  
3 unusual about this investigation, you know, the fact  
4 that officers had not provided any statements, any  
5 initial accounts, you know we later found out that the  
6 information that was passed to Keith Harrower was --  
7 a lot of it was inaccurate, yes. So, as I have said  
8 there, it was unprecedented that I did this.

9 Q. Did you --

10 A. Sitting -- sorry, sitting here now I can understand  
11 maybe saying it was maybe premature but I was trying to  
12 weigh up of getting the statements from the officers,  
13 this was causing untold harm to the investigation, and  
14 ultimately it caused untold distress to the family.  
15 I was hoping that if I could get statements when I met  
16 the family -- and I think originally at that time I was  
17 hopeful we were going to meet the family on the 5th but  
18 it wasn't arranged until the 6th -- I could say, "We've  
19 got the statements, I have just had a phone call, the  
20 statements are in", and that would have been a huge step  
21 forward, it would have been a very positive step in  
22 respect of the investigation, and would have been  
23 a very, very positive step in respect of our  
24 relationship with the family.

25 So, yes, I know we are sitting in hindsight here,

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1 I say to you I have never done it prior to this, I have  
2 never done it since then, but I was trying to break  
3 a deadlock here and unfortunately that deadlock  
4 continued. And actually what I think the disappointing  
5 thing is, I later became aware the information I was  
6 passed by Detective Superintendent Campbell that the  
7 officers would be spoken that that night, my  
8 understanding is they were not spoken to that night and  
9 that is disappointing, you know. And that is my  
10 understanding, they were not spoken to that night by the  
11 police.

12 Q. You have been advised of that, have you?

13 A. Yes. Yes. I recall that the information I received  
14 later was they hadn't been spoken to that night by  
15 Mr McEwan. So me taking that step --

16 Q. Who told you that?

17 A. -- me kind of making that decision, what I thought for  
18 the best intentions is was it actually taken forward by  
19 another step, you know.

20 Q. Who told you that?

21 A. That was -- that was -- that was when we met with  
22 Keith Hardie, on the 6th after we met with the family.  
23 I was hopeful then that we would be going and there  
24 would actually be some of the statements there,  
25 something there, because that is the 4th and then we get

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1           to the 6th, how long would it take them to prepare  
2           an operational statement?

3           Q. So on the 6th you were advised by Keith Hardie that in  
4           fact the officers hadn't been told --

5           A. My understanding is they hadn't been spoken to that  
6           night.

7           Q. We have heard other evidence that they had been told,  
8           and in fact Conrad Trickett described a conversation he  
9           had Jane Combe regarding the disclosure to the officers.  
10          You don't know anything about that?

11          A. No. No, I am not aware of that.

12          Q. Did you have any concerns in relation to making this  
13          decision whether sharing this information could have  
14          an impact on the officers' own recollection of events?

15          A. No, I don't think so. I think it was important to -- to  
16          capture their recollection of events as soon as  
17          possible. There is the PIP process, yes, you know, and  
18          the methodology and the rationale why that PIP process  
19          is -- you know, I know the timescales, but how they  
20          arrived at these timescales when the PIP was designed,  
21          I don't know. But what I would say is in my experience  
22          the longer you leave it until you take a statement off  
23          somebody is their perception of what happens can change.

24          Q. We have heard evidence that when they are -- if people  
25          are given further information that could potentially

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1           impact their recollection. It could -- it could perhaps  
2           change things that they thought were the case. And that  
3           that is a risk, if you do not capture that initial  
4           account or basic account or their own recollections.

5           A. Yes.

6           Q. Do you agree with that?

7           A. I go back -- it was -- the information they got was --  
8           that I put forward was very, very limited. It was  
9           unascertained pending toxicology and further examination  
10          and I had asked the question: was blunt-force trauma,  
11          you know, responsible? And I was told no. So the  
12          information is very, very limited. It is not as if it  
13          is like when the full post mortem report came out and  
14          you are providing that information in respect to that.  
15          There was no details passed to Police Scotland although  
16          Police Scotland knew of the injuries that were  
17          identified on Mr Bayoh's body.

18          Q. So the fact that you were giving what you considered to  
19          be limited information --

20          A. It was limited.

21          Q. -- was that also a factor in your decision-making  
22          process?

23          A. Yes, yes.

24          Q. Did you consider whether it would be potentially  
25          perceived, say by the family or members of the public,

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1           that the police were being given preferential treatment  
2           by being given information about the post mortem?

3           A. Well, yes. I can see that because, as I have said to  
4           you, it is not something I did previously, it is not  
5           something I did since. I am not aware of it happening  
6           since, you know within my organisation we've did that.  
7           Yes, I can understand but I stand by -- the whole  
8           objective here was to get statements off these officers  
9           because it was hindering, and it was hindering in a way  
10          because we didn't have basic facts. I am aware that  
11          Mr Trickett says he didn't get the basic facts because  
12          the basic facts were known. Well, they weren't known  
13          because the information that Keith Harrower passed,  
14          particularly information on the briefing paper, we now  
15          know now that is inaccurate and we knew, as we built the  
16          evidence, that that was inaccurate.

17                 So they didn't know the basic facts. We didn't have  
18          initial accounts. So here we are, I'm on day 2 here,  
19          I've just taken over and we have to find -- I could see  
20          a blockage right away and I could see the problems that  
21          were coming down the line, for want of a better  
22          expression, yes, so I made this decision. I have never  
23          hidden this decision. I have never hidden it. This is  
24          what I did, you know. You know, so it wasn't as if it  
25          was something I did and then I -- you know, you know,

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1           everybody within my organisation was aware, Crown were  
2           aware that I did this. Nobody passed adverse comment to  
3           me about having done it.

4           Q. How were the Crown aware?

5           A. My recollection is that -- well, first of all it was in  
6           my statement that I submitted when we submitted the  
7           first report so I think the statement -- I can't  
8           remember the date, is it July I prepared the statement?  
9           I think it -- and that -- and I had prepared a briefing  
10          paper after day 7 in respect of where we were.

11          Q. So the Crown were aware retrospectively, after --

12          A. Oh, yes. Oh, they weren't aware I was going to make  
13          that decision, no.

14          Q. No.

15          A. No, no. Sorry, I don't want to give that impression.  
16          They were not aware that -- you know, that was  
17          a decision I made that night to do that.

18          Q. I see. To go back for a moment to the idea of  
19          a perception perhaps of preferential treatment to the  
20          officers, did you consider whether that perception,  
21          which you have acknowledged could have been created, had  
22          any impact on the trust in your investigation, the faith  
23          in your investigation?

24          A. Did --

25          Q. In it being independent?

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- 1 A. Sitting here nearly nine years later I cannot recall if  
2 that was a consideration I made at that time.
- 3 Q. All right.
- 4 A. Okay, I considered my rationale for making that  
5 decision, or why I was going to make that decision if  
6 there was an indication there was no statements  
7 forthcoming when we sat down with Mr Campbell. My  
8 consideration with regard to the family was I was  
9 hopeful, I was hopeful, that we would get statements so  
10 I would be able to, when I sat with the family, say: the  
11 matter of the statements has been resolved and is  
12 overcome and we are getting the statements, or we have  
13 the statements.
- 14 Q. You've talked about the decision being unprecedented in  
15 your role in PIRC, either before or after May 2015?
- 16 A. Yes.
- 17 Q. You obviously had a lot of prior experience as a police  
18 officer. Had you been involved in any situations where  
19 you had disclosed preliminary post mortem findings to  
20 potential eyewitnesses?
- 21 A. Not that I recall, no.
- 22 Q. We have focused so far on blunt-force trauma.
- 23 A. Yes.
- 24 Q. And that was not a cause of death. Did you consider  
25 other possible causes of death as part of the

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- 1           significance of those towards your investigation,  
2           for example positional asphyxia, did you consider  
3           whether that could be a cause of death?
- 4       A. Well, that cause of death would be identified kind of  
5           later through the kind of pathology and the expert  
6           witness kind of process that was adopted.
- 7       Q. The same I suppose would apply to mechanical asphyxia?
- 8       A. Yes.
- 9       Q. What about the restraint itself, did you consider  
10          whether the restraint of itself could be a potential  
11          cause of death resulting in cardiac arrest?
- 12      A. At that time we didn't know because it was unascertained  
13          pending, you know, toxicology and further examination,  
14          and that would be further examination down the line.
- 15      Q. Did you discuss those at all with -- or the possibility  
16          of those with the pathologist after the post mortem?
- 17      A. Not that I recall, no.
- 18      Q. Did you consider whether those potential causes would  
19          impact on the status of the officers?
- 20      A. Oh, they -- well, if it came to pass that that was the  
21          primary or the sole reason for Mr Bayoh's demise then  
22          yes, the status of the officers would be something that  
23          would be under consideration.
- 24      Q. If the ultimate findings had been that restraint  
25          contributed or caused death or positional or mechanical

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- 1           asphyxia had contributed or caused death, what impact  
2           would that have had on the officers' status?
- 3       A. That would need to have been -- I would suggest given  
4           the time that would maybe have come through from the  
5           pathology, you know the further tests that were done, is  
6           their status may have changed. And the reason I do that  
7           is, maybe as we discussed on Friday is police officers  
8           are unique in society as they are allowed to use force,  
9           they are legitimately allowed to use force and even  
10          lethal force. So it then becomes what was their  
11          justification for it, what was their rationale what  
12          was -- you know the factors there. Yes. But when  
13          I made that decision that was not known. As I said, it  
14          was very limited information that I passed. Very, very  
15          limited.
- 16       Q. Did you consider that if one of those potential causes  
17          of death did turn out to be the final result of the  
18          post mortem, and you had taken the decision to share  
19          some interim results with the officers, did you consider  
20          at that time what would happen in the future to the  
21          status of the officers or how it would look to the  
22          public that you have shared information about  
23          preliminary results with them?
- 24       A. No, no, I didn't, no. I have to -- you know. No  
25          I don't recall that, no.

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1 Q. We touched on the timing of the information about the  
2 post mortem being shared with the family on Friday.

3 A. Yes.

4 Q. I would like to go back to that. I think the relevant  
5 paragraph is 62 of your Inquiry statement, which is on  
6 the screen. You refer back to your first Inquiry  
7 statement SBPI 00255, and you say:

8 "... 'I can't recall when the family were advised of  
9 the result of the post mortem. However, the information  
10 may have been delivered via the FLOs and if so would be  
11 recorded into the FLO log'."

12 A. Yes.

13 Q. I think on Friday afternoon you said thought the family  
14 had been told by Aamer Anwar, their solicitor?

15 A. That is correct, yes.

16 Q. Or Mr Lewis, the FLO?

17 A. That is correct, yes.

18 Q. We have heard some evidence that the family were not  
19 told and did not know about the post mortem until the  
20 next day. If you had known that the family had not been  
21 told, either by Mr Anwar or by Mr Lewis, about the  
22 post mortem, would that have altered your decision to  
23 authorise disclosure of the PM results to the officers?

24 A. Potentially, yes. Because I was -- I made this decision  
25 based on the fact that I had had a discussion with

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1           Alistair Lewis, I had advised Alistair of the interim  
2           result, that Ms Shearer had, you know, relayed to  
3           myself, and he had -- I knew he had the meeting with the  
4           family and he was going to advise Aamer Anwar. Now, the  
5           next day he told me that he had advised Mr Anwar. If  
6           I go back to the -- when my first -- my first statement  
7           to the Inquiry, where I said I couldn't recall. Just  
8           for clarification in that matter, when I said it would  
9           be in the FLO log is I did that statement sitting in my  
10          house with access to no paperwork, so I was running off  
11          memory, and that is why I said, you know, the details  
12          will be in the FLO log.

13         Q. Right. We have heard something from Mr Lewis about this  
14          as well. If a situation had arisen that the family were  
15          not told about the results of the post -- or the  
16          preliminary results of the post mortem until after the  
17          officers, sitting here now on reflection do you have any  
18          comment to make about that possible scenario?

19         A. If that is -- if that is what has happened, bearing in  
20          mind my understanding of what has happened is Mr Anwar  
21          was made aware, and obviously Alistair and John Clerkin  
22          were meeting with the family earlier that night.  
23          In fact, when I was sitting with Pat Campbell there was  
24          a good chance they were still sitting with the family.  
25          Yes, I would be uncomfortable with that.

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- 1 Q. Why?
- 2 A. Because it is only right and respectful that the family  
3 are made aware before anybody else is. But I have to  
4 also -- I have to also say Police Scotland knew the  
5 result of the post mortem. Police Scotland --
- 6 Q. I think you mentioned on Friday that was because  
7 officers had been present during the post mortem.
- 8 A. They were there, yes.
- 9 Q. You told us on Friday about the meeting you had had at  
10 Kirkcaldy Police Office --
- 11 A. Yes.
- 12 Q. -- with Campbell and Hardie and was it Wilson?
- 13 A. I think it was Stuart Wilson, yes.
- 14 Q. Where you discussed this possibility of disclosure to  
15 the officers.
- 16 A. Yes.
- 17 Q. Did anyone at that meeting suggest or say, "If you are  
18 going to advise officers, we had better make sure the  
19 family are told first"?
- 20 A. No, no.
- 21 Q. Did you consider confirming, either via Mr Anwar or with  
22 Mr Lewis, that the family had actually been told first?
- 23 A. No, I didn't because I was working on -- and it is  
24 an assumption, that they would be told.
- 25 Q. Right. You talked to us on -- well, on Friday afternoon

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1           and today you have talked about your expectation that  
2           you would get the statements pretty much the next day?

3           A. Yes.

4           Q. I think is that fair to say? With that expectation in  
5           mind, had you prepared a witness interview strategy for  
6           the next day or started to --

7           A. No, no.

8           Q. So if the officers had said the following day, "We've  
9           heard about the post mortem, we are going to give you  
10          statements", what would your plan have been at that time  
11          about obtaining the statements from the officers?

12          A. Well, at that time I would have expected the officers to  
13          submit their own statement, as would be invariably the  
14          normal process through the PIP process. There is the  
15          basic facts which the PIM would get, just the initial  
16          accounts which the officers would either in the main  
17          write themselves or sometimes you have a PIM will write  
18          it for them. But if you have a number of police  
19          officers, it is normally they would write it themselves  
20          and then there is what you call the stage four aspect  
21          where within 48 hours the police officers invariably  
22          supply their own statements or write their own  
23          statements.

24                 It is very, very rare that we would -- that we would  
25          put a team to take a statement off them at that time.

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1           And I would expect them to write their own statement,  
2           what may be referred to as an operational statement, and  
3           we would get that statement, we would be able to examine  
4           it and then in due course we would invariably go back to  
5           the officers once we have gathered in more  
6           information -- you know, we talked about on Friday the  
7           Airwave, the STORMs -- and maybe go back and get more  
8           detailed statements off them. So it wasn't a case of  
9           thinking: oh, I'd better have an interview strategy  
10          ready for each of the nine officers, I would expect them  
11          to have supplied an operational statement.

12         Q. I think on Friday talked about the possibility of having  
13          a statement taken from an investigator with PIRC, or  
14          preparing a self-penned or written statement themselves?

15         A. Yes.

16         Q. Am I clear in understanding that actually you would have  
17          expected on the 5th a sort of self-penned or operational  
18          statements from the officers?

19         A. Yes, I would have.

20         Q. What would you have suspected in terms of your PIRC  
21          investigation after you received self-penned statements;  
22          would there have been a planned interview at some stage  
23          with PIRC?

24         A. Yes, depending -- depending on what the investigation  
25          had identified and what evidence we had in gathered over

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1           the period of time. But, you know, in these  
2           circumstances I cannot envisage that we wouldn't be  
3           going back to the principal officers, if you call them  
4           principal officers, but I expect an operational  
5           statement from each of them, yes.

6           Q. Can I ask you for your comment -- we have heard evidence  
7           from Pat Campbell and Keith Hardie, I asked questions of  
8           them in relation to this disclosure --

9           A. Yes.

10          Q. -- of the PM results, the interim results. Keith Hardie  
11          gave evidence on 15 March last year, he was taken to the  
12          Gold Group meeting minutes, do you remember the ones  
13          I showed you for the 12.30 meeting on 4th May?

14          A. Yes.

15          Q. Where there was a task and asking about the issue of  
16          disclosure, and I asked him.

17                 "Question: Do you remember any discussion about  
18                 disclosing post mortem results to the officers?"

19                 He said he didn't, and he says:

20                 "Answer: ... I am pretty confident I was never  
21                 involved in any discussion in relation to that."

22                 So he doesn't have any recollection of a meeting  
23                 with you on 4 May in relation to a disclosure. Can you  
24                 provide any explanation for that?

25          A. No, I can't provide any explanation for that.

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1 Q. Are you confident that you did have that meeting in  
2 Kirkcaldy on 4 May?

3 A. Absolutely. Absolutely.

4 Q. Then we spoke to Campbell and took his evidence on  
5 14 March last year. Again, we asked him about this  
6 issue in relation to disclosure and the task, and asked  
7 him if -- in relation to his involvement. He says:

8 "Answer: Garry McEwan raised the matter~..."

9 At the Gold Group meeting:

10 "Answer: ... There was a detailed discussion, the  
11 main representative from PIRC was Billy Little. The  
12 discussion was around we would deploy PIRC FLOs to  
13 deliver the results of the PM to the family. The second  
14 aspect was Garry McEwan thought it would be beneficial  
15 in their status as witnesses for their welfare and  
16 wellbeing for them to be told about the results of the  
17 post mortem."

18 Sorry, I am reading that out. It doesn't really --  
19 grammatically maybe it doesn't make a lot of sense but  
20 there was a discussion with Garry McEwan, that they  
21 would maybe deploy PIRC FLOs to deliver the results of  
22 the post mortem to the family and the second aspect was  
23 Garry McEwan thought it would be beneficial in relation  
24 to their status as witnesses, and for welfare and  
25 wellbeing, for them to know the results of the

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1 post mortem. Do you remember any discussion in relation  
2 to that or being advised by Pat Campbell that  
3 Garry McEwan had been discussing it?

4 A. First of all, I have maybe picked you up a wee bit wrong  
5 there, Ms Grahame. Is that an inference then that I was  
6 at that Gold Group meeting?

7 Q. No, I think you have already said, and others have said,  
8 you weren't at that Gold Group meeting.

9 A. No, I wasn't, no.

10 Q. But this was Pat Campbell's understanding of the  
11 situation regarding the conversation about disclosure.

12 A. Right. Okay.

13 Q. Did he raise any of that at the meeting --

14 A. No.

15 Q. -- you say he attended?

16 A. No, no. The first I became aware that there was any  
17 prior discussion about disclosure to the principal  
18 officers was when I read those Gold Group meetings,  
19 and I -- what day that was but it was whenever we  
20 received the Gold Group meetings or took possession of  
21 the Gold Group meetings, okay. I was not aware -- as  
22 far as I was concerned in relation to the disclosure of  
23 this information, that was a decision I was making based  
24 on the rationale that I have provided, I was totally  
25 unaware -- and I am actually quite surprised, and

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1 I think I expressed that surprise on Friday, when  
2 I looked at the Gold Group meetings -- that that  
3 actually was being discussed because -- and I will take  
4 you back to what I have said a couple of times is I have  
5 never known this to occur. I have never known. But  
6 I felt given the circumstances that we had, that  
7 I thought it was the best way to break the stalemate.  
8 Ultimately it didn't, but ...

9 Q. Ultimately you did get a final report from the  
10 pathologist.

11 A. Yes.

12 Q. And we have heard evidence from Kerryanne Shearer in  
13 relation to this. She was the pathologist. And that  
14 final report we have heard was dated 18 June 2015.

15 A. Yes.

16 Q. So this was after you had the statements from the  
17 officers?

18 A. Yes, that is correct.

19 Q. You got them on the 4th. The cause of death Dr Shearer  
20 gave evidence about on 9 May last year, that it was  
21 sudden death in a man intoxicated by MDMA -- which was  
22 ecstasy -- and alpha-PVP whilst being restrained. And  
23 in evidence Dr Shearer said that would now include, "And  
24 the struggle against the restraint", not just the  
25 restraint itself. If you had not disclosed the interim

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1 results to the officers and you had delayed until after  
2 you got final report, which would have been 18 June --  
3 so after the initial statements, after you got the final  
4 report -- would that have altered your view about the  
5 status of the officers?

6 A. I go back to -- when you asked me just a short time ago,  
7 I said it -- it would have -- it would have made me  
8 think more about the status of the officers, if I can  
9 put that, okay. So if I say -- on the 4th there was no  
10 evidence to suggest that they were -- they were  
11 responsible in any way for a criminal act. So they were  
12 not suspects. They were not suspects at that time.

13 When -- when, you know, the final report come out is  
14 yes you have the cause of death and it was comma "whilst  
15 being restrained". But I think also Ms Shearer, if  
16 remember right from the reading of that post mortem  
17 report, and it may well be -- and I'm sitting here just  
18 now, my recollection is she could not determine how much  
19 the restraint had on the cause of death. So it wasn't  
20 like Ms Shearer was saying the restraint was the primary  
21 cause of death, or how much the restraint had played in  
22 the death.

23 So that then became -- became how do we take this  
24 forward. So we've got MDMA, we know quite a lot about  
25 MDMA in this country. Alpha-PVP we knew nothing about.

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1 My recollection is at that time when we did some  
2 research on alpha-PVP there had been one seizure of  
3 alpha-P and it was at a festival or something like that.  
4 So we knew nothing about alpha-PVP, so the discussion  
5 was right, how do we find out about alpha-PVP. And the  
6 restraint -- then we need to look at the restraint and  
7 have identified experts in the area around about  
8 restraint to give us some opinion in respect of the part  
9 that restraint played in that man's death.

10 So I wouldn't -- just because we got that report  
11 I wouldn't immediately have said, "Well, they are  
12 suspects now, aren't they?" Okay? Because we've got no  
13 definitive that a crime has occurred here.

14 Q. Did you have a discussion with Dr Shearer about the  
15 contribution that restraint had had in the cause of  
16 death?

17 A. No, I don't think I did actually. I think at first --  
18 it wasn't like I was having regular discussions with  
19 Ms Shearer in respect of this. I think ... my  
20 recollection is that I made Ms Shearer aware or  
21 Ms Shearer became aware that there was expert witness  
22 testimony being sought because we needed to obtain some  
23 samples and Crown gave authority that the samples be  
24 released to us, as an organisation, you know, so they  
25 could be taken to the different experts for examination,

## Transcript of the Sheku Bayoh Inquiry

- 1           the histology samples that she had possession of.
- 2           Q. Just to be clear about this, Dr Shearer gave evidence  
3           that the initial post mortem was pending toxicology and  
4           further investigations.
- 5           A. Yes.
- 6           Q. The final report was after those results had been  
7           obtained, so that was 18 June. Was it your  
8           understanding that she was seeking further expert  
9           opinion?
- 10          A. I maybe getting --
- 11          Q. Or was it the Crown at that stage or ... or was it PIRC?
- 12          A. The Crown issued the instruction about the expert  
13          witnesses, the exact date of it I would need to refresh  
14          myself from, you know ...
- 15          Q. I think the final report was dated 18 June. The final  
16          post mortem report. That was after Dr Shearer, as  
17          I understand her evidence, had completed the toxicology  
18          and the further investigations.
- 19          A. Right. Okay, yes. But there then became ... the  
20          instructions from Crown in respect of identifying the  
21          experts who could provide expert testimony in respect of  
22          the alpha-PVP and the restraint, because that came  
23          later.
- 24          Q. Was it your understanding then that that issue still had  
25          to be resolved in some way through expert opinion

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1 evidence?

2 A. Yes, yes.

3 Q. And perhaps with assistance from the Crown -- and we  
4 might hear about this later -- and with the involvement  
5 of PIRC in instructing experts, that was done, that line  
6 of investigation was followed?

7 A. Yes.

8 Q. But did you consider at that time, after you got the  
9 final post mortem report, the impact of something we  
10 have heard about in evidence called material  
11 contribution? Have you heard of that?

12 A. No, I haven't, no.

13 Q. Can I move on, please, and ask you about the paperwork  
14 that surrounds this decision that you made in relation  
15 to disclosure. I think you have a hard copy of your  
16 notebook. We looked at that on Friday. I hope you  
17 still have that, it's PIRC 04200.

18 A. Thank you.

19 Q. I really just want to confirm that I have not missed  
20 anything in your notebook. What, if anything, did you  
21 note in your notebook on 4 May that related to this  
22 decision to make a disclosure to the officers?

23 (Pause).

24 I couldn't find anything but I wanted you to check  
25 your own writing.

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1 A. No, that is fine. There is no details in respect of  
2 that disclosure apart from, I think it's item 5 I have  
3 got:

4 "Witness statements from all officers and staff."

5 And I have got:

6 "9 officers."

7 And then I have:

8 "Admin Detective Superintendent Campbell~..."

9 Q. What page are you on?

10 A. It says 47 at the top.

11 Q. 47 is the --

12 A. Sorry, scroll back, sorry. There.

13 Q. I think maybe page 3. We are talking about 4 May and  
14 I think we see that at the bottom of page 2 on the  
15 left-hand column, we see 4 May.

16 A. Sorry, 47 is the reference number of that book, every  
17 page is marked 47.

18 Q. At the bottom on the left-hand side we see Monday  
19 4 May 2015, so this is the section where you are dealing  
20 in your notebook with the 4 May.

21 A. Yes.

22 Q. It goes on to the next page, page 3, and then on page 4  
23 on the left-hand column we can see at the bottom  
24 Tuesday, 5 May.

25 A. Yes.

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1 Q. So if there was an entry about this decision it would be  
2 on one of those pages?

3 A. It would, yes. So we've got -- if you look at the  
4 first -- the left-hand page and you've got number 4 and  
5 number 5, just coming down.

6 Q. Is that ...?

7 A. On the left-hand side.

8 Q. Page 2 or page 3? Let's go back to page 2. We see on  
9 the left-hand side at the bottom it says 4 May, do you  
10 see that there? So is it that page you are referring  
11 to?

12 A. Yes.

13 Q. That is page 2.

14 A. Yes. Okay, so if you go to the next page.

15 Q. Page 3.

16 A. If you look at the top ... okay, so ... okay, if you  
17 then go to the next page.

18 Q. Page 4.

19 A. So, sorry, so if you stop, the left-hand -- obviously  
20 pages are kind of double, so the left-hand page if you  
21 look at the points and there's 4 and then 5.

22 Q. Yes.

23 A. You've got 5:

24 "Witness statements from all officers and staff."

25 So this is me agreeing with Mr Campbell what is

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1           required. Then I have got:  
2           "9 officers. Advised  
3           [Detective Superintendent]~..."  
4           Sorry, it's:  
5           "... D/Supt Campbell that status following PM was  
6           witnesses and they could be advised of interim PM  
7           result."  
8           And then I've got:  
9           "C/Supt McEwan attending office and will personally  
10          contact each officer and ask for statements."  
11          Q. Thank you. So that is the area where you note the  
12          discussion that took place?  
13          A. Yes.  
14          Q. That does mention Chief Superintendent McEwan as the  
15          person that is going to be providing that disclosure to  
16          the officers personally?  
17          A. Yes, that's correct.  
18          Q. So that ties in with what Pat Campbell said in evidence.  
19                 Is that following on from the meeting that you had  
20          in Kirkcaldy Police Office with Campbell, Hardie, and  
21          Wilson?  
22          A. Yes, because the next line is 20.55 I left Kirkcaldy.  
23          Q. Thank you. Then can we look at your daybook, 04520.  
24                 I think the relevant page is page 9. There is  
25          a reference to a meeting there, 20.05. If we can move

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1 further down the page we will see the time, there it is:

2 "Meeting with Pat Campbell."

3 And it was -- was this a note in your daybook about  
4 that meeting?

5 A. It is, yes.

6 Q. Can you help us understand the notes that relate to this  
7 discussion or this decision.

8 A. Yes, well I have got scribbled notes there. I've got.

9 "O/S Action.

10 "1. Gold Group terms of reference.

11 "2. Movements confirmed.

12 "3. CCTV strategy - scope done by P/Scotland.

13 "4. H2H [house-to-house] strategy."

14 And then I have got a couple of dashes and:

15 "- - Gordon Stanford!"

16 I have got:

17 "5. Officers' clothing.

18 "6. CS spray (PAVA).

19 "7. Nothing forensic from locus."

20 And then I've got --

21 Q. Can we move up the page there because there is some  
22 more --

23 A. Then I have got:

24 "Confirmed officers' status as witnesses!"

25 If you go to the next --

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1 Q. And was that part of the discussion that you had?

2 A. Yes. If you go to the next stage.

3 Q. On to page 10.

4 A. I have got:

5 "07.10AM.

6 "Telecoms."

7 Q. What was that in connection with?

8 A. I have got scribbling kind of circled. It's:

9 "Mobiles.

10 "2 T/calls~..."

11 Q. Is any of that in connection with this decision?

12 A. No, no, no. And then we come down to the next bit:

13 "Commander will be coming in to [telephone] T/call

14 each of the officers of their status."

15 Q. I think on Friday you told us the commander was McEwan?

16 A. That is correct.

17 Q. So that was the following morning at 7.10?

18 A. Yes.

19 Q. Was that when that entry was made?

20 A. Yes. So if we continue on as well, if you scroll up,

21 I've noted:

22 "Keith Hardie [DCI] MIT East."

23 Because I said to you I didn't know who Keith Hardie

24 was.

25 Q. But you knew that he had been at the post mortem and he

## Transcript of the Sheku Bayoh Inquiry

- 1           had been at the meeting?
- 2       A. Yes, yes, yes. But I was unsure so -- yes. Then I've
- 3       got:
- 4           "FLO.
- 5           "1. Death message.
- 6           "2. Read out statement from Pat Campbell.
- 7           "Garry McEwan."
- 8           I was trying to understand, that was in respect of
- 9       what had happened in respect of the delivery of the
- 10       death message. Then again I've got:
- 11          "3. Garry McEwan."
- 12          I've got:
- 13          "Social media.
- 14          "Background to victim."
- 15          And then ...
- 16       Q. Is any of that related to the disclosure?
- 17       A. No, no, the disclosure is the point about the commander
- 18       will be coming in to telephone each of the -- yes, and
- 19       obviously --
- 20       Q. And the previous page?
- 21       A. "Confirm officers states as witnesses", so it was
- 22       discussed at that meeting.
- 23       Q. Thank you. Then on the policy log, we heard about that
- 24       on Friday, you said John McSporran was the author of
- 25       that policy log?

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- 1 A. That is correct, yes.
- 2 Q. And it was started on 5 May. Can we look at PIRC 04153.  
3 Item 1, for example, just to remind us of this document.  
4 It says: decision number, the decision itself, the  
5 reason for the decision, the officer making the  
6 decision, and it gives the date.
- 7 A. Yes.
- 8 Q. If we could look at -- so can we look at -- I appreciate  
9 this policy log commenced on 5 May but I think you told  
10 us on Friday you had discussed entries with Mr McSporran  
11 at different times.
- 12 A. Yes.
- 13 Q. I am interested in item 9, so this is an entry  
14 John McSporran made on 7 May, or appears to be, and it  
15 talks about the post mortem examination. We know that  
16 took place on 4 May, the day before John McSporran  
17 started the log but he has obviously recorded this here.
- 18 A. Yes.
- 19 Q. I am interested in this entry. Was this completed with  
20 some guidance from yourself to Mr McSporran?
- 21 A. I can't recall, sorry.
- 22 Q. All right.
- 23 A. I obviously prepared a kind of note on what had happened  
24 at the post mortem, whether John used that or whether he  
25 had that information~... because I would have briefed

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- 1           him when he came on duty on 5th on what had taken place.
- 2           Q. There is no mention there of any decision in relation to
- 3           the --
- 4           A. No.
- 5           Q. No mention of blunt head trauma not being the cause of
- 6           death. Do you remember if you gave that information to
- 7           Mr McSporran or not?
- 8           A. I think I would have been. I think as I said, as I said
- 9           earlier, I have never hidden the fact that, you know,
- 10          I did disclose to Police Scotland and asked -- you know,
- 11          said they could tell the officers that, so ...
- 12          Q. All right. Thank you. But there are references in both
- 13          your daybook --
- 14          A. Yes.
- 15          Q. -- and your notebook --
- 16          A. Yes.
- 17          Q. -- that relate to this. They were prepared shortly
- 18          after the discussion or at the time of the discussion?
- 19          A. The notes from my daybook, I would suggest they were
- 20          made at the time of discussion. And then I would
- 21          have -- later, at an available time I would have made an
- 22          entry into my notebook which is the normal book, as you
- 23          are aware, that you would produce when you were at
- 24          court, if you were involved in court proceedings.
- 25          Q. All right. Thank you. Can we move on please and

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1           can I ask you about your second Inquiry statement,  
2           paragraph 73. That is the 421. So you realised you  
3           weren't getting statements?

4           A. Yes.

5           Q. We will get this up on the screen in a moment. It's  
6           paragraph 73. I think when you were giving your  
7           statement you were asked whether you had considered  
8           speaking to the officers direct yourself to tell them  
9           about their status --

10          A. Yes.

11          Q. -- and to make a direct request to them to give  
12          statements. I think here you say:

13                 "In hindsight I believe that exactly what I should  
14                 have done and it is something I always do now when in  
15                 attendance at an out-of-hours incident or  
16                 a post-incident procedure. But up until this point the  
17                 request for a statement from a police officer or  
18                 a member of police staff had always been requested via  
19                 Police Scotland and this had presented no challenges  
20                 previously."

21          A. That is correct.

22          Q. Can you tell us a little bit more about this? You  
23                 obviously -- in hindsight you think that is exactly what  
24                 you should have done, was there anything stopping you  
25                 doing that other than normal procedure is you didn't?

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1       A. First of all, I wasn't there on the 3rd when all the  
2           officers were present.

3       Q. No, no. But on 4 May?

4       A. So on the 4th, you know when I became aware of the --  
5           bearing in mind I became aware about 8 o'clock at night  
6           that we still didn't have statements is I would have  
7           need to have found out the officers' home addresses, and  
8           gone around the home addresses -- gone round the home  
9           addresses of the police officers, which is not something  
10          I have ever done before. I have always arranged to see  
11          them, you know, within a police office.

12                But I think the fact is -- is on the 3rd we didn't  
13           speak to the officers. On the 4th I didn't speak to the  
14           officers. We later, and you most likely -- I would  
15           imagine you will come on to it, we asked Police Scotland  
16           to undertake that task. And that is what had happened  
17           previously, communication had all been done through  
18           Police Scotland.

19                I talked on Friday about serving the letter of  
20           instruction, for want of a better expression, to be  
21           served on the police, and within that would be  
22           operational statements from all officers involved in  
23           this incident or we would identify the officers. That  
24           is how we went about our business and was that what was  
25           agreed with Police Scotland what would happen then.

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1           This obviously caused a conundrum. It caused  
2           a concern: what if this happens? Because I don't think  
3           we have overcome what will happen if a police officer  
4           says, "I am not giving you a statement". So to ensure  
5           that there is no ambiguity in our minds -- and I am now  
6           just speaking generally here -- as I think it is best  
7           that actually if I am at an out-of-hours incident and  
8           I'm at a PIM, I will ask to speak to the police  
9           officers. The way the PIP process is designed, I have  
10          to ask the PIM manager if I can speak to the police  
11          officers, all right. We have never been refused to  
12          speak -- I don't know what would happen if we ever were  
13          refused. That would then become a bit of a -- because  
14          the PIP is for welfare and to aid the investigation and  
15          I would go in and I would explain to the officers,  
16          I would explain who I am, what instruction I am working  
17          under, okay, and I would say to them, "You are witnesses  
18          to this incident, I need statements from you, is there  
19          any issue with us getting a statement from you?"

20          Now, I am hoping by that time we've got basic facts,  
21          we've got initial accounts and then there will be  
22          arrangements made within 48 hours for statements to  
23          either -- for them to write their own statements or type  
24          their own statements, or be -- I will supply teams to  
25          take the statements. That is -- so there is no

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1           ambiguity what we're asking of them and what their  
2           status is and what legislation we are working under.  
3           But what I feel at that time is we never spoke to these  
4           officers. It is maybe something you will come on to  
5           later about that.

6           Q. You mentioned you would have had to have gone to their  
7           home address.

8           A. Yes.

9           Q. This was on the 4th, when you became involved as lead  
10          investigator?

11          A. Yes.

12          Q. When would you have done that, if you had been taking  
13          that direct action?

14          A. But I wouldn't -- but I wasn't taken that direct action.

15          Q. You weren't. But if you had, would you have done that  
16          on the 4th or would you have done it later?

17          A. No, I wouldn't have done it on the 4th because -- so  
18          I am getting this information after 8 o'clock at night,  
19          how many staff have I still got on that the time of  
20          night? I don't know. I've been away at the  
21          post mortem, I've then gone to Kirkcaldy, I've sat with  
22          Pat Campbell, you know. So the actual mechanics and the  
23          availability of people to go and do that, I don't think  
24          I would have had that at that time, so it wouldn't have  
25          been done that night.

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- 1 Q. When would you have --
- 2 A. If I had taken that approach, if I had taken --
- 3 Q. If you had taken that approach, when would you have had  
4 the manpower or the resources to make that direct  
5 contact with officers?
- 6 A. If that was line and I didn't -- that wasn't the line  
7 I took but talking in hindsight here and hypothetically,  
8 then the earliest it would have been would have been the  
9 5th, if the officers were available on the 5th and if  
10 the officers agreed.
- 11 Q. Looking at the situation now if you have a scenario in  
12 the future where officers decline to provide statements,  
13 for whatever reason, seeking legal advice or otherwise,  
14 or you have a situation where the post-incident manager  
15 refuses permission for PIRC to speak to the officers, is  
16 there any way you -- or any further powers you would  
17 like to be able to try and have that direct contact?  
18 And do you think that would help?
- 19 A. I said earlier about this unique position that police  
20 officers have, you know in the fact of being able to use  
21 force but the way -- the way I see the law and the way  
22 the legislation is written in respect of a Crown  
23 investigation, if they -- if they are witnesses, I can't  
24 force a witness to give me a statement. Now I know from  
25 my liaison with the IOPC and the IPCC, they do have the

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1 power to require an officer to attend. So they have  
2 that power, but the officers just stare at them. They  
3 don't give information. That is the feedback that  
4 I have had when I have had discussions with my  
5 counterparts in the IPCC.

6 So this is -- if they are witness, if it is  
7 considered this is a criminal investigation -- bearing  
8 in mind it was a death investigation -- but if it is  
9 considered a criminal investigation, we can't force  
10 a witness to give a statement. We can't force it.

11 Q. Are there any circumstances where you can force  
12 a witness to give a statement?

13 A. No. No, there is none. And at that time I could -- if  
14 I considered them to have been suspects, I could have  
15 detained the officers. But they are afforded all the  
16 rights of a -- it is now an arrest as we know, but  
17 I could have -- if I had considered that, that the  
18 status was that of suspects, I could have detained them.

19 Q. But you still couldn't force them to give a statement if  
20 they had been detained and were suspects?

21 A. No, I would interview them under audio-visual conditions  
22 and they would just say, "No comment", or just not  
23 comment.

24 Q. We have heard about the different statutory authorities  
25 where you can have a Crown-led discretion, so direction

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- 1 from the Crown to PIRC, as was this case.
- 2 A. Yes.
- 3 Q. Or you can have a Chief Constable-led or instructed --
- 4 instruction?
- 5 A. Yes.
- 6 Q. My understanding is the powers of PIRC are different
- 7 under each of those scenarios?
- 8 A. Yes, they are.
- 9 Q. There may be further powers available if it is
- 10 Chief Constable --
- 11 A. That is correct.
- 12 Q. -- directed. Now, if it was a Chief Constable and
- 13 direction, would that afford PIRC further powers that
- 14 would allow you to demand statements from officers?
- 15 A. Well, we can require under legislation but would they
- 16 give the statement? That becomes the conundrum.
- 17 Q. So you can require the Chief Constable to provide those
- 18 statements --
- 19 A. Provide the information. The information we want is a
- 20 statement from their employee.
- 21 Q. But again, that could be, "I am not saying anything"?
- 22 A. Yes, so how do -- I don't know how you overcome this.
- 23 A duty of candour, given the privileged position they
- 24 are in, but how do you actually get that from them?
- 25 Q. Do you have any ideas?

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- 1 A. No, I don't. I have to be honest with you, I don't.
- 2 Q. Thank you. Can I ask you about an aspect of  
3 communication between the police and PIRC.
- 4 A. Yes.
- 5 Q. Roughly in that period, the day prior to you coming on,  
6 the day of 4 May, you were asked about this in relation  
7 to a statement Garry McEwan had given, and he spoke  
8 about this in evidence, that the family had requested to  
9 Mr McEwan, Garry McEwan, an opportunity to lay flowers  
10 at Hayfield Road where Mr Bayoh had been restrained.  
11 I think you indicate that you were asked about that.  
12 Did you know that the family had made that request to  
13 Garry McEwan?
- 14 A. No, I've not recollection of that. I have no  
15 recollection. How was that ... was that communicated to  
16 me in some format?
- 17 Q. Garry McEwan does not specify, as far as I am aware --  
18 I will be corrected if I am wrong -- that he advised you  
19 of that matter. If you had been aware of that, is that  
20 something you could have facilitated as lead  
21 investigator?
- 22 A. Absolutely, absolutely.
- 23 Q. Is that something that PIRC have facilitated in the  
24 past --
- 25 A. Yes, we have.

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1 Q. -- with other members of families?

2 A. Yes, I have other death investigations that have  
3 occurred outside and we have facilitated that.

4 Q. Thank you. Can I ask you about when -- this is after  
5 the post mortem --

6 A. Yes.

7 Q. -- when the family had a viewing of the body. As  
8 I understand the position, there was something said at  
9 that viewing by a relative of Mr Bayoh?

10 A. Yes.

11 Q. And they made comments, it is said, that there would be  
12 some sort of violence or repercussions as a result of  
13 this?

14 A. Yes.

15 Q. I wonder if I can ask you about your statement,  
16 paragraph 102. I think we heard something of this when  
17 Mr Lewis, the FLO, gave evidence.

18 A. Yes.

19 Q. That he had prepared a report which I think came to your  
20 attention; is that right?

21 A. Yes.

22 Q. Here we are, you are asked about:

23 "Following the family viewing of the body ...  
24 [Mr] Lewis submitted an incident message stating that  
25 during the viewing a brother-in-law of [Mr] Bayoh had

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1           made comments ... that there would be violence as  
2           a result of [Mr] Bayoh's death."

3           You say:

4           "I do recall that Alistair Lewis submitted such  
5           a message. The message was passed to the incident room.  
6           My recollection is that no action was taken. I believed  
7           that this was a comment made at a time of considerable  
8           duress by a family member."

9           A. Yes.

10          Q. Did you treat this as a serious matter that required  
11          investigation or further action to be taken?

12          A. No, I didn't treat it -- I treated it as I have said  
13          there, you know. No, I didn't -- so obviously, as we  
14          have talked about on Friday, the kind of -- how  
15          traumatic attending a mortuary is to view one of your  
16          loved ones. No, I didn't consider this a concern.  
17          I can't -- I can't recall if I spoke to Police Scotland  
18          about it in respect of community impact, you know,  
19          because that is a side they deal with, it's not PIRC's  
20          role. But I didn't consider this of any great concern,  
21          I have to be honest with you.

22          Q. Is it customary for FLOs to issue these things called  
23          incident messages of anything has been said at  
24          a post mortem in these circumstances?

25          A. No. It was -- no. No. It may have been something they

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1           would -- you know, you know, it is connected to the  
2           family so I would expect it would be recorded into the  
3           FLO log, it may be brought to my attention that it's in  
4           the FLO log or there was an incident message put in.  
5           But I ... I ... I don't recall us and myself deeming it  
6           necessary to take any action in respect to that. As  
7           I said, I spoke to Alistair about it, and, yes. And my  
8           recollection is that I felt it was, you know, if there  
9           had been something else that had come to light then  
10          obviously that would have changed my thinking, but  
11          I don't recall~...

12         Q. I am interested in the distinction between maybe  
13          something being noted in the FLO log and maybe brought  
14          to your attention at some point and what is called here  
15          an incident message. Is there a difference in status  
16          relating to --

17         A. No, no, it's just -- it's all information that is  
18          contained within the MIR, the major incident room, it is  
19          all information that is contained in there. Alistair  
20          obviously decided to put it into an incident message.  
21          We would need to look at the FLO log for that day and  
22          see if it was mentioned in that. I can't recall.

23         Q. Do you understand why he elected to put it in  
24          an incident message and draw it to your attention that  
25          way?

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- 1 A. Maybe he thought it would get to my attention quicker.
- 2 Q. When you spoke to Mr Lewis about this, was there any  
3 expectation that you would do something in relation to  
4 this?
- 5 A. Sorry, I can't recall. That is something Alistair would  
6 need to, if he had an expectation --
- 7 Q. We may hear there is not an entry in the FLO log  
8 describing this.
- 9 A. All right, okay.
- 10 Q. Does that surprise you or does it not --
- 11 A. Well, it is recorded and it is recorded in the  
12 incident -- so it's not like it's not recorded and we  
13 are not aware of it.
- 14 Q. On Friday we touched on the issue of the knife.
- 15 A. Yes.
- 16 Q. And I would like to just finalise one entry in the  
17 daybook and ask you about that --
- 18 A. Yes.
- 19 Q. -- before we leave it. It's -- if we can have the  
20 daybook it's PIRC~...
- 21 A. 4520?
- 22 Q. Let's try that. That is the one. PIRC 4520. Thank you  
23 so much. I think it is page 28. There is a reference  
24 to a knife at the very bottom of that page. If we look  
25 at page -- just look at the very, very bottom of

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1 page 28. Keep going. One of the sheets is a covering  
2 sheet so let's try page 27. There it is. Do you see at  
3 the very bottom it says:

4 "Knife??"

5 Just to put this into context, if we go to the  
6 previous page, which would be page 26, you will see at  
7 the top of that page this is dealing with Thursday,  
8 7 May. So you have reported on duty on 7 May.

9 A. Yes.

10 Q. Then if we look at page 27, which is the next page, this  
11 is the part of your daybook where you are dealing with  
12 items on that day. I think you were asked on Friday  
13 when you became aware that the information in the  
14 briefing note about the knife was incorrect. And I just  
15 want to look at the bottom of that page there. Where  
16 there is a reference to "Knife??", do you remember  
17 anything about the reason you made that note on that  
18 day, that is 7 May?

19 A. Sorry, I am just reading the sort of previous entries to  
20 get a wee flavour of why I had that.

21 Q. Yes, please do. (Pause).

22 A. So these are notes I have made before the morning  
23 briefing because I have got the morning briefing at the  
24 next page, 8.35 meeting.

25 (Pause).

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1           No, I ... I am unsure. I'm unsure. It may well  
2           have been in respect of did we have a knife, had we  
3           taken possession of a knife. It may well have been we  
4           had the knife but then we need to consider what forensic  
5           approach we take to a knife because you need to be  
6           careful what process you use first, if we're looking for  
7           fingerprints, if we're looking for DNA, what process  
8           takes precedent because if you do one before the other  
9           you destroy~... and I can't remember which one it is at  
10          this moment in time. But I am surmising there. I am  
11          surmising.

12         Q. All right. I just wanted to ask you in case that  
13          refreshed your memory. Can we have move on then to  
14          something in paragraph 136 of your Inquiry statement.  
15          So this would be 421. There is a reference to  
16          decision 34 in the policy log. It is quoted there,  
17          decision 34:

18                 "It is clear that [Crown Office] are providing  
19                 information to Mr Anwar the family solicitor, regarding  
20                 the investigation, post mortem and other findings."

21                 This entry in the log is dated 17 May.

22         A. Yes.

23         Q. There was this note that information was being provided  
24          to Mr Anwar:

25                 "PIRC are unsighted on some of these matters and

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1           this can undermine and compromise our dealings with the  
2           deceased family."

3           That is an entry in the policy log made by  
4           Mr McSporran.

5           A. Yes.

6           Q. You say:

7           "Yes I did, this course of action presented  
8           a challenge in PIRC's dealing with the family and their  
9           lawyer as it could arise that information provided by  
10          the FLOs was at variance to that already provided by  
11          [Crown Office]."

12          Can you tell us a little bit more about this issue  
13          and the difficulties that PIRC experienced because of  
14          it?

15          A. I mean, as I say in my response to that Rule 8 question  
16          there is the normal -- the normal process in dealing --  
17          in a death investigation is the fact that the family  
18          liaison officers are the single point of contact with  
19          the family. And all information in respect of the  
20          incident you are investigating whilst you are conducting  
21          that investigation is routed through to the family  
22          liaison officers. So you have this single point of  
23          contact, you are trying to minimise any ambiguity, any  
24          conflict of information, any inaccurate information  
25          being passed. And the reason I say that is COPFS are

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1           aware of what we tell them, okay, but that is getting  
2           told to them in a kind of briefing paper or if there is  
3           a meeting. The live and current information is being  
4           held in the investigation in -- by myself and John in  
5           the incident room.

6           So if you have COPFS providing information to the  
7           family solicitor who is the -- who is the point of  
8           contact for the family, and he is relaying that to the  
9           family, then when the FLOs have a meeting with the  
10          family -- not every meeting was Mr Anwar out with the  
11          FLOs -- and they provide some information that is at  
12          variance to what Crown, then that is compounding in my  
13          mind what happened in the first day of this  
14          investigation, there is conflicting information being  
15          pass to the family and that really prevented or  
16          presented untold issues in the relationship and the  
17          building a relationship with the family and building  
18          trust.

19          So the whole point of that, and I think it was  
20          Mr Mitchell then took that up with Crown is I am not  
21          saying Crown don't tell information to the family, the  
22          family were -- Mr Anwar was in fairly -- my  
23          understanding fairly regular dialogue with senior  
24          officials within Crown, but if they are, tell us, and  
25          tell us what you are telling them so at least the FLOs

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1           when they go to see -- because the FLOs could be going  
2           in there and they're saying, "Well, we've been told by  
3           the Lord Advocate that this has happened", and we are  
4           like, "Well we don't know that". You know. They've  
5           maybe said something that is more current than what  
6           Crown have told them and more accurate than what Crown  
7           has told them. You know. So I -- I agree with what  
8           John said there.

9           Q. So it could be that the Crown information that is being  
10          shared is perhaps based on an old briefing paper or  
11          out-of-date?

12          A. Yes, because as we gather more evidence, you know, you  
13          start to get a clearer picture of what has happened.

14          Q. Or it could be that their information is bang up-to-date  
15          but PIRC aren't aware of it?

16          A. Yes, it could be well be. It could be information that  
17          has come direct from the pathologist to them, the  
18          pathologist is employed by the Crown not PIRC, you know.

19          Q. Can we look at paragraph 138 of your statement. I think  
20          here your response is:

21                 "In my experience both with the police and that of  
22                 PIRC this was unusual and I cannot recall another time  
23                 this has happened whilst a live investigation was  
24                 ongoing and prior to the circumstances being reported to  
25                 [Crown Office]."

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1           So the PIRC investigation is ongoing, it is live.

2       A. Yes.

3       Q. There has not been a report to Crown Office at that

4           stage but in that period of time the Crown are having

5           are direct conversations with the lawyer who is the

6           single point of contact for the family?

7       A. Yes.

8       Q. Up until that point had you experienced this happening

9           with any other investigation?

10      A. No.

11      Q. Since then have you experienced it with

12           an investigation?

13      A. No.

14      Q. Do you -- looking back now, do you think some of the

15           difficulties with communication with the family in

16           relation to the FLOs contributed to this situation

17           arising?

18      A. I don't think -- I don't think -- you know, difficulties

19           with the FLO, I think the challenge arose because of the

20           fact of what happened on day one and what happened on

21           3 May. You had this, right from the very start,

22           conflicting information passed to the family,

23           potentially as death messages. You then had a senior

24           officer visiting the family passing on information.

25           I remember from -- the family saying that you know

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1           Mr McEwan says, "I shouldn't be telling you this", you  
2           know and then -- I don't know how Police Scotland had  
3           a challenge identifying and introducing FLOs on 3 May  
4           bearing the size of the organisation they are. It has  
5           never been an issue before and it has never been  
6           an issue since. So why were all these issues thrown up  
7           on the first day of this investigation? And that  
8           compounded by the time -- when Alistair and John got to  
9           sit down with the family, my feeling is they were on the  
10          back foot in trying to build a relationship with the  
11          family because of what had preceded beforehand, you  
12          know.

13                 So, yes, and for whatever reason the family  
14          solicitor engaged directly with Crown and directly with  
15          very senior people within Crown in respect of that.  
16          I am not aware of that ever happening -- it may have  
17          happened in other investigations but I'm not aware of it  
18          and it is not something we got feedback from, so you  
19          know I am not aware of it.

20          Q. So from your perspective on 4 May as lead investigator  
21          and then to be involved --

22          A. Yes.

23          Q. -- after that with John McSporrán, many of these issues  
24          arose because of the difficulties on 3 May?

25          A. Absolutely.

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- 1 Q. And they continued to have an impact?
- 2 A. Compounded by a number of things. You know, the  
3 numerous death messages passed to the family, the  
4 conflicting information, the failure to deploy FLOs, the  
5 failure for the PIM process, or the PIP process to work  
6 when you -- you know, and then we ended up we didn't  
7 have any statements. There were all these matters all  
8 compounding in as well as you had a death of a black man  
9 in the street whilst being arrested by the police.
- 10 Q. You have talked about the impact of that in your  
11 investigation. Did it have an impact on the  
12 relationship between PIRC and the family?
- 13 A. I think so. Yes, I think so.
- 14 Q. Did it have an impact on PIRC's relationship with the  
15 Crown?
- 16 A. No, I don't think -- I don't think that. I am not aware  
17 of ... Certainly then Mr Mitchell spoke to Crown, so  
18 how that was viewed and how that was received, that is  
19 for Mr Mitchell to talk about, but --
- 20 Q. He has given a statement to the Inquiry about this  
21 matter so we will no doubt hear from him at some point.
- 22 A. Yes, I -- my job and John's job when we take on is to  
23 conduct an effective investigation and gather  
24 the evidence, examine that evidence, and report to Crown  
25 on that. Then, you know, if Crown wish further

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1 investigations undertaken, which is not unusual, then we  
2 would do that further investigation and Crown make  
3 a decision in respect of what takes place.

4 So we were working through these challenges to get  
5 that information, it just felt as if there was always  
6 a hurdle every day there was a hurdle, you know, and  
7 going in: what have we got? Bang, bang, we've got this,  
8 we've got this. Right, you know~... So I think as  
9 I said in my Rule 8 everything was slow, taking longer  
10 than it should have done, everything felt like a bit of  
11 a -- I won't say a fight, but everything was  
12 a challenge.

13 Q. We will come back to that. Thank you. Can I ask you  
14 about a couple of issues regarding the behaviour of  
15 investigators.

16 A. Yes.

17 Q. If we could look at paragraph 116. You were asked about  
18 PIRC taking a statement from Mr James Hume. Your  
19 response to that is -- in relation to the question you  
20 were asked. PIRC investigators took a statement from  
21 James Hume regarding drugs and alcohol and such like.  
22 And Mr Hume said that he felt he was being asked leading  
23 questions and it felt accusatory rather than  
24 fact-finding and he was left upset and it built mistrust  
25 from him towards PIRC and the police.

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1           Your response is you were not aware of any concerns  
2           raised by witnesses in relation to PIRC's report?

3           A. No.

4           Q. Approach:

5                     "Given the cause of death, information regarding the  
6           deceased use of alcohol, drugs and steroids was  
7           absolutely central to the matter under investigation.  
8           How this information was elicited I cannot answer but  
9           should be referred to the investigators who obtained  
10          Mr Hume's statements."

11          A. Yes.

12          Q. When you were taking on the role of lead investigator or  
13          deputy to Mr McSporran, is this the type of information  
14          you would like to be brought to your attention if  
15          witnesses have concerns about the behaviour of PIRC  
16          investigators?

17          A. Absolutely.

18          Q. What could you do in your role either as lead  
19          investigator or deputy to resolve issues like this?

20          A. Well, you know, if -- you can't do anything unless you  
21          are made aware of something, so if Mr Hume had passed  
22          that information to us or the information had come via  
23          the family solicitor, and Mr Hume was a family --  
24          a friend of Mr Bayoh, then, yes, in the first instance  
25          I would have spoken to the two investigators, in respect

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1 of what had happened, and if necessary Mr Hume could  
2 have made a complaint. We have a complaint process  
3 which is clearly documented on our website and was at  
4 that time, and -- and a complaint would have been taken,  
5 it would have been passed to somebody independent within  
6 PIRC, I would suspect not within the investigation  
7 department, and passed to that person to investigate  
8 that complaint.

9 Q. If you were line manager and a complaint was made about  
10 one of your investigators that you line manage, is that  
11 something that would be brought to your attention?

12 A. Yes.

13 Q. Were you aware of any complaints -- this may not be for  
14 you, it may be for someone else, but you were aware of  
15 any complaints about an investigator Ross Crawford in  
16 relation to taking a statement from a Karen Swan?

17 A. That is -- Ross Stewart.

18 Q. Ross Stewart, sorry. Were you aware of any complaints  
19 in relation to Ross Stewart?

20 A. I was aware that we withdrew Ross Stewart from taking  
21 a statement from Ms Swan or Mrs Swan. Circumstances --  
22 yes, I was aware of that. There are circumstances all  
23 round about getting the statement of Ms Swan, you know,  
24 and -- and I spoke to Ross in respect of what happened  
25 because Mr Anwar made a complaint about Mr Stewart, and

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1 taking the statement. I had actioned Mr Stewart to take  
2 that statement and I had actioned alongside a person who  
3 was a non-police person for better expression.

4 Mrs Swan provided information regarding a family  
5 conflict with one of the police officers. There was  
6 a reluctance in getting the statement, although the  
7 information had been relayed during a BBC programme,  
8 that Ms Swan had -- it had been relayed and the reason  
9 I put Mr Stewart in to that, to take that is you know  
10 that the inference is my recollection is that Ms Swan  
11 was fearful about passing this information over to us.  
12 Mr Stewart's previous experience had been within the  
13 witness liaison team, the national witness liaison team,  
14 witness protection so he understood how to allay fears  
15 of people who felt reluctant or whatever.

16 But I am aware that -- yes. And I spoke to  
17 Mr Stewart about the circumstances of why Mr Anwar asked  
18 for him to be removed from that interview and we sent  
19 down another investigator who doesn't have a policing  
20 background take a statement.

21 Q. So what were the complaints in relation to Mr Stewart's  
22 behaviour that gave rise to this complaint from  
23 Mr Anwar?

24 A. It is -- it was John McSporran that spoke to Mr Anwar,  
25 okay? But my understanding from Ross is during the

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1 course of taking the statement, it was just in the early  
2 stages of the statement, Ms Swan made reference to  
3 an incident that had occurred with her brother. Her  
4 brother is a couple of years -- she is younger of her  
5 brother and it was an incident that occurred, and my  
6 recollection is that an incident occurred when her  
7 brother was a very young age and Ross had --

8 Q. I am asking Mr Stewart's behaviour.

9 A. Yes, yes, but Mr Stewart had questioned how the witness  
10 could recall that at such a young stage.

11 Q. Sorry for interrupting.

12 A. And Mr Anwar objected to that, stating it is not for  
13 Mr Stewart to be questioning what the witness says and  
14 that -- my understanding is Mr Anwar contacted John and  
15 we withdrew Ross and put down another investigator.

16 Q. So it was resolved by sending two other investigators in  
17 to take --

18 A. No, no. We kept the first investigator there who was in  
19 on --

20 Q. You sent if a separate one instead of Mr Stewart?

21 A. We sent in a separate investigate investigator from  
22 a non-policing background.

23 Q. We may hear further evidence about this, that Mrs Swan  
24 had been quite upset about Mr Stewart's attitude during  
25 the statement. Does that accord with your recollection?

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1 A. My recollection is that Mr Anwar objected to -- I don't  
2 recall, you know, what happened with Ms Swan.

3 Q. Thank you. Can I ask you about a separate matter now,  
4 please. Can we look at an article in The Herald  
5 newspaper from 15 May 2015. This is AA C00379, page 7  
6 only. You will see this is a black and white copy of --  
7 you will see at the side it says The Herald,  
8 15 May 2015. It's headed:

9 "Custody death family: Tell us the truth and let us  
10 grieve."

11 With some pictures and such like. When did you  
12 become aware of this article in the Herald newspaper?

13 A. I don't recall. I don't recall. I was obviously aware  
14 there was -- there was a lot of media reporting  
15 throughout the whole investigation, a lot of media  
16 reporting. So ... no.

17 Q. Were you having important media reports brought to your  
18 attention by anyone PIRC?

19 A. They were being collated by our -- one of our media  
20 office, one of our media staff in our media room, yes.

21 Q. Do you remember seeing this article?

22 A. No, I can't -- I can't recall.

23 Q. So on 15 May you didn't yet have statements from the  
24 officers.

25 A. No.

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1 Q. They were the 4 June.

2 A. No.

3 Q. And there are a number of apparent quotes within the  
4 body of this, so can I ask you to look on the left-hand  
5 column.

6 A. Yes.

7 Q. In this article, by Brian Donnelly, senior news  
8 reporter. Peter Watson -- at the bottom of page:

9 "Peter Watson, a lawyer for eight police officers  
10 involved in the case, said that the officer feared for  
11 her life and had been attempting to run away."

12 That is a reference just under:

13 "A policewoman who is described as 'petite' was  
14 injured in the early morning incident."

15 Then the next column, just slightly down. Again,  
16 there is a reference to Peter Watson of PBW Law. And  
17 the quotation there is:

18 "While it is deeply regrettable that Mr Bayoh lost  
19 his life, I would ask the media and public to remember  
20 that a petite female police officer was chased and then  
21 subjected to a violent and unprovoked attack by a very  
22 large man who punched, kicked and stamped on her.

23 "The officer believed she was about to be murdered  
24 and I can say that but for the intervention of the other  
25 officers that was the likely outcome.

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1            "We all seek the truth and part of that truth will  
2            lie in part in the post mortem and toxicology reports  
3            which will follow in due course. Calls for the  
4            suspension of the officers serve no purpose and do  
5            nothing but add unhelpful rhetoric in a difficult  
6            situation for all."

7            Do you see that?

8            A. Yes.

9            Q. Can I ask you about the comment that is made there by  
10           Peter Watson of PBW Law where it is said in quotation  
11           marks:

12           "... a very large man who punched, kicked and  
13           stamped on her."

14           That is a reference to the petite female officer.

15           A. Mm-hm.

16           Q. Can I ask you now to look at your Inquiry statement at  
17           paragraph 127 because I think you have been asked about  
18           this article. So that is 127. I think you were asked  
19           about the article, it was quoted to you and can we move  
20           down to your response:

21           "I can recall that this statement was released by  
22           the SPF but have no recollection of any discussion  
23           within PIRC about it. I do recall being surprised they  
24           had made this statement."

25           Just to be clear, the statement that you are being

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1           asked about here is the press release by SPF. I wonder  
2           if we can just move up slightly. Could we look at  
3           SPF 0010A. So this is the press release not the article  
4           that I have just shown you.

5           A. Okay, so I wasn't asked about the article?

6           Q. You weren't asked about the article, you were asked  
7           about the --

8           A. Okay, because I have no recollection of that being in  
9           the paperwork.

10          Q. So you have no recollection of the article at all?

11          A. No, not the article.

12          Q. This is the media release issued by Scottish  
13          Police Federation. That is dated 14 May, so that is  
14          the day prior to the article appearing in The Herald on  
15          15 May. Do you see that?

16          A. Mm-hmm.

17          Q. And if we move down, there is a reference:

18                 "Speaking in response to the comments made at the  
19                 press conference by representatives of the family for  
20                 Sheku Bayoh this morning, Brian Docherty, Chairman of  
21                 the Scottish Police Federation said;

22                 "The Scottish Police Federation ... recognises that  
23                 the family of Sheku Bayoh is mourning his death and that  
24                 this is a painful process.

25                 "The SPF does not wish to add to that pain by making

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1           unhelpful comments to the press. We are saddened that  
2           his legal representatives appear not to take the same  
3           approach.

4           "We are also saddened that his legal representatives  
5           are inferring police officers should not have the same  
6           legal protections as any other member of the public.

7           "A petite female police officer responding to a call  
8           of a man brandishing a knife was subject to a violent  
9           and unprovoked attack by a large male. The officer  
10          believed she was going to die as a result of this  
11          assault.

12          "I very much regret that Mr Bayoh sadly lost his own  
13          life following this incident but innuendo and  
14          speculation whilst the independent investigation is  
15          ongoing adds nothing other than to the pain and grief of  
16          the family.

17          "We make no apology for standing up for the rights  
18          of police officers and we continue to extend to the  
19          family and friends of Mr Bayoh our sincere condolences."

20          So I think in your Inquiry statement you were asked  
21          about this press release but not asked specifically  
22          about the article that then appeared?

23          A. Yes.

24          Q. So the press release is the 14th, the article is the  
25          15th, the following day, and we can see that there are

## Transcript of the Sheku Bayoh Inquiry

1 differences between this press release from SPF and the  
2 article that was published and primarily I am interested  
3 in the remarks from Peter Watson who is representing  
4 eight of the officers, it is said.

5 A. Yes.

6 Q. As I understand it, he also represents SPF. His  
7 comments -- it was Mr Watson's comments that mentioned  
8 the kicking, the "punched, kicked and stamped on the  
9 female officer". Do you see that?

10 A. That is -- it is not there anymore but yes, I remember  
11 you said that. It was on the article.

12 MS GRAHAME: We can put the article back on screen.

13 Actually, I am conscious of the time and it may be we  
14 should simply pause there.

15 LORD BRACADALE: We will take a 20-minute break at this  
16 stage.

17 (11.31 am)

18 (A short break)

19 (11.55 am)

20 LORD BRACADALE: Ms Grahame.

21 MS GRAHAME: Thank you. Let's just recap on what we were  
22 looking at before the break. So I asked you to look at  
23 the media release and that was dated 14 May 2015.

24 A. Yes.

25 Q. I will give you the reference to that in a second. If

## Transcript of the Sheku Bayoh Inquiry

1           we could look first of all actually at paragraph 127 of  
2           your Inquiry statement. Paragraph 127. This is where  
3           you were asked by the Inquiry team about a media release  
4           that had been issued by SPF the Federation. And your  
5           response was you can recall this statement was released  
6           bit SPF but you had no recollection of any discussion  
7           within PIRC about it:

8                     "I do recall being surprised that they had made this  
9           statement."

10                    So when were you made aware that SPF were -- had  
11           issued a media release?

12           A. I can't recall. I would imagine that would have been --  
13           I don't know what time the media release was, you know,  
14           was released. I'd imagine it would have been the next  
15           day, the 15th.

16           Q. It was dated the 14th. Do you think it was likely to be  
17           the 15th you became aware --

18           A. Yes. You know, whenever it came into the organisation,  
19           I would be surprised -- yes.

20           Q. We can see there the doc ID is SPF 00010A. And if we  
21           can move down the page, we looked at this before  
22           the break. The media release from SPF said:

23                     "A petite female police officer responding to a call  
24           of a man brandishing a knife was subject to a violent  
25           and unprovoked attack by a large male. The officer

## Transcript of the Sheku Bayoh Inquiry

- 1           believed she was going to die as a result of this  
2           assault."
- 3           So that was the extent of the SPF's media release at  
4           that time?
- 5       A. Yes.
- 6       Q. So you didn't have any statements from the officers at  
7           this stage --
- 8       A. No.
- 9       Q. -- but that would appear to at least be some information  
10          for you in connection with the petite female officer?
- 11      A. Yes.
- 12      Q. Did you know who that petite female police officer was  
13          when you read this?
- 14      A. I know they are talking about Nicole Short. Did I know  
15          that at the time? Yes, I would have known that at the  
16          time because Nicole Short -- we were aware that  
17          Nicole Short had been taken to hospital. Yes.
- 18      Q. We've heard evidence that Nicole Short had been taken to  
19          hospital after the incident and then brought back to the  
20          canteen at Kirkcaldy Police Office --
- 21      A. Yes.
- 22      Q. -- on 3 May 2015. She had remained there for a period  
23          of time. Her equipment and clothing had been taken  
24          along with the other officers.
- 25      A. Yes.

## Transcript of the Sheku Bayoh Inquiry

1 Q. So were you aware that that had been done and that  
2 Nicole Short was the female police officer?

3 A. Yes -- well, there was more than one female police  
4 officer at the scene but I was aware that Nicole Short  
5 was the officer who had been taken to hospital.

6 Q. So you were aware she had been injured, taken to  
7 hospital and we have heard evidence from Nicole Short  
8 and we have -- can I say she appeared petite, of short  
9 stature.

10 A. I never made ever met her, so I don't -- I never met  
11 her.

12 Q. Thank you. So you are made aware of this. You think it  
13 would have been on the day or the next day that you were  
14 made aware of it?

15 A. Yes.

16 Q. This is information that you didn't previously have in  
17 relation to at least one of the police officers who you  
18 now know to be Nicole Short?

19 A. Yes.

20 Q. Then let's look at the article that appeared in  
21 The Herald on the 15 May. This is at page 7, sorry.  
22 There it is. We can see I referred to you before  
23 the break on the left-hand column the comment from  
24 Peter Watson, lawyer for eight police officers involved  
25 in the case:

## Transcript of the Sheku Bayoh Inquiry

1            "... the officer feared for her life and had been  
2            attempting to run away."

3            Again, would that be new information that was  
4            available to you?

5            A. It would have been, yes.

6            Q. Right.

7            A. I don't recall that article, I don't recall reading that  
8            article.

9            Q. Do you recall anyone drawing this article to your  
10           attention?

11           A. No. I remember when the Police Federation issued this  
12           statement and --

13           Q. The media release?

14           A. The media release, yes. And I remember actually --  
15           I actually think it was on TV, I think actually the  
16           SPF -- if my recollection is right, it was covered on  
17           television. I remember being surprised by it, that they  
18           had ... that they had come out with that actually, yes.

19           Q. I also referred you to the second -- the column to the  
20           right of that first column, where Peter Watson is quoted  
21           as saying that she had been:

22           "... subjected to a violent and unprovoked attack by  
23           a very large man who punched, kicked and stamped on  
24           her."

25           A. Yes.

## Transcript of the Sheku Bayoh Inquiry

1 Q. I think you said before the break you don't remember --  
2 and I think you have said now you don't remember reading  
3 this article?

4 A. No, I don't, no.

5 Q. Do you remember if this article was drawn to your  
6 attention by anyone within PIRC?

7 A. Not that I recall, it may have been but not that  
8 I recall, no.

9 Q. Do you remember any discussions in PIRC going on around  
10 about 15 May that Peter Watson had said there was  
11 a violent and unprovoked attack by a very large man who  
12 punched, kicked and stamped on her?

13 A. I can't specifically -- no. No, I can't specifically.  
14 I remember myself being surprised about it, by the  
15 Police Federation coming out this statement in respect  
16 to that. There was so much media attention ongoing, you  
17 know, in respect of this incident. My primary focus was  
18 the focus on investigation, taking the investigation  
19 forward and evidence-gathering in respect of that. So  
20 that -- I can't -- I can't recall that. I remember  
21 being surprised by the Police Federation coming out with  
22 that and why they did that, you know that is obviously  
23 for the Federation to explain, you know.

24 But no, I don't remember it being -- that  
25 information, particularly in respect of what

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1 Peter Watson is saying in the paper there because it  
2 is -- it is different from what is on the official media  
3 release, if I can put it that way. No, I don't remember  
4 that.

5 Q. Was anybody in PIRC talking about the fact that this  
6 article had appeared in the papers and the lawyer  
7 representing some of the officers appeared to be making  
8 a reference to punch, kick and stamping on who you know  
9 to be Nicole Short?

10 A. I don't remember that. The aspect of Mr Watson and the  
11 Federation, that was -- that was -- I think I said on  
12 Friday that was taken away in the main from John and I.  
13 It was dealt with by Mr Mitchell and the Commissioner,  
14 and I think you will be aware of all the correspondence  
15 round about that. But I don't recall that. I do  
16 remember being surprised because again, one of  
17 the things I am not aware of the Federation coming out  
18 and making a statement in the middle of  
19 an investigation, you know, so ...

20 Q. I will come on to the surprise in a moment, but do you  
21 remember any conversation with Mr Mitchell in relation  
22 to this suggestion that there had been a punch, a kick  
23 and a stamp?

24 A. No. Not at this time, no.

25 Q. At this time you don't have any statements from the

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1           officers, you are looking for information about what  
2           happened at Hayfield Road. Would it have been helpful  
3           if that information had been drawn to your attention?

4           A. Yes, because that is the information we didn't possess,  
5           you know. Yes.

6           Q. Would that have had any impact on your investigation as  
7           such, the lines that you were pursuing, if it was the  
8           case that Nicole Short had been punched, kicked and  
9           stamped?

10          A. It wouldn't have changed the investigation as it was  
11          ongoing at that time, you know on reflection sitting  
12          here now it wouldn't have changed but it would have been  
13          something you would be looking to say can we actually  
14          evidence that, did that actually happen, or is that just  
15          Mr Watson coming out and saying this. The benefit  
16          Mr Watson had is he had obviously been in dialogue with  
17          the officers. And we know --

18          Q. He was representing --

19          A. -- that in hindsight, we know that in hindsight, that  
20          you know~...

21          Q. It says in that article that he is the lawyer for eight  
22          police officers involved. Do you remember in the  
23          left-hand column --

24          A. Sorry.

25          Q. -- I drew that to your attention?

## Transcript of the Sheku Bayoh Inquiry

- 1 A. Right, yes.
- 2 Q. It said:
- 3 "... the officer feared for her life and had been
- 4 attempting to run away."
- 5 Do you remember that? So you were aware he was
- 6 representing a number of the officers?
- 7 A. Yes.
- 8 Q. If you had had that drawn to your attention, who would
- 9 have been responsible in PIRC for bringing information
- 10 from the media to your attention?
- 11 A. I would have expected that to come from our media
- 12 department. I hadn't allocated an investigator to
- 13 research all media, such like it was the media that --
- 14 our media department was -- you know, it is something
- 15 that gets done anyway. They look at the press releases,
- 16 you know, for what articles there may be concerning PIRC
- 17 or whatever on a regular basis, so I would have expected
- 18 that to come from them.
- 19 Q. In terms of your investigation and your expectations of
- 20 that media department, would you have expected them to
- 21 draw this type of information to your attention when
- 22 they read it?
- 23 A. Yes, I would.
- 24 Q. Or shortly thereafter?
- 25 A. Yes, yes.

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1 Q. If you had been -- if you had had this drawn to your  
2 attention, would it have caused you to consider whether  
3 there were any forensic implications of this  
4 information?

5 A. Now, I would need to see the minutes but we had --  
6 I think about a week after the incident we had  
7 a forensic strategy meeting with representatives from  
8 the SPA.

9 Q. Scottish Police Authority?

10 A. Yes, sorry, and -- yes, Scottish Police Authority. We  
11 had a forensic meeting and the purpose of that  
12 meeting -- and Ms Shearer was at it as well and the  
13 Crown was at it as well -- was to -- what evidence have  
14 we got, what articles have we seized and what needs  
15 progressed and in what manner.

16 Q. Do you have an entry in your daybook or in your notebook  
17 that might relate to that?

18 A. I don't know because it was minuted, there was an agenda  
19 and there was minutes taken. So I don't -- that would  
20 be the best ... But there was examination undertaken in  
21 respect of the body armour vest worn by Nicole Short, in  
22 respect of footwear, and footwear comparison against.  
23 When that exactly was undertaken, there would be  
24 an action for it, and as I said we had the forensic  
25 strategy meeting, the exact date I can't remember

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1 sitting here at this moment. Then thereafter we  
2 progressed the -- the articles and the manner and line  
3 of what we had discussed and agreed at the ...

4 Q. I would like to come on to that -- the forensic  
5 implications if I may, but can I go back to in your  
6 statement you had as in evidence you have said you were  
7 surprised in relation to the media statement that was --  
8 the media released issued by SPF?

9 A. Yes.

10 Q. Can you explain to the Chair why that was of surprise to  
11 you?

12 A. I think it's maybe a wee bit of naivety. You know, in  
13 PIRC in respect of any media releases that we are going  
14 to make on a Crown-directed investigation we will not  
15 make that media release until we have okayed it with  
16 Crown. And that is the same as Police Scotland,  
17 Police Scotland will not make any media release until  
18 Crown say, "Yes, I agree with that media release", so  
19 any proposed media release would go to Crown and Crown  
20 would examine that and a lot of times alter it, you know  
21 in respect of --

22 Q. Why is that done?

23 A. That is just to ensure that there's -- my impression of  
24 why it's done is just to ensure that there's a -- (a)  
25 there's an accurate message getting put out there, and

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1           also to preserve the integrity of the investigation in  
2           respect of information being passed out.

3           So the police are aware of that, we're aware of it,  
4           Crown is aware of it, and there you have a -- the  
5           Federation, the police union, you know, in the main with  
6           police officers in it and they have made this statement.  
7           Now, I understand Mr Watson, but the Police Federation  
8           have made this statement, you know, so as I said it may  
9           be a wee bit of naivety on my part thinking, you know,  
10          why have they just come out with that?

11         Q.   If the Police Federation had followed the same practice  
12           as yourself, PIRC, the police and had any media  
13           statements approved by the Crown or revised, would you  
14           have expected the Federation to also follow the same  
15           practice?

16         A.   I think that is why I was surprised that never having  
17           encountered it before, then you know -- I don't know how  
18           it is governed by them in respect of a Crown  
19           investigation, and release of information. Because that  
20           is information being released, and as you say prior to  
21           us even having sat down and taken statements off the  
22           officers or the principal officers.

23         Q.   We may hear evidence from Mr Mitchell later in this  
24           hearing in relation to concerns he had about things in  
25           the press from the Federation. Did you share concerns

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1           about the Federation, or officers putting things out in  
2           the public domain through press releases or articles?

3           A. Yes. Yes, it felt as if at times the investigation was  
4           being conducted through the media. I have to be honest  
5           with you, and I do remember that at one point the  
6           Lord Advocate and I think the Justice Minister came out  
7           and basically issued a statement asking for the running  
8           commentary you know to cease while the investigation is  
9           ongoing. So what powers there was to prevent this,  
10          I don't think there's any, you know.

11          Q. From the perspective of PIRC and carrying out their  
12          investigation, would it have been helpful for none of  
13          the media issues to be raised at that stage?

14          A. Yes. Yes. It would have been. And it would have been  
15          helpful in respect of our relationship with the family  
16          for that. Because they are seeing this information  
17          coming out, and as the investigatory body, you know,  
18          an expectation: well, how's that information getting  
19          there, why is that getting allowed to be released?

20          So~...

21          Q. Can I ask you, if you had had this information brought  
22          to your attention, so the punched, kicked and stamped  
23          information --

24          A. Yes.

25          Q. -- is that something that you could have discussed with

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1 the forensic scientists? I will tell you why I am  
2 asking. We have heard evidence that the forensic lab  
3 obtained footwear --

4 A. Yes.

5 Q. -- from Mr Bayoh and a vest from Nicole Short on 14 May,  
6 so that is the date that the press release -- the media  
7 release was issued. And the day before the Herald  
8 article came out. The final report was sent to you on  
9 24 August and I say it was sent to you, Mr Little, by  
10 the lab. So that was a period of around three months --  
11 over three months when they had those items.

12 A. Yes.

13 Q. You've said earlier today the order of testing can be of  
14 significance?

15 A. Yes.

16 Q. Now, if you had known on 15 May that there was this  
17 suggestion that a man had punched, kicked and stamped on  
18 Nicole Short, is that something that you could have  
19 shared with the forensic lab and discussed with them  
20 about what tests should be done, what order of tests  
21 should be done?

22 A. It would have formed part of the discussion. If we  
23 had -- I think we had the information about the punch,  
24 I think we had spoken to a witness there by that time  
25 who had given us information regarding the punch. But

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1           the stamp -- but we were obviously -- we obviously --  
2           how do we get to sending the vest before that and how  
3           did we have that information? I can't remember. Maybe  
4           within the minutes of the forensic strategy meeting it  
5           would identify that, I can't remember. But we had  
6           obviously lodged the vest and the footwear prior to this  
7           newspaper article, so was it because there was a mark on  
8           the vest or -- I can't recall what -- you know, the  
9           actual timescale and the order how that happened.

10          Q. This article is 15 May?

11          A. Yes, I understand that. I am talking about how we  
12          got -- you know, presenting the footwear, you know and  
13          asking for comparison of footwear against the vest. You  
14          know, the body armour.

15          Q. You sent the vest to the lab, did you consider whether  
16          or not fingerprint testing had to be done at all?

17          A. On the vest?

18          Q. Mm-hm?

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

20          Q. We have heard evidence that when they carry out  
21          fingerprint testing they use a black powder --

22          A. Yes.

23          Q. -- which can be dusted over but that can have an impact  
24          on any woven material.

25          A. Yes.

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- 1 Q. And that can subsequently have a detrimental impact on  
2 the ability of forensic scientists to carry out  
3 subsequent testing.
- 4 A. But I go back to what I said earlier, the whole point of  
5 the forensic strategy meeting is to discuss with the  
6 experts from the different departments of the SPA in  
7 respect of what articles we've got, what examination we  
8 would like them to undertake, and actually the order,  
9 the mechanics of how you undertake that because, you  
10 know -- the example I gave was fingerprints and DNA, and  
11 I am aware that if you do one before the other then  
12 you're almost mitigating the ability to do the latter,  
13 so --
- 14 Q. So you were aware of that when you attended the forensic  
15 strategy meeting?
- 16 A. Oh, yes, I am aware of that, yes.
- 17 Q. Did you say that was around a week later?
- 18 A. Yes, I can't remember the date of forensic strategy  
19 meeting.
- 20 Q. Did you find anything in your notebook or in your  
21 daybook --
- 22 A. Sorry, I never looked. My apologies, I never looked.
- 23 Q. Would you have a look?
- 24 A. I tell you what might be easier, is it not in my ... in  
25 my first -- my initial statement, right at the very ...

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1 Q. If you think it was roughly about a week later, that  
2 would be about the 11th and there are entries on page 6  
3 of your notebook, which is PIRC 04200. Entries of the  
4 10 May and 12 May. That is page 6. That is roughly  
5 around a week later. Can you find anything? There is  
6 a reference I think on the 12th to a forensic strategy  
7 meeting?

8 A. Yes, 12 May:

9 "Forensic strategy meeting at Howden Hall forensic  
10 lab. Strategy agreed."

11 Q. What does that say after that?

12 A. "Advise verbally that Sheku had amphetamine and ecstasy  
13 within his system. Full details to follow."

14 Q. There is no mention there of any fingerprint or the type  
15 of order of the analysis.

16 A. Yes, but that is what I said, it was minuted, the  
17 meeting. We had a minute taker there at the meeting.  
18 There was an agenda on the meeting because there was  
19 a number of areas to cover, so there was an agenda  
20 drafted up and there was somebody assigned to minute  
21 taking. So we had representatives there from Crown,  
22 pathology, SPA, Police Scotland.

23 Q. I will see if we can -- the Inquiry team can look for  
24 that.

25 A. There are -- there were minutes of that meeting.

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1 Q. Let me see, I don't know if this is actually on the  
2 playlist for today but it's PIRC 04161. It's not on the  
3 playlist. What we'll do is we will maybe come back to  
4 this in the afternoon once we can have that added and  
5 shown on the screen, and I will come back to those  
6 questions once you've got the minutes in front of you.

7 A. Thank you.

8 Q. Can I turn to another press statement. 2 June, if we  
9 look at PIRC 04521. Let's look at your statement first  
10 of all, Inquiry statement, paragraph 159. You are asked  
11 about another SPF press statement in that paragraph. So  
12 that is 159. This is your -- 159. You are asked about  
13 another public statement which read, and it is quoted  
14 here:

15 "The officers involved have never refused to provide  
16 statements."

17 This is from SPF, a press statement:

18 "The officers involved have never refused to provide  
19 statements. It was agreed at the outset with PIRC that  
20 they would revert to us when they wanted statements and  
21 when they were clear on the basis that statements were  
22 to be given. PIRC emailed me this morning at 10.46 am  
23 asking for our assistance to organise interviews and we  
24 answered at 11.29 am confirming we would be pleased to  
25 assist. Those are the facts."

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1           If we can look at SPF 0019. If we can move down the  
2 page, please. You should see a -- here it is. It's in  
3 relation to the death of Mr Bayoh:

4           "... family lawyer heavily criticised."

5           And it's issued on behalf of the SPF on 2 June 2015.  
6 So this is two days prior to you getting statements from  
7 the officers, which was 4 June.

8       A. Yes.

9       Q. It says:

10           "The legal adviser to the Scottish Police Federation  
11 has responded to criticism levelled at the organisation  
12 by Aamer Anwar, the lawyer representing the family of  
13 Sheku Bayoh."

14           And the quotation there is from  
15 Professor Peter Watson of PBW Law. This is issued by  
16 the Federation. It says there:

17           "The comments made by those representing the family  
18 of the deceased continue to promote a completely  
19 inaccurate and misleading account. The officer injured  
20 remains off work, has several hospital visits and is now  
21 in rehabilitation. A examination by a leading  
22 Consultant confirms her injuries were significant. The  
23 injuries have been documented and photographed."

24           Then the quotation goes on, and this is the part  
25 that was referred to in your statement:

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1           "The officers involved have never refused to provide  
2 statements. It was agreed at the outset with PIRC that  
3 they would revert to us when they wanted statements and  
4 when they were clear on the basis that statements were  
5 to be given. PIRC emailed me this morning at 10.46 am  
6 asking for our assistance to organise interviews and we  
7 answered at 11.29 am confirming we would be pleased to  
8 assist. Those are the facts."

9           If we could go back to your Inquiry statement,  
10 please, that is at paragraph 159. That was on the  
11 screen a moment ago. If we can look at your response:

12           "I found this unhelpful as it implied that the SPF  
13 were waiting all along for PIRC to approach them to have  
14 the officers provide statements. It is well documented  
15 the efforts we had made with Police Scotland and SPF  
16 legal representatives in this regard and this was just  
17 an unhelpful statement put out to the media making it  
18 sound in my opinion that we had been doing nothing in  
19 this regard."

20           And if we can move up. At paragraph 160 you were  
21 asked for a little bit more explanation about that, and  
22 you said:

23           "I did not consider this statement to be accurate  
24 and the officers had refused to provide statements on  
25 previous occasions as detailed in my earlier responses."

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1           Then at paragraph 161, again I think you provide  
2 a little bit more detail, you say:

3           "I did not take any action and I am unsure if anyone  
4 else did."

5           At 162 you say:

6           "I felt could in the Public's eyes, as it ..."

7           This is in response to a question about whether the  
8 statement undermined confidence in PIRC:

9           "I felt could in the Public's eyes, as it inferred  
10 that PIRC had only to ask the SPF for statements from  
11 the nine officers and they would have complied, despite  
12 the fact that a month had passed since the attending  
13 officers had refused to provide statements or complete  
14 any documentation."

15           I am interested in the situation that arose in  
16 relation to this statement that was made by the  
17 Federation. If we can maybe perhaps go back to the  
18 paragraph 151 which commenced this passage in your  
19 Inquiry statement, where it says -- back to 159, sorry.  
20 We can see the quotation there.

21           A. Yes.

22           Q. "The officers have never refused to provide statements."

23           What was your impression when you read that  
24 sentence:

25           "The officers have never refused to provide

## Transcript of the Sheku Bayoh Inquiry

1 statements"?

2 A. That is untrue. Mr Watson knew it was untrue and the  
3 Federation knew it was untrue.

4 Q. The suggestion then in the second statement:

5 "It was agreed at the outset with PIRC that they  
6 would revert to us when they wanted statements and when  
7 they were clear on the basis that statements were to be  
8 given."

9 Was there any agreement with PIRC that PIRC would  
10 revert to "us", presumably being the officers or  
11 Mr Watson or the Federation, when they wanted  
12 statements? Was there any such agreement?

13 A. Not with me. I think I can clearly speak for  
14 John McSparran, not from him. As I said earlier,  
15 there's a lot -- well, the majority of the  
16 correspondence was taking place between the commissioner  
17 and Mr Mitchell with the Federation, but you know that  
18 is just wrong, that is just untrue. You know, it's  
19 clearly documented the efforts we made to get  
20 statements, and for them just to come out with that and  
21 what effect that had -- I go back to what effect did  
22 that have with regard to the family, and the family  
23 perception that we were capable and able to carry out  
24 an effective investigation, when you have a statement  
25 like that to say: well, you only need to -- we had

## Transcript of the Sheku Bayoh Inquiry

1 an agreement, just come and tell us when you want  
2 statements. It's wrong.

3 Q. What were your concerns about the impact on the family  
4 reading this, if they did read this?

5 A. If they had read that, it would be first question  
6 I think: what in the name of goodness has PIRC been  
7 doing? Because any meetings we had the family we were  
8 saying, "Look, we are making best efforts to get  
9 statements from the officers, there's challenges that we  
10 are having in respect of that", and, you know, for all  
11 we could say to them, you know, "We've never come across  
12 this before we need to overcome this hurdle", and then  
13 you have that. And the Federation knew full well and  
14 they had correspondence as well around about -- the  
15 Federation knew full well that we had been trying since  
16 day one to get statements from these officers or an  
17 operational statement from the officers and then get we  
18 would get full statements which is why we ended up just  
19 taking full statements, you know.

20 But that is a total misrepresentation of what was  
21 happening and it reflected -- it reflected on --  
22 I would -- my viewpoint was this reflected badly on PIRC  
23 in the public eye and in the family eye. It could also  
24 have a -- it could also have a detrimental effect within  
25 our own organisation because we are telling them this is

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1           what we're doing, you know, the investigators are out  
2           and about doing other stuff, we are making best efforts  
3           to get this so keep working away and we will get this  
4           and hopefully fill in the gaps. And then what did the  
5           public think of that statement? You know, really kind  
6           of totally undermining a new organisation, which we were  
7           at that time, and making best efforts to take forward  
8           the kind of new responsibilities we had been given and  
9           then on the other side the family must have just  
10          been ... I don't know what they would have thought of  
11          us, to be honest with you.

12         Q. So from your perspective you had come in on 4 May, you  
13           are lead investigator initially and then you are working  
14           with Mr McSporran?

15         A. Yes.

16         Q. As far as your evidence is concerned, am I right in  
17           understanding that you believed that PIRC were making  
18           efforts from that point --

19         A. Oh, absolutely.

20         Q. -- to seek statements?

21         A. Absolutely.

22         Q. As far as you are concerned, I think on Friday you said  
23           that efforts at that time were through Police Scotland?

24         A. Yes.

25         Q. Had any direct contact been made with the SPF?

## Transcript of the Sheku Bayoh Inquiry

1 A. Not by me. Not by me personally, no, but I know there  
2 was direct dialogue ongoing.

3 Q. I think did you mention Mr Mitchell might be able to --

4 A. Mr Mitchell, and the Commissioner Ms Frame was involved  
5 in direct dialogue with Mr Watson.

6 Q. Thank you. Am I right in saying from my understanding  
7 of your statement that PIRC actually responded to this  
8 statement publicly?

9 A. Did I say that? I don't ...

10 Q. Are you aware that Mr Mitchell was involved in  
11 responding to this statement?

12 A. I don't think I said that. I ... He may well have  
13 done, I don't have any recollection at this moment in  
14 time.

15 Q. All right, well I can move on.

16 A. Sorry did I actually ... I thought I said I did not take  
17 any action and am unsure if anyone else did. That is  
18 161.

19 Q. Let's look at 161. Do you remember if anyone else did  
20 now?

21 A. No.

22 Q. Do you remember if Mr Mitchell took --

23 A. No, he may well have done, as I said Mr Mitchell was in  
24 the main principally liaising with the Federation,  
25 Mr Watson in respect to this.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Did anyone have any conversations with yourself or  
2 yourself and Mr McSporran about what action should be  
3 taken in relation to this?

4 A. I don't recall. It may well have done. I am sorry.

5 Q. Thank you for clarifying that. Can I look at  
6 paragraph 29 of your second Inquiry statement. 421,  
7 which is the one we are on but go right back to  
8 paragraph 29.

9 A. 29. Thank you.

10 Q. You are asked here:

11 "Did any 'lessons learned' exercise take place  
12 following the investigation in relation to the incident  
13 involving Mr Bayoh."

14 You are asked to expand on that?

15 A. Yes.

16 Q. Your response is:

17 "There was no 'lesson learned' exercise undertaken  
18 by PIRC into this investigation. Due to the time for  
19 this investigation to be concluded and then move to  
20 a Public Inquiry, a management decision was taken not to  
21 hold a debrief given the fact that there is this  
22 Public Inquiry. Who made that decision I cannot recall.

23 "I do believe that we could have benefitted from  
24 such an exercise. In my opinion we can learn something  
25 from every investigation."

## Transcript of the Sheku Bayoh Inquiry

1 A. Yes.

2 Q. Can I ask you about some of the different aspects of  
3 that response. You said there was no lessons learned  
4 exercise. We've heard evidence that on occasion PIRC  
5 can do a debrief or a lessons learned exercise after  
6 an investigation. Was that your experience also?

7 A. Yes, yes it is.

8 Q. Do you know why there was no lessons learned exercise in  
9 the immediate aftermath of the final report being sent  
10 to Crown Office?

11 A. No. No. No, I don't know. I don't know why it  
12 immediately took place. We have a process now that is  
13 under the direction of the director of operations who  
14 you know who will call a kind of a lessons learned  
15 debrief which includes everybody who has been involved  
16 in it, and -- and others who may not have been involved  
17 in it who maybe have a contribution to make.

18 But no, I can't -- I can't recall that, you know.  
19 Bearing in mind when the report had gone in we -- you  
20 know we -- (a) the workload had increased quite  
21 dramatically and we immediately almost moved into the M9  
22 situation. But, no.

23 Q. After the report had been sent to the Crown --

24 A. Yes.

25 Q. -- do you remember anything resembling a lessons learned

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1 exercise or debrief at that time?

2 A. No, no, not a -- not a -- no.

3 Q. You have said there it would be a management decision.

4 You have talked about the -- would it be the director

5 of --

6 A. At this time it is the director of operations.

7 Q. -- operations?

8 A. Yes.

9 Q. And then at the point where you issued the final report

10 to the Crown, who would have been responsible for

11 organising a lessons learned exercise or a debrief?

12 A. That would have been a discussion, Mr Mitchell was the  
13 director, I can't remember if he had moved from director  
14 of investigations -- you know, his title changed, he got  
15 a bigger portfolio, I think that is why it changed. But  
16 he was the director of operations and John was obviously  
17 the SIO in respect of that. But there was no lessons  
18 learned exercise undertaken.

19 Q. Thank you. You say:

20 "I do believe that we could have benefitted from  
21 such an exercise."

22 Can you tell us a little more why that is your  
23 belief and whether you have had any experiences of  
24 benefit being gained after this type of exercise in the  
25 past in other cases?

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1           A. Yes, yes. Yes. As I said we do -- I am saying "we"  
2           although I am not in the organisation. PIRC does have  
3           and a kind of structure in place for, you know, a formal  
4           debrief, a lessons learned exercise, and we talk through  
5           different aspects of it. You know, I was involved in  
6           one although I wasn't part of the -- the actual  
7           investigation and particularly what happened in day one  
8           but the incident occurred at the Park Inn, the fatal  
9           shooting that occurred there and then we held a debrief  
10          in respect of that. There was some areas come out round  
11          about that, exactly what, I can't remember, but that is  
12          an example, I am giving is I was invited to provide some  
13          contribution if I could, or commentary if I could, just  
14          based on being one of the PIRC's senior investigators.

15                 From that we had another debrief that I was involved  
16          in where I was the lead investigator on another shooting  
17          where shots were discharged by Police Scotland and  
18          thankfully they missed, and so there was a discussion  
19          all around about that aspect. And there was lessons  
20          learned in respect of the management of the scene  
21          and the handover of the scene at that one, and also in  
22          respect of the Gold Group and who was actually the lead  
23          SIO in respect of the police side and just making sure  
24          lines of communication.

25                 So there are two examples of fairly high profile

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1 investigations and we sat down and we sat for  
2 an afternoon, I can't remember how long it was, but  
3 there was an agenda drafted up to cover each of the  
4 points. Not to identify it but to cover the areas that  
5 people were covering, whether it be the initial  
6 attendance, the initial call, the scene management, the  
7 PIM process, the interviewing. You know, so we do have  
8 that now. But didn't do it then.

9 Q. Could I ask you -- sorry, you've mentioned the M9 FAI?

10 A. Yes.

11 Q. Were you involved in that PIRC investigation?

12 A. No, I was still dealing -- in principle dealing with  
13 this or I was dealing with other deaths as well. But  
14 I wasn't the M9.

15 Q. From the work that you have done in PIRC are you aware  
16 if there was ever a lessons learned exercise in the M9  
17 investigation that PIRC carried out?

18 A. Not to my recollection. There may have been, but not to  
19 my recollection.

20 Q. Thank you. I would like to move on and ask you some  
21 questions that all relate to the investigation itself  
22 and the adequacy of the investigation as such. You will  
23 know that Article 2 requires the investigation to be  
24 adequate?

25 A. Yes.

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1 Q. That is one of the five principles that are required.  
2 Can I ask you first of all about statements. You were  
3 obviously lead investigator from 4 May?  
4 A. Yes.  
5 Q. And then became deputy to John McSporran?  
6 A. That is correct.  
7 Q. Can I ask you to look at your statement 421 at  
8 paragraph 168. Paragraph 168.  
9 A. Yes.  
10 Q. We will get that on the scene. You were asked in  
11 relation to officers --  
12 A. Yes.  
13 Q. -- that the PIRC investigation did not take statements  
14 from. You were specifically referred to  
15 DCI Keith Hardie, DS Lesley Boal and Inspector  
16 Stephen Kay?  
17 A. Yes.  
18 Q. I think your response here is:  
19 "Operational statements were requested from all  
20 police officers involved in any aspect of the incident.  
21 Only if the information supplied was lacking in detail  
22 or required further clarification or missing certain  
23 information was it deemed necessary to raise an action  
24 for that officer to be re-interviewed."  
25 Is an action a phrase where you -- it's a request

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- 1           effectively --
- 2           A. Yes, an instruction.
- 3           Q. An instruction. Thank you:
- 4                       "Similarly if a witness had a statement taken from
- 5                       [them] by a police officer I would not [have] asked for
- 6                       that witness statement to be re-seen by a PIRC
- 7                       investigator as a matter of routine but only if
- 8                       I required further detail/clarification on certain
- 9                       points. It is not practical to have PIRC re-interview
- 10                      every witness as a matter of course."
- 11          A. Yes.
- 12          Q. Does this relate to pressure on resources and the number
- 13               of people you have available?
- 14          A. No, I wouldn't say it is related to that. It actually
- 15               relates to the requirement and the need to re-interview
- 16               that person. As I said, an action is an instruction.
- 17               It is an action raised in a system and the instruction
- 18               is when it's actually allocated to somebody to go and
- 19               undertake that action.
- 20          Q. Can I ask you about -- we can see the names at the top
- 21               of the screen?
- 22          A. Yes.
- 23          Q. If I can ask you to begin by thinking about Inspector
- 24               Stephen Kay. We have heard evidence from Inspector Kay.
- 25               He was a temporary inspector on 3 May 2015 acting as

## Transcript of the Sheku Bayoh Inquiry

- 1           Police Incident Officer, PIO, and he was listening to  
2           calls and he later attended the incident at  
3           Hayfield Road. He was mentioned and heard on the  
4           Airwaves. Why was there no statement taken from him?
- 5       A. He -- did he not provide a statement? Now, I am  
6           surmising here because I can't specifically remember.
- 7       Q. The question presupposes that he was not actually asked  
8           any questions by PIRC. So you think you had enough  
9           information from Inspector Kay without the need for PIRC  
10          to go back to speak to him personally?
- 11       A. Without having -- without reading the statement at this  
12          moment in time and seeing what kind of action was raised  
13          in respect of that statement, if any action was raised,  
14          then, I'm sorry, I can't comment upon that.
- 15       Q. Right. I will come back to that. Can we move on to  
16          Keith Hardie.
- 17       A. Yes.
- 18       Q. He was the single point of contact. He was with MIT?
- 19       A. Yes.
- 20       Q. He wasn't at the scene?
- 21       A. No.
- 22       Q. We have heard from him. But he was involved, trying to  
23          get statements from the officers. He spoke to officers  
24          at Kirkcaldy Police Office requesting statements?
- 25       A. Yes.

## Transcript of the Sheku Bayoh Inquiry

- 1 Q. He attended the post mortem. He was present during the  
2 meeting, as you have said, where you discussed the  
3 decision to disclose the interim results of the  
4 post mortem. Why did PIRC not take any statement from  
5 him?
- 6 A. Did Mr Hardie not supply a statement?
- 7 Q. So is this another example of: he has given a statement  
8 and a view has been taken that no further detail is  
9 required?
- 10 A. Yes.
- 11 Q. Can I ask you about Lesley Boal.
- 12 A. Yes.
- 13 Q. I think she was Chief Superintendent actually?
- 14 A. She was, yes.
- 15 Q. Yes. She was involved on 3 May?
- 16 A. Yes.
- 17 Q. I think she -- we have heard evidence from her she  
18 appointed Campbell as SIO?
- 19 A. Yes.
- 20 Q. She was the senior officer involved with attending  
21 Gold Group meetings on the day of 3 May and she was  
22 party to various discussions that day?
- 23 A. Yes.
- 24 Q. Again, do you know why PIRC did not speak to her and ask  
25 for a statement?

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1       A. We did ask her for a statement. She provided  
2       a statement. What I do remember about Ms Boal is she  
3       was not involved in any evidence aspects. She was not  
4       the SIO. She appointed the SIO. She was not involved  
5       in the decision-making. She in-gathered no evidence, if  
6       I remember correctly, and the only -- I am saying "the  
7       only", this is again to my recollection, the only part  
8       on 3rd that I can recall that she played is she was  
9       involved with the SIO in drafting a death message.

10      Q. Yes, we have heard that evidence.

11      A. Yes. So really I think Ms Boal, when we asked her for  
12      a statement -- so she wasn't a priority statement, you  
13      know. She wasn't somebody you're needing a statement  
14      from because, as I said, she is not involved in the  
15      evidence side of things, and when she provided  
16      a statement -- yes. I can remember Ms Boal's statement  
17      as well, is the incident room -- the statements come in  
18      and they go into the incident room. I think I explained  
19      on Friday that I created a -- and I tried to put in  
20      place a structure and put in a MIR. So the statements  
21      go into the MIR and the office manager and the statement  
22      reader, he would read the statements and he would  
23      identify areas that he thinks need to be covered and  
24      hands -- now, these areas may actually have been covered  
25      by somebody else, so you don't need that. And

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1 I remember with Ms Boal's statement is, although the  
2 action was raised for a re-interview of Ms Boal is  
3 I deferred it on a number of occasions, because I didn't  
4 see the -- there was other things more important needing  
5 done than Ms Boal being seen, as I said, because she is  
6 not in the evidence chain. And I recall then I -- I use  
7 a phrase "I referred it". Again, these are terms within  
8 the CLUE management system. I referred that and  
9 I think, if I remember correctly -- you will be able to  
10 look at the action -- my rationale for referring that  
11 one is we have now submitted the report to Crown, we  
12 haven't re-interviewed Ms Boal because, again, it was my  
13 decision that she wasn't forming part of the evidence  
14 chain and if they wished -- if Crown wished Ms Boal  
15 re-interviewed, then they would get back to us. Now,  
16 Crown did come back to us about a number of people to be  
17 re-interviewed, one of them being Garry McEwan. Was  
18 Stephen Kay not part that? I don't know, sorry. I'm  
19 just thinking off the top of my head and trying to --  
20 but Ms Boal was not -- Crown did not come back to us.  
21 And Crown is like a fail-safe. We work under  
22 instruction by Crown, we send a report to Crown, we send  
23 the statements to Crown and if there is an area that  
24 Crown feel we have not covered correctly, then they will  
25 come back to us and instruct us to undertake these

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1           enquiries. And that's happened in every big  
2           investigation I've ever worked on within the police and  
3           when I was down in the States of Jersey and this, and  
4           other PIRC investigations.

5           Q. So PIRC treat Crown as a -- I think the phrased used was  
6           "fail-safe"?

7           A. Yes.

8           Q. If there is anything missed or that needs clarified, you  
9           would expect Crown to come back and make a request?

10          A. Yes. Likewise, if there is further instruction required  
11          that -- I am aware they had a Crown counsel working  
12          that, because I did meet her, you know, in relation to  
13          aspects of the investigation. Yes, so ...

14          Q. Thank you. You obviously recollect that Lesley Boal was  
15          involved in drafting a death message?

16          A. Yes.

17          Q. You understood I think when you became lead investigator  
18          that there were concerns expressed by the family --

19          A. Yes.

20          Q. -- about the differing information that was given to the  
21          family --

22          A. Yes.

23          Q. -- in delivery of the death messages on 3 May. Did you  
24          consider that that alone merited a further discussion  
25          with Lesley Boal or not?

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- 1           A. I can't remember how Ms Boal covered that in her  
2           operational statement, and I can't remember if that was  
3           one of the aspects that the officer manager identified  
4           during the kind of examination of the statement.  
5           I don't recall that. Again, I will go back to what  
6           I just explained there; if that was a failing and  
7           lacking, then I'm surprised that Crown didn't come back  
8           to us and ask us to -- to re-interview Ms Boal.  
9           Crown do have the option to precognosce as well, you  
10          know, so ...
- 11          Q. So is it somewhat reassuring that you don't remember  
12          that aspect being sent back to PIRC for further --
- 13          A. I don't know about reassuring. It is -- we weren't  
14          asked to re-interview Ms Boal, so, you know.
- 15          Q. Can I move on to Kevin Nelson?
- 16          A. Yes.
- 17          Q. I think PIRC took two statements from Kevin Nelson?
- 18          A. Yes.
- 19          Q. We have heard from Mr Nelson. He gave evidence to the  
20          Inquiry and we heard that he was -- he lived in the  
21          area?
- 22          A. He did.
- 23          Q. He lived -- his house was close to the scene and to some  
24          extent he was an eyewitness to the events?
- 25          A. Yes.

## Transcript of the Sheku Bayoh Inquiry

1 Q. We have also heard from PC Tomlinson and PC Walker about  
2 an alleged stamp --

3 A. Yes.

4 Q. -- which Mr Bayoh stamped on Nicole Short, and that  
5 would have been information available to you on  
6 4 June 2015.

7 A. Yes.

8 Q. I think Kevin Nelson's PIRC statements were 5 May, so  
9 within a couple of days of the incident, and then  
10 26 August, a number of months later. Now, when PIRC  
11 went back to speak to Mr Nelson the second time in  
12 the August, there was no attempt to ask him questions in  
13 relation to whether he had seen a stamp?

14 A. Yes.

15 Q. I think you have been asked about this. You have  
16 mentioned that in your Inquiry statement?

17 A. Yes.

18 Q. Which I think is at paragraph 169. Can we have a look  
19 at that.

20 A. Yes.

21 Q. You say there:

22 "I did not think it was necessary for this witness  
23 to be re-interviewed. It is clear from his statement  
24 taken by Investigator Pattenden that after he (Nelson)  
25 stated that he saw the deceased punch PC Short he left

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1 his viewpoint from his front window and had no sight of  
2 the altercation until about 10-20 seconds later when he  
3 entered his front garden and stood at his front gate.  
4 By this time the deceased is being restrained on the  
5 ground by the police."

6 So did you have a conversation with  
7 Investigator Pattenden?

8 A. Yes, I did. I did, and that was just shortly after the  
9 statement had been taken. Obviously the information  
10 that Mr Nelson provided was very relevant and very  
11 crucial. He's the only independent witness to any  
12 assault on a police officer. Yes. So I asked her  
13 about -- you know, the taking of the statement.

14 Q. I think earlier this morning you mentioned that you knew  
15 about the punch?

16 A. Yes.

17 Q. The first statement from Mr Nelson was 5 May?

18 A. Yes.

19 Q. So would it have been from Mr Nelson --

20 A. Yes.

21 Q. -- that you became aware of the punch? Alleged punch.  
22 You say in your opinion from that conversation with  
23 Investigator Pattenden Mr Nelson wasn't in a position to  
24 see the events that occurred after the punch. Was that  
25 your impression at the time?

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1       A. Yes. I maybe should have -- that occurred immediately  
2       after the punch. He obviously -- he saw -- because he  
3       was able to view once he got to his front gate and he  
4       gave us information regarding that.

5       Q. You found out from Investigator Pattenden that she had  
6       walked the route effectively with him from his window --

7       A. Yes, she had timed it. Yes.

8       Q. -- to his gate? It had been timed.

9       A. And his hedges were high.

10      Q. Sorry --

11      A. His hedges were high. Kareen commented on that. His  
12      hedges were high.

13      Q. Yes, and it comments there specifically:

14                "Having taken the route from the front window and  
15      confirmed the time taken, given the height of the hedges  
16      he would have been unable to see anything that was  
17      occurring at street level until he reached his garden  
18      gate."

19      A. Yes.

20      Q. His second statement taken by Investigator Pattenden was  
21      26 August.

22      A. Mm-hmm.

23      Q. And the events took place on 3 May. I am wondering  
24      about the height of the hedges on 3 May. It seems to be  
25      that a view has been taken about the height of the

## Transcript of the Sheku Bayoh Inquiry

- 1 hedges based on their height in August -- at the end  
2 of August rather than what position they were in on  
3 3 May.
- 4 A. No, my -- no, my recollection of the conversation with  
5 Kareen is Kareen had walked to see the viewpoint of  
6 Mr Nelson. Kareen is a tall lady, you know. I don't  
7 know the height of Mr Nelson, but she is a tall lady  
8 so -- but she did make mention of the fact that she  
9 couldn't see over the hedges until you got to the gate.
- 10 Q. And did she make mention of what height the hedges were  
11 on 3 May? If there had been any change between 3 May  
12 and 26 August --
- 13 A. Sorry, my apologies. Between 3 and 5 May? Sorry, I'm  
14 getting a wee bit confused here.
- 15 Q. The 3 May is the incident, 5 May is when he gives his  
16 first Inquiry statement.
- 17 A. Yes, right. Okay.
- 18 Q. Then 26 August is when Investigator Pattenden is  
19 carrying out this -- as I understand it, carrying out  
20 this timing of the journey from the window to the gate.  
21 I am interested in the height of the hedges.  
22 Essentially I am wondering did they grow during that  
23 period?
- 24 A. No, I recall having a discussion with Kareen after she  
25 had taken the first statement from this witness, because

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1           he was an eyewitness to part of the events that happened  
2           here, and I remember having the discussion with her in  
3           respect of -- of how -- you know, what did she do in  
4           relation to the statement? Did she just sit down and  
5           take the statement? She said, "No, no, I walked it,  
6           Billy. I kind of walked the route to see what he could  
7           see. I took how long it would take to walk through"  
8           Now, whether --

9           Q. So this was after the first statement had been taken --

10          A. My recollection is this is after the first statement.

11          Q. So that was after 5 May?

12          A. After 5 May, yes.

13          Q. So when you say at the start of this:

14                 "I did not think it necessary for this witness to be  
15                 re-interviewed ..."

16                 He was re-interviewed on 26 August. Am I wrong in  
17                 assuming that this is --

18          A. But he was re-interviewed on 6 August in relation to  
19                 a different aspect, not in respect of his -- of his  
20                 view. If I remember rightly, and I haven't read his  
21                 statement for a long time, is we re-interviewed him as  
22                 the result of people calling at his door seeking to get  
23                 information from him.

24          Q. So you didn't re-interview him after 5 May to ask him  
25                 about the officers' versions of events?

## Transcript of the Sheku Bayoh Inquiry

1 A. No, no.

2 Q. And you didn't re-interview him after 5 May to discuss  
3 the hedges at all?

4 A. No.

5 Q. Or his viewpoint --

6 A. No.

7 Q. -- at that stage. It was a completely separate matter?

8 A. Yes.

9 Q. So why didn't you re-interview him after you got the  
10 police officers' statements on 4 June?

11 A. Because I didn't think it was necessary because of the  
12 information that Kareen had in-gathered, and how she had  
13 in-gathered that information.

14 Q. On the basis that you assumed he couldn't see or hadn't  
15 seen events?

16 A. Well, he couldn't see because he said himself he  
17 witnessed the altercation between Mr Bayoh and  
18 Nicole Short and then left his viewpoint and travelled  
19 through his house to his front door, out through his  
20 front garden and up to his garden gate.

21 Q. And you didn't think it worthy of clarification --

22 A. No.

23 Q. -- if he had seen a stamp or anything of --

24 A. No.

25 MS GRAHAME: Right. I am going to move on. I appreciate

## Transcript of the Sheku Bayoh Inquiry

1 I have said we will come back to a couple of points  
2 which we will see if we can get hard copies over lunch.

3 I wonder if that might be an appropriate point to  
4 rise for lunch?

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

7 (12.55 pm)

8 (The short adjournment)

9 (2.00 pm)

10 LORD BRACADALE: Ms Grahame.

11 MS GRAHAME: Thank you. Mr Little, before lunch I was  
12 taking you through some statements but we didn't have  
13 heard copies. I think you have now been provided with  
14 hard copies, they should be in your blue folder. I am  
15 going to begin by looking at Kevin Nelson's statement  
16 which is PIRC 00019.

17 A. Thank you.

18 Q. This is -- we have heard evidence from Mr Nelson. It's  
19 a statement that was taken on 5 May 2015 at 19.00 hours.

20 A. Yes.

21 Q. It was taken by Kareen Pattenden, we spoke about her  
22 before lunch.

23 A. Yes.

24 Q. He was a key eyewitness, I think you said?

25 A. Yes.

## Transcript of the Sheku Bayoh Inquiry

1 Q. He was one of only two civilian witnesses to the  
2 incident, Ashley Wyse and Kevin Nelson?

3 A. Yes.

4 Q. Now, we have heard evidence from Ashley Wyse that she  
5 gave an initial statement on 3 May and then PIRC went  
6 back and spoke to her on 5 May.

7 A. Okay.

8 Q. Looking at Kevin Nelson's statement we see he was spoken  
9 to by PIRC on 5 May.

10 A. Mm-hmm.

11 Q. But he was not -- they didn't go back -- PIRC didn't go  
12 back to speak to him until 26 August --

13 A. Yes.

14 Q. -- after that. I was wondering why -- after the  
15 officers gave statements on 4 June why there was no  
16 return to Mr Nelson to maybe explore in further detail  
17 issues regarding the incident once you were aware of  
18 what the officers were saying?

19 A. I think the -- after the officers gave the statement  
20 that the area that was ... that was not, say,  
21 potentially not covered in Mr Nelson's statement was in  
22 relation to the alleged stamp on PC Short. I think the  
23 first statement -- sorry, I have not had a chance to  
24 read it here, I think in the first statement it is  
25 mentioned that he saw Mr Bayoh punching the police

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1 officer, who we know to be Nicole Short.

2 Q. That is correct, page 3.

3 A. I think he mentions more than one punch, I think.

4 Q. He does.

5 A. I can't remember if he said they all struck or not.

6 Q. It's on page 3, you can actually see it at the bottom of  
7 the page there:

8 "I believe he struck at her with his closed fists at  
9 least three times."

10 That is the section of the statement. So he  
11 commented on the punch or the "lunge", as he put it, in  
12 his first statement, the one on 5 May.

13 A. So reading that there and after he says:

14 "... with his closed fists at least three times.  
15 I heard her scream out so I cannot be positive but  
16 I believe that at least one of those fists struck her."

17 That was the point I was~...

18 He then says:

19 "At this point I decided to go to the front garden  
20 to have a closer look. I do not know why I did this  
21 other than being curious."

22 So he left his front window to make his way to his  
23 front door to go out into his front garden:

24 "I believe it may have taken me 10-20 seconds~..."

25 That's a fairly big time gap:

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1            "I exited my house ... and stood looking over my  
2            gate. At this time the black male now appeared to be  
3            face down on the pavement."

4            So he is telling us there he hasn't seen the stamp,  
5            he has not had the opportunity to -- you know, by  
6            omission there he has not had the opportunity to see the  
7            stamp because he said himself he left from the window he  
8            was looking out of and he made his way through his house  
9            and out his front door into the garden, so ...

10          Q. I am wondering --

11          A. I understand the point you are saying, so why didn't we  
12          go and actually get that written down in writing.

13          I understand what you are saying. But the decision was  
14          saying well, we don't need that. The statement -- the  
15          statement covers why he can't see the stamp, the alleged  
16          stamp. The statement covers that.

17          Q. I suppose I am wondering why you didn't think it might  
18          be worthwhile to go back and ask him specifically if he  
19          had seen the stamp. It may have assisted the officers  
20          to know that there had been a stamp, an alleged stamp by  
21          Mr Bayoh --

22          A. The principal officers?

23          Q. Yes.

24          A. I wouldn't have told them that.

25          Q. I am not asking you if you would have told them that --

## Transcript of the Sheku Bayoh Inquiry

1 A. I wouldn't have told them that.

2 Q. -- but obviously you are investigating the  
3 circumstances, whether they favour Mr Bayoh or they  
4 favour the officers, and it may be that this sort of  
5 information might have favoured the officers. You have  
6 talked about justifications for use of force --

7 A. Yes.

8 Q. -- things happened after these events, would it not have  
9 been worthwhile to go back and perhaps put to  
10 Mr Nelson: we've heard -- we've got statements from  
11 officers, they mention a stamp. Did you see anything of  
12 that sort?

13 A. At the time the decision was made not to go and  
14 re-interview him because we felt it was covered by quite  
15 clearly covered in his statement. We also had the  
16 opportunity when there was an additional statement taken  
17 off him, but as I said my recollection of that  
18 statement -- again, I think it is in here but I haven't  
19 read it -- was that that was in relation to -- shall we  
20 say another matter. Not with the events of 3 May.  
21 Events that occurred later, you know.

22 So I know -- I know -- but gain, I'll go back to the  
23 phrase I used on Friday, we are sitting here in  
24 hindsight but at that time and that information -- to me  
25 that was quite clear that he couldn't see the stamp.

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- 1           Okay, he couldn't see the stamp.
- 2           Q. Having gone back at a later stage, you've got a copy of  
3           26 August statement, I know you've not had the chance to  
4           read it, but it doesn't cover any of this information.
- 5           A. No, no that was my recollection, it doesn't.
- 6           Q. Looking back now, do you think that might have been  
7           an opportunity to discuss the versions you had had from  
8           the officers with him to get more information from him,  
9           or did you think that wasn't necessary?
- 10          A. Obviously sitting now with you questioning me on this  
11          matter, then yes it was an opportunity to do that but  
12          the decision at the time was that it wasn't felt  
13          necessary to do that, because to me it is quite clear in  
14          there is he looks out the window, he sees three punches  
15          being thrown, he thinks one connects and then he leaves.  
16          He talks about curiosity, he then leaves and he is not  
17          in a position to see what is happening outside.
- 18          Q. All right. Thank you. Sticking with Mr Nelson's first  
19          statement, 5 May, so this is two days after the incident  
20          before you got statements from the officers.
- 21          A. Yes.
- 22          Q. Do you have that one?
- 23          A. Yes, sorry, 19.
- 24          Q. Could you look at page 2 of that statement. Down  
25          towards the bottom, it says:

## Transcript of the Sheku Bayoh Inquiry

1           "When this male started walking along the road he  
2           appeared to be acting as if the police were not talking  
3           to him. He ignored everything that was being said. My  
4           view was clear, I would say the male was about 30 yards  
5           from me and at this time he did not appear to be  
6           carrying anything in either of his hands."

7           Now, you have given evidence that on 5 May the  
8           briefing was still being used, the briefing paper which  
9           made mention of he was holding a knife above his hands  
10          going towards the officers. Do you remember looking at  
11          the briefing paper?

12         A. Yes.

13         Q. When you saw this paragraph in Mr Nelson's statement to  
14          PIRC, what action did you take? Because up until that  
15          point the briefing was that Mr Bayoh was holding --  
16          clearly seen to be holding a knife at Hayfield Road.  
17          This seems to be a contradictory statement from one of  
18          the key eyewitnesses saying he wasn't holding anything  
19          in either of his hands. Did you take any steps in  
20          relation to that?

21         A. Well, that was us now in the process of what the  
22          investigators do, we had next to no information on the  
23          3rd. I was provided with a briefing paper on 4th that  
24          contained what we now know to be inaccurate information,  
25          then the investigatory process is to in gather

## Transcript of the Sheku Bayoh Inquiry

1           the evidence and identify, and this obviously -- when  
2           I read this, I don't know if I read this -- I doubt --  
3           it was 5 May, 19.00, so that is when they started taking  
4           that statement. So I wouldn't have read this until the  
5           very earliest 6 May or maybe even 7 May, once it had  
6           been processed through the incident room. But, yes,  
7           I absolutely agree with you. That is then now telling  
8           us that we have an eyewitness who says he wasn't  
9           carrying anything in his hands when the police first  
10          engaged with him. So, yes.

11         Q. Can I just be clear about one point. You may have read  
12          this statement at a subsequent event. What about  
13          the conversation you had with Investigator Pattenden?  
14          How long after she took this statement did you discuss  
15          Kevin Nelson with her? Because, as you have said, he  
16          was a key eyewitness. Did she raise or draw to your  
17          attention this issue about the knife and Mr Nelson not  
18          seeing anything in his hands?

19         A. I can't recall that aspect of it, I can't recall, sorry.  
20          And you know I did discuss with her the statement  
21          because it is -- you know, saying he was a key witness,  
22          one of the only eyewitnesses we have to the incident,  
23          independent eyewitnesses.

24         Q. Would you have expected her to draw that type of thing  
25          to your attention?

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1       A. I would have, you know, but likewise you have to see  
2       things in writing, written down to know it's in  
3       evidence, it has been captured.

4       Q. So even if Ms Pattenden had said, "I've taken  
5       a statement from Mr Nelson at 7 o'clock tonight, he  
6       voluntarily gave that statement", you would want to see  
7       it in writing before you relied on it?

8       A. But it was -- there was nothing to rely on, we had -- we  
9       had a briefing paper and that is -- it's a brief. It's  
10      brief information to give a kind of outline of what has  
11      happened. You know, we later identified that  
12      information within it was inaccurate. That, whilst  
13      disappointing, on reflection is not a huge surprise  
14      because the key -- the principal officers had given no  
15      statements, they had made no initial accounts, they had  
16      provided no basic facts. So we are working on  
17      information there that yes, while you would have  
18      expected it to be reliable, you have to take the caveat  
19      that nobody had provided any evidence as I would  
20      describe, and actually the PIM didn't hand us basic  
21      facts, the PIM didn't hand us initial accounts, so  
22      officers didn't provide statements.

23                So this, to me, is all part of investigatory process  
24      and all part of evidence-gathering, and then actually  
25      analysing the evidence and seeing where that evidence is

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1           taking us, which as an investigator is what we would do.

2           Q. Thank you. Before lunch we also spoke about

3           Inspector Stephen Kay.

4           A. Yes.

5           Q. We have provided with you a hard copy of his statement.

6           This is PS-00345.

7           A. Sorry, I have got the wrong one. I am looking at

8           a follow-up statement.

9           Q. No, not at all.

10          A. Yes, thank you.

11          Q. This is a self-penned statement.

12          A. Yes.

13          Q. It is undated.

14          A. Yes.

15          Q. We have heard evidence from Inspector Kay that -- we

16          heard evidence from him on 23 November 2022 and his

17          evidence was that this self-penned statement was

18          prepared within a week after the events.

19          A. Okay, yes.

20          Q. And, as I said before lunch, he was the PIO?

21          A. Yes.

22          Q. We have heard evidence he was listening to Airwaves in

23          real time when the incident was taking place, and

24          I think you see at the bottom of page 1 that he mentions

25          that he was PIO for the following day's business?

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1 A. Yes.

2 Q. And that took him on to 3 May. If we can move on to  
3 page 2, please. We have heard evidence from  
4 Inspector Kay and we also have the benefit of Airwaves  
5 transmissions which show that the police arrived at  
6 Hayfield Road at 7.20 and 23 seconds in the morning, and  
7 Inspector Kay arrived at 7.40 and 54 seconds. There is  
8 an Airwaves transmission from him saying, "I have just  
9 arrived".

10 A. Okay.

11 Q. So he was the PIO in regard to this incident and on  
12 page 2, if we look at paragraph I think 6, or ... it  
13 starts:

14 "I then heard on radio transmissions ..."

15 A. Yes.

16 Q. "... that more calls had been received regarding this  
17 male brandishing a knife at vehicles and was still  
18 walking about the streets ... At this time I heard  
19 [Acting Police Sergeant] Maxwell request an armed  
20 response vehicle and dog unit to attend due to the  
21 severity of the reports."

22 We have heard evidence that they were grade 1,  
23 immediate threat to life:

24 "This request was not acknowledged and it took  
25 several attempts to receive an acknowledgement stating

## Transcript of the Sheku Bayoh Inquiry

1 contact was made.

2 "I immediately realised this was a very serious  
3 report of which officers safety and the public safety  
4 was at risk."

5 Then:

6 "I was aware via radio that PCs Paton and Walker had  
7 arrived at Hayfield Road and had the suspect in sight.  
8 Almost immediately I became aware of the emergency  
9 button on the Airwave terminal being activated. I then  
10 heard shouts for assistance similar to officer down and  
11 an officer was injured, possibly PC Short."

12 So he was listening in the calls, the Airwave  
13 transmissions as it was happening, he was aware it was  
14 very serious, and officer and public safety was at risk.

15 You have told us about the difficulties with Airwave  
16 transmissions and collecting them and gathering them in.  
17 Would it have been worthwhile going back to  
18 Inspector Kay, in light of his involvement in the  
19 incident and his role as PIO, to flesh out some of the  
20 details involved in what had happened and the course of  
21 events? Because at this moment in time you don't have  
22 police statements.

23 A. I would say possibly in respect to that. But you have  
24 to bear in mind that we have got all these other aspects  
25 that we are looking at, you know we are not the biggest

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1           team, I think the other day I identified principal roles  
2           and that took up about 20 of our staff. So it was one  
3           of the points that was always at the back of the mind,  
4           who have I actually got to go out and do enquiries  
5           because I have got CCTV, I have house-to-house team,  
6           I have got people dealing with -- the post mortem is  
7           over but we are now deal with the SPA, productions --  
8        Q. Crime scene management?  
9        A. Crime scene management, ingathering information there,  
10       we've got our office up and running, and trying to  
11       ensure we put in place the kind of protocols within the  
12       kind of office. So there is really, really time  
13       critical investigations you've got to do or you will  
14       lose evidence. So take this one aspect in hindsight,  
15       and saying why didn't we go and take that, is -- I can't  
16       answer that definitively just now why not. Okay? But  
17       as I said, we had -- you've only got the resources  
18       you've got, you have to make the best use of them. You  
19       know house-to-house is really, really important because  
20       you may spring up another Kevin Nelson, another  
21       Ashley Wyse, so we have to ensure that getting done.  
22       People aren't just sitting in their houses waiting for  
23       us to arrive, so you are spending a lot of time back and  
24       forth to different houses trying to get somebody in,  
25       trying to get some response.

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1           So I understand your question and I am -- but to me  
2           it is being taken in isolation and actually, you know,  
3           actually how do you do this, you know. Now, whether  
4           that was a rationale for not doing it at the time -- we  
5           didn't do it, you know, I presume by your questioning --  
6           and I can't remember Stephen Kay, I can't remember his  
7           statement -- we did go and take another statement from  
8           him, I see there. It was actually myself that took that  
9           statement because that caught my eye when he were doing  
10          that.

11         Q. That was on 12 January 2017.

12         A. I go back to just before lunch when I say I think  
13           Stephen Kay was one of the officers identified by Crown  
14           to -- for a re-examination.

15         Q. Right.

16         A. Yes, so that was an instruction from Crown and I think  
17           there was a kind of -- Crown had a wee bit of a  
18           catch-all, you know, and you are looking for Crown to  
19           kind of, you know~...

20           But I don't think that was one of the aspects. It  
21           wasn't. One of the aspects we were going back to speak  
22           to him about was about a briefing regarding threats that  
23           had been raised, apparently. It was to try to establish  
24           that. So with regard to your question, no, it is  
25           obviously not something we've done, otherwise you

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1           wouldn't be questioning me on it, but Crown haven't  
2           asked for it either.

3           Q. You've explained on Friday about issues with the  
4           resourcing. I am wondering would you have -- if you had  
5           had the opportunity or had the resources to appoint  
6           someone to go through statements as they were coming in  
7           and identify possibly further useful lines of enquiry,  
8           is that suggest would have liked to have had?

9           A. I did have somebody doing that --

10          Q. Who --

11          A. -- Ian Macintyre was doing that. There was only  
12          Ian Macintyre and Laura White plus admin support because  
13          the statements got typed into CLUE, the statements are  
14          written statements and then they are typed into the CLUE  
15          system at that time. And Ian was -- part of the  
16          function within a major incident room is you will have  
17          a statement reader or a number of statement readers who  
18          will go through the statement and they will identify  
19          areas that will -- you know, that potentially need  
20          further examination. So there was somebody doing that.

21          Q. But he didn't think in relation to this statement that  
22          there should be any further actions?

23          A. Well, obviously not because there is no further action  
24          to do. It is not like -- I am presuming and again, we  
25          are all these years later, I presume there has not been

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1 an action raised like there was for Lesley Boal and  
2 I have referred it or deferred it, you know. So  
3 obviously not. But in defence of Ian and such like,  
4 there is three people in an incident room, I think my  
5 last major investigation when I was in the police,  
6 a Cat A murder, we would have about a dozen people in  
7 the incident room.

8 Q. Doing that job of reading statements --

9 A. Doing different jobs. You've got an office manager, an  
10 action allocator, a statement reader, a researcher.  
11 You've all these kind of functions, okay. We are -- we  
12 are -- we were multitasking here. So -- so I am not --  
13 I am not saying I agree with you here in respect of --  
14 yes, I agree would that not have been a good idea but  
15 you have to say right what is the priorities, what are  
16 we trying to focus on, and at that time when this  
17 statement came in and when we actually got possession of  
18 it, you know although it is -- he penned it on -- did  
19 you say the 5th or the 6th or something?

20 Q. I said his evidence was that it was penned within a week  
21 of the events.

22 A. Okay, but when did it come to us? Because you know,  
23 did it come directly to us the day after he penned it?  
24 Remember I talked about this transition of information  
25 coming to us, it's not just a case of: there you go,

## Transcript of the Sheku Bayoh Inquiry

1           there's your information. There's a transition of  
2           information and Ian Macintyre, as office manager, was  
3           meeting with his counterpart to get information passed  
4           over.

5           Q. How long would you expect a self-penned statement from  
6           a PIO to reach PIRC?

7           A. It depends on the size of the investigation, I have to  
8           say.

9           Q. In this case?

10          A. He has not penned it -- he is saying he has penned it  
11          within a week, so there we're talking seven days, from  
12          a PIO. You know, we serve notice on Police Scotland  
13          that we want the information, it would have been  
14          operational statements from all officers, you know, you  
15          will have that letter in your system, when -- I think it  
16          went on the 6th, or the 5th, it went. So that is us  
17          serving notice on the police: you need to give us this.

18                 So just because an officer said they penned that  
19          statement, it doesn't mean we actually get physical of  
20          that statement to read it and examine it and decide what  
21          is to happen.

22          Q. So when would you expect a self-penned statement from  
23          a PIO to reach --

24          A. I would expect it as soon as possible from a PIO. Yes.  
25          But how long is that? You know, an example given he is

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1           saying he did it within seven days, so it could be say  
2           the 11th before he has typed it up.

3           Q. You didn't have statements from the officers at this  
4           time?

5           A. No.

6           Q. Could you look at page 3. You've explained the  
7           difficulties that caused for PIRC. Do we see on page 3  
8           that Mr Kay was -- he attended the incident at  
9           Hayfield Road, he was there about 7.40 and 54 seconds  
10          and we see there he said:

11                    "I was then further briefed by [Acting  
12                    Police Sergeant Maxwell]~..."

13                    And you will see a section within his statement, if  
14                    we can move up the page, where he talks about who was  
15                    initially involved, he names officers, what they were  
16                    doing, they were:

17                           "... holding the male down by asserting their body  
18                           weight onto the male at various points, which is  
19                           a recognised method of gaining control."

20                    And he talks about things that Maxwell informed him.

21           A. Yes.

22           Q. "... the male ran at officers and was given the command  
23           to stop and get back! After a similar command and the  
24           male refusing, officers deployed their PAVA and  
25           CS spray, but the male displayed no effects and did not

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1 stop and kicked PC Short to the ground by swiping her  
2 legs thereafter kicking her to the head."

3 And he was restrained in leg restraints.

4 Now, leaving aside for one moment issues about  
5 whether that is accurate or not, there was obviously  
6 a discussion between Kay and Maxwell, Maxwell was the  
7 acting police sergeant for the response team that day,  
8 would it have been worthwhile -- looking at it now in  
9 hindsight, would it have been worthwhile, in the absence  
10 of having statements from the officers, going back to  
11 Kay and maybe fleshing out more detail with regard to  
12 what Maxwell had been saying?

13 A. As I think I said earlier, I can't disagree with that  
14 sitting here now.

15 Q. Not disagreeing with me now, does that mean that you  
16 agree that that would have been helpful to the  
17 investigation if someone had had a further conversation  
18 with Inspector Kay?

19 A. Yes.

20 Q. Thank you. Can we move on to -- just for completeness  
21 really, moving on to the statement that Keith Hardie  
22 gave. This was dated 27 May 2015, I think you had  
23 mentioned it before lunch. Detective Chief Inspector  
24 Hardie. It's PS00667. And you see it says it's again  
25 a self-penned statement written on 27 May 2015. I think

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1           as you said before lunch, it mentions him attending the  
2           mortuary?

3           A. Yes.

4           Q. It mentions him having a meeting with you on 5 May, and  
5           it mentions him receiving a request from PIRC to make  
6           contact with all officers who were known to be involved  
7           in the arrest of Mr Bayoh and establish whether they  
8           were willing to provide an operational statement?

9           A. Yes.

10          Q. And that related to all of the officers. As you see  
11          during his -- that is a statement that he prepared.  
12          It's three pages long. I think you said before lunch  
13          that you didn't feel that there was any more detail,  
14          further detail required from DCI Hardie in that regard?

15          A. That is my recollection, yes.

16          Q. Then you mentioned minutes of the forensic strategy  
17          meeting and I think we have provided with you a hard  
18          copy of those.

19          A. Thank you.

20          Q. This is PIRC 04161. It was a meeting dated -- a minute  
21          taken on 12 May at 14.40 and there's a number of people  
22          listed as being present including yourself,  
23          Mr McSporran, and a number of other investigators and  
24          the pathologist, Kerryanne Shearer.

25          A. Yes.

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1 Q. And others from different departments.

2 A. That is correct.

3 Q. Can I ask you to look at item 4, please, which is on  
4 page 3. I think you ... sorry. Sorry, item 5 actually,  
5 subheading 4. It's this page, page 3.

6 Item 5 in this meeting was, "Forensic examination  
7 and priorities", and number 4 says:

8 "PC Nicole Short's body armour to be examined for  
9 possible footprint."

10 Do you see that?

11 A. Yes.

12 Q. "Any footprint found to be compared with deceased's  
13 footwear which was seized at Victoria Royal Infirmary,  
14 Kirkcaldy at the time of recovery of the body."

15 It mentions the left boot, the right boot and  
16 Nicole Short's vest and it mentions photographs were to  
17 be taken. So this was obviously part of the discussion  
18 at the meeting?

19 A. Yes.

20 Q. Was this indicative of the outcome and the result of the  
21 discussion? So was it a discussion about the items  
22 and then a decision taken that the body armour, as it is  
23 called there, or the vest as we have known it, is to be  
24 examined for a footprint? Was that the instruction that  
25 was given to the forensic scientist?

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1           A. No, that is a discussion about how best to -- a minute  
2           of how best to proceed with -- the instructions actually  
3           would be on the submission, I would suggest, the  
4           submission form to the SPA in respect of each item,  
5           because it is not to say that you know -- so who was  
6           there from ... Is somebody there from mark enhancement?  
7           Yes, so Judith Archibald there from the mark enhancement  
8           lab. So that is not to say that she would be  
9           undertaking that examination, she is just there  
10          representing that department from within the SPA so  
11          I would suggest instruction would be on the  
12          submission -- the forensic laboratory submission form  
13          that would be submitted.

14         Q. When you had this meeting on the 12th, did you discuss  
15         whether or not fingerprint testing should be done on the  
16         vest?

17         A. We've obviously not done that, no. No. Because --  
18         sorry, just quickly glancing through the section is  
19         there another section on fingerprints? No. So I would  
20         suggest if it is not in the minute we haven't discussed  
21         it.

22         Q. I don't see anything. I am interested specifically  
23         about fingerprinting of the vest.

24         A. Right.

25         Q. So if that wasn't instructed, did you consider

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1           instructing them not to do fingerprint testing given, as  
2           we are aware, the use of this black powder can have  
3           an impact on woven material and be to the detriment of  
4           later tests?

5           A. I don't recall that, I don't recall that.

6           Q. So your expectations in relation to item 4 there --

7           A. Yes.

8           Q. -- what did you think the forensic lab was going to do  
9           in relation to the footwear, and Nicole Short's vest?

10          A. It would obviously be photographed prior to examination  
11          so that is obviously -- reading that now my expectation  
12          of that is that we are ensuring that we record what is  
13          the mark on the vest before any forensic examination is  
14          undertaken because, as you quite rightly said, it could  
15          be -- I am going to use the word damaged but the mark  
16          could be damaged by -- so you want it photographed  
17          before that, and then for them to take -- to, you know,  
18          carry out an examination.

19                 What method they would do to do that, I don't know.  
20          That is their expertise. And vice versa that is where  
21          I would be relying on particularly Garry Sinclair and  
22          John Ferguson, who are both very experienced scene  
23          managers, and the -- because they were liaising with the  
24          forensic lab. I wasn't myself -- I know you said the  
25          report was sent to me, but I wasn't liaising with the

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1 forensic lab, I put in place that in principle it was  
2 John Ferguson was liaising with the lab in relation to  
3 all the examinations that were undertaken, and there was  
4 quite a lot, you know, as you will be aware of, how many  
5 examinations reports that you have.

6 Q. Was it part of that discussion whether they would be  
7 doing DNA testing?

8 A. On the boot?

9 Q. On the boots or the vest?

10 A. On the vest, no I don't recall that.

11 Q. Would --

12 A. Sorry, can I just say as well, as I -- I would be  
13 expecting if that is the area, if it's -- whoever, what  
14 area of expertise that is, I would be expecting them to  
15 advise us what could be done.

16 Q. And did they?

17 A. Because, you know, you can have a crossover between DNA  
18 and fingerprints about who is best to do it, so it's not  
19 just a case of like John chairing a meeting saying we  
20 want this done, we want that done. It's: we have a mark  
21 on this vest, how best can we proceed to identify if the  
22 mark is relevant to the boots worn by the deceased?

23 Q. And did the forensic scientists present give advice to  
24 you about what tests could be done, what order they  
25 should be done, what they could achieve with the vest

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1           and the boots?

2           A.   Around about the boots I can't -- I can't recall.

3           Sorry, I can't recall.

4           Q.   You don't remember. Did they give you any advice about

5           the potential impact of carrying out fingerprint testing

6           and the use of black powder and the impact that would

7           have on the vest?

8           A.   I can't recall. Can I just ask was the vest

9           fingerprinted?

10          Q.   Yes, we have heard evidence that the vest was

11          fingerprinted.

12          A.   Sorry, I can't recall.

13          Q.   And we have heard that as a result of that there was

14          black powder on the vest which had an impact --

15          A.   Right okay.

16          Q.   -- on the material. I am interested in what help for

17          you -- from the perspective of PIRC and the

18          investigation you were carrying out at that time, what

19          help would fingerprint testing have been in relation to

20          the vest?

21          A.   It would be to try and identify who had been in contact

22          with that vest, you know. The challenge being that vest

23          was lying about the muster room or the room in -- if my

24          recollection is right it was lying about in the area

25          where the police officers were taken after the -- for

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- 1           the PIP process.
- 2           Q. How would that have helped your investigation, knowing
- 3           who or -- that someone had touched the vest?
- 4           A. I would suggest unless it was Mr Bayoh's prints that
- 5           were on it that any other officer could have carried the
- 6           vest at any time.
- 7           Q. Where would that have taken the investigation?
- 8           A. I don't know if it would have taken it anywhere because
- 9           they all work together, so moving somebody's body armour
- 10          about, you know, in a car, in an office, I don't see --
- 11          at this time when I am sitting here I don't see any huge
- 12          relevance in it.
- 13          Q. We've not heard any evidence in the Inquiry that
- 14          Mr Bayoh put his hand on the vest or touched the vest or
- 15          anything of that sort.
- 16          A. No.
- 17          Q. So perhaps not entirely relevant to the investigation?
- 18          A. No. No.
- 19          Q. Did you consider or discuss with the forensic scientists
- 20          the possibility of testing soil?
- 21          A. No, I didn't. No, I didn't.
- 22          Q. Or the substance --
- 23          A. No, I didn't, I didn't. I am aware that -- I think the
- 24          Inquiry got that done. No, I didn't.
- 25          Q. Was that something you were aware of at the time that

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- 1           was possible or --
- 2           A. I was aware that soil sampling, you know, is available.  
3           But I don't -- and I don't remember it coming up. As  
4           I say, this is not a case of John and I dictating: we  
5           want this, we want that. We are looking for input from  
6           the experts to tell us this is what we can bring to the  
7           table. I have to hold my hand up, bearing in mind this  
8           was 2015, I left the police in 2009, although I did some  
9           work for another policing agency, you know. But this  
10          is -- you know, so science moves at a very fast right of  
11          knots, so~...
- 12          Q. Did you feel you were reliant very much on the forensic  
13          scientists keeping you up-to-date with what could be  
14          done?
- 15          A. I felt -- yes, I felt I had a knowledge gap. I hold my  
16          hands up to that. This is why I have John Ferguson and  
17          Garry Sinclair, that is -- you know, relying on them in  
18          respect of that.
- 19          Q. Looking back now, do you think there was maybe  
20          an opportunity for additional training, would that have  
21          assisted you at that time?
- 22          A. Shortly after this, and -- it was on my training, we  
23          went for a forensic awareness day up at the SPA.
- 24          Q. I think that was in your paragraph 6 of your Inquiry  
25          statement --

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- 1 A. Is it in my training aspects? Yes.
- 2 Q. Do you remember at the beginning of your evidence on  
3 Friday I think it was paragraph 6, it may have been 421.
- 4 A. My recollection is that was arranged by Garry Sinclair.
- 5 Q. Could we maybe just go to paragraph -- here it is. So  
6 if we could see -- here we are:  
7 "2017 to 2018.  
8 "... Forensic awareness day at SPA Gartcosh."  
9 Could that have been it?
- 10 A. Yes, that is it. Because Police Scotland run a crime  
11 scene managers forum, and I am not saying it was me but  
12 one of the -- Garry was like our lead scene manager so  
13 one of Garry's objectives was to see if we could become  
14 part of that forum, and so we were -- we would be  
15 sitting and we would be hearing updates, we would be  
16 aware of what new techniques would be available.
- 17 Q. What was that forum called?
- 18 A. I think it was the Crime Scene Managers Forum, and Garry  
19 had interaction with the SPA in respect of trying to go  
20 on it from their side and also -- I can't remember who  
21 was the lead in Police Scotland at the time for scene  
22 management.
- 23 Q. Ultimately did PIRC get a seat at the table of the Crime  
24 Scene Managers Forum?
- 25 A. I don't think we got a seat at the table. I think what

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1           we got is we were included in any circulars that were  
2           coming out of Gartcosh SPA in respect of forensic  
3           developments.

4           Q. Have you found that to be of assistance up until your  
5           retirement?

6           A. I couldn't say if I found it of assistance, but what  
7           I am hoping for is somebody like Garry or John, you  
8           know, they would be more forensically aware than what  
9           they had previously been.

10          Q. Thank you. I would like to move on and ask you some  
11          questions about 3 June. This is the day prior to the  
12          officers giving statements.

13          A. Yes.

14          Q. Can we look at paragraph 171 of the Inquiry statement we  
15          have on the screen. So this is the day before and it is  
16          mentioned -- you are asked about a generic interview  
17          plan --

18          A. Yes.

19          Q. -- that was completed by Investigating Officer Sinclair.  
20          Is that Garry Sinclair?

21          A. It is, yes.

22          Q. Your response there is:

23                 "Investigator Sinclair is a trained Interview  
24                 Advisor so I had approached him to create a generic  
25                 interview plan in preparation for when we could get to

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1 interview the attending officers. This was unusual and  
2 is not something that would regularly occur. I reviewed  
3 the generic plan which was to be used."

4 Perhaps we could have a look at that generic  
5 interview plan. PIRC 04182. If we look at the very top  
6 of that page, do you recognise this as the witness  
7 interview strategy?

8 A. Yes, the generic -- yes --

9 Q. Is that just another name for the generic interview  
10 plan?

11 A. Yes, that the witness interview strategy.

12 Q. The names of the officers are on the front page, so it's  
13 to cover the strategy for all of those officers?

14 A. It was to cover the nine officers, yes.

15 Q. You have said Investigator Sinclair was a trained in  
16 relation to preparing strategies; is that right?

17 A. He is a trained interview adviser, yes.

18 Q. Can you explain to the Chair a little bit about that  
19 role, what is involved with an interview -- a trained  
20 officer?

21 A. First of all I am not a trained interview adviser. That  
22 is a -- one of the kind of newer concepts that has come  
23 through in the police but it is where you have what  
24 could be a kind of lengthy interview covering  
25 a wide-ranging area or a wide-ranging investigation and

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1           it is to pull together in a structured manner  
2           and covering areas that you wish covered. It is not  
3           saying: ask this question ask that -- it is not  
4           a question, question, question, it is areas to be  
5           covered. It is also used -- maybe more used for suspect  
6           interviews, or accused person interviews as we have now  
7           in respect of that and they talk about the kind of  
8           different phases in relation to that. So it is to  
9           consider all the aspects and, yes, to prepare a kind of  
10          areas to be covered.

11         Q. You have told us that Garry Sinclair was trained and was  
12          qualified to do this?

13         A. Yes, yes.

14         Q. And you are not trained and qualified to do this role?

15         A. No.

16         Q. I'm wondering if you felt at the time you knew what  
17          Garry Sinclair's role was and how to get the best out of  
18          him in relation to this interview strategy?

19         A. I go back to the point I made a wee bit earlier is the  
20          PIRC staff are all multi-tasking, so we have got Garry  
21          kind of leading the scene manager along with John,  
22          I have got Garry leading in productions because all that  
23          stuff is going. You will see he is out taking  
24          statements from people and then when we were advised  
25          that the officers were going to make themselves

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1           available, I asked Garry as -- I think at that time  
2           Garry was our only trained interview adviser we had, so  
3           I asked Garry to prepare this interview.

4           I also remember that -- and I can't remember, I was  
5           just having a wee flick through before that and the  
6           question before that is:

7           "On this day John Mitchell met with representatives  
8           of SPA and it was agreed that nine would provide  
9           statements."

10          I was looking for the date for that. Because my  
11          recollection is that Garry wasn't too happy with me  
12          coming and doing that because I was giving him very  
13          little notice to prepare this. On reflection there  
14          should have been work ongoing almost from the start by  
15          an interview adviser preparing, you know, because there  
16          would come a time we would get this. But we hadn't done  
17          that. And that would be an oversight on my part because  
18          I should have put that in place.

19          But again, as I said, we were kind of multitasking,  
20          we were all over the place and I remember Garry  
21          wasn't -- he was a bit like, "Gee, thanks", in respect  
22          of that. So I did say to him I don't want one for each  
23          the individual officers, I want a generic to cover the  
24          areas that we've been looking at and I was also --  
25          I put -- I gave him a timeline because I needed it in

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1           time to pass out to the interview teams to give them  
2           time to have a look at this, and then consider what they  
3           needed to do in respect of the officers that they had  
4           been asked to look at. So I would expect them to be  
5           examining, you know like -- you know, different records  
6           to see what part did they play in that, when were they  
7           made aware of that because by the time we got that we  
8           were into understanding what was in there, we were into  
9           understanding what was in the CCTV. We were creating  
10          these kind of timelines we have round about that. So,  
11          yes --

12         Q. How much time did Garry actually have in the end to  
13          prepare this strategy?

14         A. That is why I was looking to see when Mr Mitchell was  
15          made aware that they were going to make themselves  
16          available.

17         Q. My understanding is that it was on 2 June but we have  
18          not heard from Mr Mitchell --

19         A. And the interviews on 4 June?

20         Q. And the interviews took place on the 4 June.

21         A. So he had a day.

22         Q. That is the time Garry had?

23         A. Basically he had a day, yes, which is no ideal. Yes.

24         Q. Do you know from your awareness of this role, is there  
25          a recommended period of time for --

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1 A. Sorry, I don't know, I don't have enough knowledge about  
2 that.

3 Q. I don't know if you were able to watch any of the  
4 evidence I took from Mr Harrower?

5 A. I saw some of it, not all of it.

6 Q. You saw some of it. Did you see any part of it where  
7 I went through this interview strategy with him?

8 A. No.

9 Q. Have a look at the interview strategy. You have  
10 obviously said you recognise it and that is what  
11 Garry Sinclair prepared. When I was asking  
12 Mr Harrower --

13 A. Sorry, do I have a copy of it?

14 Q. If there is not a copy in your folder --

15 A. No, sorry there is not a copy.

16 Q. So page 1 names the officers and page 2 is a summary of  
17 the events.

18 A. Yes.

19 Q. This summary indicates, if we can look at that, in the  
20 middle of the page:

21 "It was reported that as the officers drove into  
22 Hayfield Road they saw the male walking towards them, he  
23 may have been in possession of a knife ..."

24 Then there is a comment:

25 "It may be that the knife was discarded before

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1           this."

2           So Garry Sinclair is mentioning this --

3           A. So he taking cognisance of the additional information,  
4           as I said, actually evidence coming in.

5           Q. So may be he is taking cognisance of, for example, the  
6           statement of Kevin Nelson?

7           A. Yes.

8           Q. The officers exit their vehicles:

9           "          It was reported that the male punched, then kicked  
10           PC~... Nicole Short. Some officers drew their police  
11           issue batons. Some ... also drew their PAVA and  
12           CS sprays, which were subsequently sprayed towards the  
13           male, however ... this had little effect."

14           So it appears there may or may not have been a knife  
15           in Mr Bayoh's hands, the officers responded to that  
16           using -- drawing their batons and some using sprays. So  
17           again, comparing that to the briefing paper dated 3 May,  
18           again there appears to be a suggestion that the  
19           aggressor, if I can call it that, the subject, was  
20           approaching the officers, perhaps with a knife or  
21           perhaps without. But they responded to that using  
22           batons and sprays?

23           A. Yes.

24           Q. Then if we can carry on moving through the document, you  
25           will see that the next page should say, "Purpose of

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1 interview". And it talks about carrying out:

2 "... a planned and structured interview of the  
3 police witness to achieve a detailed account of their  
4 movements, intentions and actions~..."

5 Do you see that?

6 A. Yes.

7 Q. The intentions is part of it.

8 A. Yes.

9 Q. Does that relate back to seeking -- we have heard that  
10 officers have to justify every use of force, every  
11 individual use of force?

12 A. Yes.

13 Q. Thank you. Then moving on, "Background of officer",  
14 some details of who they are?

15 A. Yes.

16 Q. Introduction and this sets out -- sorry, "Description  
17 of officer", some preliminary personal details. Moving  
18 on, "Introduction", asking some -- asking officers in  
19 their own words to say what sort of happened at first,  
20 what happened first.

21 Keep going. Asking about a muster. Asking about  
22 incident attendance, where they were when they heard the  
23 call, how they became aware of it and how they travelled  
24 to the incident. Do you see all of that?

25 A. Yes, I do.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Please ask me to stop if you --

2 A. No, it's okay.

3 Q. If you need more time. Then, "Arrival at locus":

4 "Describe what you saw when you arrived at the  
5 locus."

6 What Mr Bayoh was doing, wearing, was he in  
7 possession of anything. There is a map referred to.

8 A. Yes, I remember that, yes.

9 Q. "Initial dealings with deceased":

10 "Did you get out of the ... vehicle?

11 "What did you do?"

12 And these questions are focused on what the officer  
13 did, what the officer said, and what the officer heard.  
14 There's nothing here in this section about dealings with  
15 the deceased that relates to intentions or the mindset  
16 of the officers or that seeks justification for their  
17 actions. Now, would you not have expected to see some  
18 sort of questioning about that in the interview  
19 strategy?

20 A. Well, it says at the start -- you know, there is the  
21 phrase, "The intentions", I agree with you it is not  
22 included in that area, but I would expect the  
23 investigators who were obtaining statements off the  
24 officers -- what -- you know, you know, to clarify if  
25 something, you know, you know, did anyone else get out

## Transcript of the Sheku Bayoh Inquiry

1           the vehicle? Well, why did they do that? Did you  
2           approach Mr Bayoh? Why did you approach him in that  
3           manner? Did you approach -- why did you approach in  
4           that manner? This is -- as I say this is this was  
5           generic and I would expect investigators not just to ask  
6           this but to flesh out round about that.

7           Q. There is no questions about why did you use force at  
8           that point? Why did you use your baton? Why did you  
9           use your spray? Why did you not use a less forceful  
10          method/tactical option? Did you consider and preclude  
11          other less forceful tactical options? Those could also  
12          be generic questions asked of all officers but they  
13          haven't been asked at all.

14          A. Okay.

15          Q. Do you think on reflection those questions should have  
16          been included in a witness strategy?

17          A. If they are not included in the witness strategy I would  
18          expect it to be fleshed out in the statement.

19          Q. Why would you expect the witness strategy to ask the  
20          question or prompt the officers: did you get out of the  
21          police vehicle? But not include a question that asks  
22          for a justification for use of force? Do you think on  
23          reflection it would have been wise to have questions  
24          about justification for use of force?

25          A. Yes, because of where we are now sitting, yes.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Then other questions relate to post-arrest and medical  
2 care, post-incident procedures and other ancillary  
3 details.

4 A. Sorry, can we go back up to -- if you don't mind.

5 Q. Not at all.

6 A. Just go up to the section around about ... So the  
7 question around about arrest and restraint, so there  
8 nothing in there about ... so there is:

9 "Did you use your PAVA or CS spray, baton,  
10 handcuffs~... during the incident?"

11 Q. Yes, but it doesn't ask why.

12 A. Yes, but that was like, you know -- you know, this is  
13 very generic, prepared in a hurry. But I would expect  
14 then that would be like: well, why did you do that?  
15 Because, I think as I said on Friday, the officers used  
16 everything in their tool box, for want of a better  
17 expression, that they had that day. So I would fully  
18 expect: well, why did you use your CS spray?

19 Q. So your expectation would be that perhaps as  
20 a supplementary to that question:

21 "Did you use your PAVA or CS spray, baton, handcuffs  
22 or leg restraints during the incident? If yes, when?"

23 No question, "If yes why?" But you would have  
24 expected officers to have asked why?

25 A. Yes.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Would your expectation be that all investigators taking  
2 statements that day would have known that they should be  
3 asking questions why about justification --

4 A. Yes, because it is -- you know, it's partly the role  
5 that we undertake is you know is it proportionate,  
6 necessary, justified.

7 Q. All right. Thank you. There's something else missing  
8 from the strategy, and that is questions about race?

9 A. Yes.

10 Q. Sitting here now looking back at the witness strategy,  
11 if you were keeping an open mind about race, is there  
12 any reason why there wouldn't be specific questions  
13 directed towards motivation, bias, racial  
14 discrimination?

15 A. As you say, that is sitting here now. A primary focus  
16 of the Public Inquiry is the race and how much did race  
17 play a part in this. Although, and I think I answered  
18 in my Rule 8 I have said that, you know, we were trying  
19 to be mindful of race but we had never received  
20 an instruction to investigate race until about a month  
21 after that. The matter of race had never been raised  
22 with myself or Alistair or John, although I wasn't at  
23 one of the meetings with Alistair but I know the  
24 meetings I was at by the family that race played a part  
25 in this.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Would you --

2 A. And actually, the first that race was mentioned -- when  
3 I say by the family I am going to include Mr Anwar in  
4 the aspect of the family -- was at a meeting we had when  
5 the family and Mr Anwar came and met with the former  
6 Commissioner, and the phrase used at that time was, "Can  
7 we talk about the elephant in the room?"

8 Q. Was that in early September.

9 A. That was in early September, although we had received  
10 an instruction from Crown in July in respect of race.  
11 John and I were trying -- everybody was trying to keep  
12 an open mind about race. But when I briefed Garry about  
13 this, is I -- I don't recall saying to him, "You need to  
14 put matters of race in here", Garry is looking at what  
15 we have been instructed to undertake, instructions we  
16 received at that time, and he is mindful of what  
17 evidence we have coming in and he has sat and prepared  
18 that, and if Garry was sitting here now he would  
19 absolutely say, "I didn't have enough time to prepare  
20 that properly", I am quite certain he would.

21 But we are sitting in hindsight here but the reality  
22 of it, if Mr Mitchell was made aware on 22nd -- sorry,  
23 on the 2nd and we were interviewing the officers on the  
24 4th and we had to get all that organised and I had said  
25 I need a generic witness strategy to assist the

## Transcript of the Sheku Bayoh Inquiry

1           interview teams.

2           Q. You have given me a lot there.

3           A. Sorry.

4           Q. No, not at all. We have heard evidence that obviously

5           this -- Mr Bayoh died.

6           A. Yes.

7           Q. He was in contact or in custody of the police, and he

8           died after that, and he was black.

9           A. Yes.

10          Q. And we have heard police officers indicate that those

11          factors made it likely there would be high interest

12          publicly, a lot of media attention. And that the issue

13          of race given -- bearing in mind some officers said they

14          were aware of events in England, down with the Met, in

15          America, that race would be a big factor. So we have

16          heard evidence from officers about that.

17          A. Yes.

18          Q. Are you suggesting that it was PIRC's expectation that

19          unless the family raised race, you wouldn't be dealing

20          with it at all?

21          A. No, I am not saying we -- we would be mindful of it, we

22          would be mindful. But I go back to the kind of

23          legislation in respect of PIRC is Crown instruct us what

24          to investigate. We never received an -- you know, to

25          investigate the matter of race until July.

## Transcript of the Sheku Bayoh Inquiry

1 Q. I will come back to that, because you -- there may be  
2 an issue about when you were instructed by the Crown and  
3 we will come back to that. We will look at the letters  
4 after the break. But am I right in thinking that your  
5 authority and your power and PIRC's authority comes from  
6 a Crown Office instruction?

7 A. Yes.

8 Q. Unless it is something to do with the Chief Constable,  
9 but in this case we were looking at Crown Office?

10 A. Yes, it's a Crown instruction.

11 Q. But is it will be possible for PIRC to contact Crown and  
12 say, "We would like to you instruct us to look at this",  
13 so that you have the authority from the Crown but you  
14 could instigate that instruction or encourage that  
15 instruction?

16 A. Well, we could. I was -- I would say my involvement  
17 with Crown was at a fairly low level, for want of  
18 a better expression. There was discussions ongoing.  
19 The circumstances you give, I would say that is maybe  
20 more pertinent where there has not been the same  
21 interaction between PIRC and Crown and there has maybe  
22 been -- you know, as we go along we identify something  
23 and we realise that requires or should form part of  
24 a different instruction, maybe we would go to Crown and  
25 say, "Would you consider that that should be instructed

## Transcript of the Sheku Bayoh Inquiry

1           to us?" And that ... But in this instance we have, you  
2           know -- as I said, I did a seven-day paper I think and  
3           I then did a three or four-week paper to Crown  
4           highlighting where we are, what we are looking at, what  
5           are the issues. At no time did anybody come and say to  
6           me, "I am instructing you to investigate race", at that  
7           time.

8           We were trying to be mindful of race, and I am aware  
9           just from the points you have laid out that race was  
10          playing a part here, particularly around about the media  
11          attention, and you know -- but, yes. So there are  
12          a number of factors here. Why is race not in there?  
13          I don't recall specifically briefing Garry to include  
14          race because I am certain if I had he would have  
15          included it there.

16         Q. But as far as you are concerned at that time when you  
17          were taking statements from the officers, there is no  
18          instructions from Crown --

19         A. No, as far as I am aware there are no instructions --

20         Q. That is my understanding.

21         A. Yes.

22         Q. No instructions from the Crown to investigate race. So  
23          it wasn't a specific part of your terms of reference?

24         A. No.

25         Q. So although you are saying PIRC were being mindful of

## Transcript of the Sheku Bayoh Inquiry

1           it, would that in a sense restrict your ability to  
2           pursue an active line of investigation in relation to  
3           race?

4           A. Yes. Yes. Sitting here now, yes, I would ... yes,  
5           I would say so, yes. Bearing in mind my recollection is  
6           we got a further instruction from Crown -- was it on the  
7           2nd or the 5th June? And I remember the wording of the  
8           instruction was, "Concerns have been raised by the Bayoh  
9           family in relation to the following matters".

10          Q. I will come on to --

11          A. But none of them say race in that instruction.

12          MS GRAHAME: I will come on to the instructions.

13                        I am conscious of the time.

14          LORD BRACADALE: We will take a 15-minute break at this  
15                        point.

16          (3.01 pm)

17                                        (A short break)

18          (3.22 pm)

19          LORD BRACADALE: Ms Grahame.

20          MS GRAHAME: Thank you. I would like to ask you about when  
21                        you became aware that the family had concerns about race  
22                        as perhaps being a factor in the death of Mr Bayoh.  
23                        Before the break I said there are some issues about when  
24                        you were actually instructed by Crown. If we can begin  
25                        with some preliminary issues. We have heard evidence in

## Transcript of the Sheku Bayoh Inquiry

1           the Inquiry that on 3 May, when the family were speaking  
2           to Mitchell and Parker who were the officers who  
3           delivered the death message --

4       A. Yes.

5       Q. -- that there had been discussion about race at that  
6           meeting, that the family had raised concerns about race  
7           and in particular had made reference to recent events at  
8           that time in Baltimore in America, involving I think the  
9           death of a black man. Was that something that you were  
10          ever made aware of when you came in on 4 May?

11      A. No, I have no recollection of that whatsoever.

12      Q. Had anyone discussed with you at that stage, or at any  
13          stage, that the family had raised this issue on 3 May?

14      A. No. No, that was not part of the briefing  
15          that I received. I don't know what is on -- in their  
16          statements either, those officers' statements, is it  
17          raised there? I don't ...

18      Q. I am interested in your awareness --

19      A. Yes, I understand that.

20      Q. -- as lead investigator; was that ever drawn to your  
21          attention?

22      A. No, no.

23      Q. Had it been drawn to your attention what would you  
24          have -- you have said you were mindful of race, what  
25          would you have done in relation to that information?

## Transcript of the Sheku Bayoh Inquiry

1           A. What would I have done in respect of that is (a) would  
2           have raised it with my senior management because there  
3           you have the family of a victim who -- who are  
4           perceiving that race played a part in this incident. So  
5           that would need exploring because one of the things that  
6           would happen would be -- is during the course of the  
7           family being spoken to is -- is to establish with the  
8           family as to why they perceive that as, you know, race  
9           being -- played a part in this incident.

10                  So there would have been a course of action in  
11           respect of that, and I would have expected my senior  
12           managers to raise that with Crown in respect of the  
13           referral, bearing in mind we got an additional referral  
14           on the 5th. Not -- well we got referral on the 5th but  
15           then the terms of that referral change from the verbal  
16           instruction.

17           Q. So if that had been brought to your attention, that is  
18           something you would have raised with both your line  
19           managers or the management of PIRC --

20           A. Yes.

21           Q. -- and the Crown?

22           A. Yes. Well, I would have expected the managers to have  
23           raised that.

24           Q. Which manager do you think you would have raised it  
25           with, or would it have been more than one?

## Transcript of the Sheku Bayoh Inquiry

1           A.  If I had been made aware of that on the 4th, and I think  
2           I am slightly at odds with yourself, because my  
3           recollection is John Mitchell was in on the 4th but  
4           I think, you know --

5           Q.  We have not heard from him.

6           A.  But definitely Irene Scullion would have been there, so  
7           that would have been -- because, you know, that is the  
8           family identifying that they perceive race as an issue,  
9           so we would be required to take that forward.

10          Q.  And required to take it forward, that would be to Crown,  
11          would it?

12          A.  Well, yes.  In the first instance go to Crown in respect  
13          of that, but my understanding of -- if -- if a victim or  
14          any person, you know, identifies race as being an issue  
15          within -- or a factor within an incident, then, you  
16          know, we have to accept that, we have to take that  
17          forward.  And my understanding is we need to notify  
18          Crown about that is my understanding of that, and also  
19          my understanding is that we need to establish why they  
20          perceive that, and that was not a line of enquiry that  
21          was pursued by the PIRC, it was not pursued by the FLOs,  
22          I didn't instruct them or ask them to pursue that.

23          Q.  Right.  But if you had been made aware that the family  
24          had raised this on the 3rd, is that something you could  
25          have pursued?

## Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes, absolutely.
- 2 Q. Liaising of course with Crown?
- 3 A. Yes, yes.
- 4 Q. And getting an instruction from the Crown?
- 5 A. I would have expected an instruction from them in that  
6 regard, yes.
- 7 Q. The other thing I want to ask you about is a meeting  
8 that took place involving the Commissioner, Kate Frame  
9 herself, and the Lord Advocate was present. It was  
10 a meeting involving PIRC and Crown Office. You weren't  
11 at this meeting.
- 12 A. No, I was not, no.
- 13 Q. I understand -- we have not heard evidence yet from  
14 Ms Frame in this regard, so I understand it took place  
15 on 14 May.
- 16 A. Okay.
- 17 Q. And that during that meeting the question of race was  
18 raised, and there was a note in the minutes saying:  
19 "This element should be looked at by PIRC."  
20 That is my understanding of the position.
- 21 A. Okay.
- 22 Q. Kate Frame, I am advised was present, she is certainly  
23 minuted as being present --
- 24 A. Yes.
- 25 Q. -- along with the Lord Advocate, John Mitchell,

## Transcript of the Sheku Bayoh Inquiry

1 Les Brown from Crown Office?

2 A. Yes.

3 Q. And it was a meeting with the PIRC on 14 May.

4 A. Okay.

5 Q. If you take that from me that that is correct, and  
6 Kate Frame was present.

7 A. Yes.

8 Q. I appreciate by 14 May you were working as deputy to  
9 John McSporran.

10 A. Yes.

11 Q. Were you aware from that matter being raised with  
12 Kate Frame and that the PIRC should be looking into  
13 questions of race, that she raised that with you or  
14 John McSporran or anybody who was involved in the  
15 investigation?

16 A. No, I have no recollection of that. Of that. I have to  
17 say if that was communicated to myself then I would have  
18 undertaken action like you said apart from the  
19 communicating with Crown. But I would have put in place  
20 no matter about, you know, the perception from the  
21 family as to why they considered race because I think it  
22 would be important to understand why they considered  
23 race to be a factor. But that was never communicated to  
24 myself, and -- well, John McSporran will be able to  
25 answer that. But if John had done that we would have

## Transcript of the Sheku Bayoh Inquiry

1           raised an action round about that, that is -- you know  
2           that would be in the FLO log -- sorry, not -- that  
3           would -- I can't see how that would not be in John's  
4           decision log and I don't think that is in John's  
5           decision log.

6           Q. You are talking about John McSporran?

7           A. Yes, John's policy log, yes.

8           Q. Let me just look at the decision log. This is  
9           PIRC 04153. And we can have that on the screen but from  
10          my looking at it there is nothing referred to on 14 May  
11          that would indicate anything in relation to race had  
12          been raised with him. There is an entry on the 13th,  
13          a number of entries on the 13th and an entry on the  
14          14th -- sorry, 15 May, so no entry on the 14th at all.  
15          And then decision 33 is 15 May, the following day:

16                   "Obtain precise details of all Police Scotland  
17                   communication with family of deceased."

18                   This relates to the various different accounts  
19                   regarding the death.

20          A. Yes.

21          Q. "Establish who provided information to the family, what  
22          that information was, who authorised it, where it is  
23          recorded."

24                   And:

25                   "It may assist the Inquiry to establish what

## Transcript of the Sheku Bayoh Inquiry

1           occurred at the point of arrest."

2           And then the next entry goes on to the 17 May.

3       A.   Okay, I was -- I was just flicking here, sorry

4           Ms Grahame, to see if there was anything in my daybook

5           in respect of that.   (Pause).

6       Q.   I think the daybook that you have hard copy of goes up

7           to 13 May, so it's the day prior, unless you have the

8           one from 14 May that you are looking at.

9       A.   No, I ... I don't think so.

10      Q.   We can maybe --

11      A.   13 May --

12      Q.   -- look that out.

13      A.   Sorry was the meeting -- did you -- sorry I've lost

14           it --

15      Q.   14 May.   So it was the day after the daybook we have

16           been looking at in detail.   I think you have got the

17           copy of.

18      A.   No --

19      Q.   But your notebook covers that period.

20      A.   Right.   Over and above that, if that was the case

21           I would still expect a written instruction to come from

22           Crown in respect of that.

23      Q.   Right.

24      A.   I -- yes.

25      Q.   I think just for completeness in your notebook on page 6

## Transcript of the Sheku Bayoh Inquiry

1           you can see an entry from 12 May and then if you go on  
2           to page 7 you will see at the very top it's 13 May and  
3           then there is an entry for Thursday 14 May, it appears  
4           to say, "Reported on duty"?

5           A. Yes, basically it is just that I'm on duty and I'm off  
6           duty.

7           Q. And then, "Off duty". There is no entry in that.

8           A. So that would be there was nothing evidentially  
9           significant like an additional instruction or I was  
10          involved in any evidence gathering, taking possession or  
11          something, taking a statement off somebody. So I --  
12          I have never been aware -- made aware of that. I don't  
13          know -- you know, I don't know if we have the minutes,  
14          do we have the minutes? Did Ms Frame get the minutes of  
15          that meeting, I don't know.

16          Q. We will hear from Ms Frame in due course but as far as  
17          you are concerned you didn't know anything about that?

18          A. Yes.

19          Q. There are no entries in your notebook and we will  
20          provide you with a hard copy of the daybook for the  
21          following period, for 14 May.

22          A. Something has caught my eye here, I don't want to put  
23          you off your train of thought, but it's something we  
24          were discussing earlier when we were discussing in  
25          relation to the fingerprint examination of the vest.

## Transcript of the Sheku Bayoh Inquiry

1 I have a note here in my daybook from the 13th and it is  
2 basically like actions and I have got:

3 "Garry/Billy~..."

4 Q. Is that page 7, 13 May?

5 A. I have "Garry/Billy", and I have underlined it. So  
6 that's Garry Sinclair and Billy Davidson, who was with  
7 us at that time. I've got:

8 "Prepare forms for gateway.

9 "Production 8, personal radio plus blood splatter or  
10 contact.

11 "Production 51, vest of Nicole Short.

12 "Production 166, R boot.

13 "Production 167, left boot for photos and  
14 examination of thread."

15 So I have not asked for fingerprint examination  
16 because we then go on to another list where I have put:

17 "Photos.

18 "DNA.

19 "F/fingerprints."

20 So my instruction has not been for fingerprint  
21 examination.

22 Q. Thank you.

23 A. Now, whether that got mixed up in the -- but ...

24 Q. All right.

25 A. Sorry, that just caught my eye there.

## Transcript of the Sheku Bayoh Inquiry

- 1 Q. No, that is very helpful. Thank you. So we were  
2 talking about 14 May. You've no recollection of that  
3 being raised with you by Kate Frame or any other  
4 manager?
- 5 A. No.
- 6 Q. Can we look at your Inquiry statement, please,  
7 paragraph 202, and I think before the break you  
8 mentioned early July or 2 July.
- 9 A. Yes.
- 10 Q. So paragraph 202 of 421. You see here you were asked:  
11 "On 2 July the PIRC was further directed by  
12 [Crown Office] to investigate the allegations~..."  
13 I won't read the whole thing out, and then I think  
14 you say:  
15 "My understanding is that this email of  
16 2 July 2015 ..."  
17 Now, this was an email from the Crown Office to  
18 PIRC; is that right?
- 19 A. Yes, I think it is an email.
- 20 Q. Yes:  
21 "... was a further instruction from [Crown Office]  
22 to investigate each of the four points~..."
- 23 A. Yes.
- 24 Q. An allegation of criminal conduct made by Zahid Saeed?
- 25 A. Yes.

## Transcript of the Sheku Bayoh Inquiry

1 Q. "Investigate issues of race and conduct.  
2 "Investigate allegations of potential contraventions  
3 of the Data Protection Act 1988."  
4 And investigate miscellaneous other matters.  
5 Can I ask you to look at this email. The one on 2 July,  
6 as I understand it, is the fourth instruction that PIRC  
7 received from Crown Office. And it is COPFS 04808. You  
8 will see at the top it says it's from Les Brown --  
9 A. Yes.  
10 Q. -- who is in Crown Office, and it is sent to  
11 Stephen McGowan, PF major crime and fatalities  
12 investigation. Subject Sheku Bayoh. And then just  
13 beneath that you see from Les Brown 2 July, 16.11 to  
14 John McSporrان and it relates to Sheku Bayoh, and if we  
15 can have a look -- so is this the email that you -- do  
16 you recognise this as the email that you are referring  
17 to?  
18 A. I knew we received a further instruction, you know.  
19 Yes, I knew -- yes.  
20 Q. Let's go through this:  
21 "Dear John ..."  
22 It's to John McSporrان:  
23 "Thank you for forwarding the email ... from  
24 Aamer Anwar.  
25 "Standing that the majority of points raised by

## Transcript of the Sheku Bayoh Inquiry

1 Mr Anwar were raised at a meeting between the family of  
2 Mr Bayoh and PIRC investigators, the Crown consider that  
3 the extent of information disclosed by PIRC at this  
4 stage is an operational one to be taken by  
5 the Commissioner. That decision will no doubt be  
6 informed by the processes that have been applied by PIRC  
7 in relation to previous investigations, and by the  
8 practices followed by the Police in updating the family  
9 prior to a report being submitted to the  
10 Procurator Fiscal.

11 "As you are aware Mr Anwar has raised four issues  
12 directly with the Crown:

13 "(i) In relation to the request to view CCTV footage  
14 I am content that this is an operational decision for  
15 PIRC that can be responded to in accordance with your  
16 usual practice."

17 So that relates to the CCTV?

18 A. Yes.

19 Q. "(ii) The information provided in relation to the case  
20 against Nicole Short is relatively vague and there is no  
21 indication as to the source of the information. As such  
22 you will no doubt wish to clarify matters before  
23 deciding how to proceed. The position of the Crown is  
24 that the case against this officer is live and  
25 proceeding."

## Transcript of the Sheku Bayoh Inquiry

1           That relates to Nicole Short:

2           "(iii) In respect of the allegation concerning  
3 Mr Saeed, as this appears to include an allegation of  
4 criminal conduct this should form part of the  
5 investigations by PIRC."

6           So that relates to criminal conduct alleged  
7 concerning Mr Zahid Saeed. And then:

8           "(iv) I can confirm that the Crown will take  
9 responsibility for the instruction of appropriate  
10 experts in relation to positional asphyxiation. We will  
11 however take account of any proposals that you make in  
12 this regard. I will advise Mr Anwar that I have  
13 responded directly to you.

14           "Regards."

15           So there are four items there, but they relate to  
16 CCTV, Nicole Short, Zahid Saeed and positional asphyxia.  
17 Let's go back to your Inquiry statement. You will start  
18 to see why I was asking -- this was paragraph 202 and  
19 you will start to see why I was going to ask you  
20 a little bit more about the letters of instruction and  
21 what you received when. So 202 --

22       A. Sorry, Ms Grahame, can I just check something if you  
23 don't mind.

24       Q. Yes, please do because this is confusing me and I am  
25 hoping you can help me understand it.

## Transcript of the Sheku Bayoh Inquiry

1 A. Sorry, I am a bit confused here as well and not wanting  
2 to -- I have it in the back of my head that I was on  
3 holiday over 2 July.

4 Q. Right.

5 A. So I am just trying to see ...

6 (Pause).

7 You see, it's redacted out here but I have myself --  
8 I've got myself here on -- now, we don't have my  
9 daybook, that only runs up to 14 May I think you said,  
10 or 13 May.

11 Q. Yes.

12 A. But looking at my notebook -- and yes, sometimes there  
13 will be a date gap in my notebook but not in this period  
14 because of dealing with this investigation, so I have --

15 Q. Can we just take a moment and get this up on screen.

16 I think it will be between pages 12 and 13 of your  
17 notebook, which is PIRC 04200. I think page 13 does  
18 have a redaction on it but you will see an entry  
19 Monday -- it's either 11 July --

20 A. It's 13 July.

21 Q. -- or 13 July?

22 A. It's 13 July. So you've got an entry on Friday,  
23 26 June --

24 Q. That is at the bottom of page 12?

25 A. Then you have an entry at Monday 13 July.

## Transcript of the Sheku Bayoh Inquiry

1 Q. So the bottom of page 12 is from June and then if we  
2 look at the top of page 13 we will see the entry that  
3 says Monday, 13 July.

4 A. Yes.

5 Q. I am interested in --

6 A. The 2nd.

7 Q. -- 2 July. From your own recollection of your notebook  
8 are you suggesting that that redacted version relates to  
9 2 July? We can have that checked.

10 A. I think I am on holiday that period.

11 Q. Oh, right. So you weren't present on 2 July? Maybe?

12 A. Sitting here now I don't think so but on ... We  
13 received the additional instruction, the additional  
14 instruction is as I have listed it, and that is how we  
15 have recorded it into our final reports. But I believe  
16 that that redaction is I am on holiday.

17 Q. All right. Thank you. We can double-check that  
18 overnight.

19 A. Please. I know -- it's still fair to say but my  
20 understanding of the kind of ... when I have answered  
21 this question, I don't know if that email was made  
22 available to me.

23 LORD BRACADALE: I think, Mr Little, if we let Ms Grahame  
24 work through this process, I think we will get  
25 an answer.

## Transcript of the Sheku Bayoh Inquiry

- 1 MS GRAHAME: We will come back to that tomorrow, Mr Little.
- 2 If we looked at -- as I showed you the email on 2 July.
- 3 A. Yes.
- 4 Q. We read that out. We have looked at it. Let's go back
- 5 to your Inquiry statement, paragraph 202.
- 6 A. Yes.
- 7 Q. It may be that your Inquiry statement is not correct and
- 8 if so I would just like you to help us with that. 202,
- 9 2 July 2015. There we are. This is where you say this
- 10 is the point at which the Crown instruct by email on
- 11 2 July and you include there:
- 12 "Investigate issues of race and conduct."
- 13 A. Yes.
- 14 Q. Now, I can't see any reference to that in the email of
- 15 2 July so do you think your statement could be mistaken,
- 16 particularly if you were on holiday on that date, about
- 17 the contents of the letter of instruction from the
- 18 Crown?
- 19 A. Yes.
- 20 Q. Because that doesn't appear in that email.
- 21 A. Yes, so -- my apologies, I think I have read -- when
- 22 I have read the question that you have asked of me
- 23 there, and my recollection, and I will base that
- 24 recollection on what is on the PIRC report.
- 25 Q. I think this is also in the PIRC report.

## Transcript of the Sheku Bayoh Inquiry

1       A. Yes. Because we -- my understanding is we got  
2       an instruction, and this was the areas that we were  
3       asked to look at.

4       Q. But looking at the email now --

5       A. Yes.

6       Q. -- looking at your statement, and if you can take from  
7       me that this also appears in the PIRC report, do you  
8       think now, looking at it in light of the email, that  
9       perhaps that is a mistake?

10      A. I do, yes. Yes. And when you showed me the email  
11      I don't recall reading that email in the last few  
12      months, which ... you know, obviously information was  
13      made available for my Rule 8.

14      Q. Thank you. So did you rely on the PIRC report when  
15      you --

16      A. For --

17      Q. -- completed your statement?

18      A. Amongst a number of other areas, yes: my notebook and  
19      the book, yes. And my previous statements. Yes.

20      Q. But if you were on holiday there wouldn't be any  
21      information in your notebook?

22      A. No, but I would be made aware when I came back that  
23      there was -- yes, because I mean -- you will maybe come  
24      on to it but the matter regarding the criminal conduct  
25      allegation made by Mr Zahid Saeed, I undertook that part

## Transcript of the Sheku Bayoh Inquiry

1 of the investigation.

2 Q. Thank you. Can we look at PIRC 04153 which is the  
3 policy log that Mr McSporran created, and look at  
4 decision 57. This was created on 3 July, so the date  
5 after the email Crown Office instruction and it refers  
6 specifically to the instruction from Crown Office, the  
7 Crown Office instruction, and it says:

8 "Item 3 is an instruction to investigate  
9 Zahid Saeed's allegation (made by Mr Anwar) of criminal  
10 conduct by police officers when dealing with them.

11 "- Raise actions and investigate -

12 "Interview officers. Interview Saeed - he has never  
13 previously made these allegations and obtain his  
14 statement as to why he says this happened."

15 Does that seem to suggest the letter of instruction  
16 or the email of instruction from Crown at that point  
17 related to Zahid Saeed's allegations?

18 A. Yes, absolutely, yes.

19 Q. And that is consistent with the email I have shown you  
20 from the 2nd?

21 A. Yes.

22 Q. I have just received a message that we can confirm the  
23 redaction confirms you were on annual leave between  
24 29 June and 12 July.

25 A. Thank you.

## Transcript of the Sheku Bayoh Inquiry

1 Q. Thank you very much. Let me move on then because  
2 I would like to move on to the next letter of  
3 instruction that I have and this is from -- well, it  
4 relates to a letter from the Crown on 24 August, 2015.  
5 So can I ask you to look at COPFS 02768A. You will see  
6 that on the screen. On the screen is a letter from the  
7 Crown Office, "Criminal allegations against police  
8 division", to Kate Frame, the Commissioner, and it is  
9 dated 24 August 2015. And you will see that it -- if we  
10 can look at the page:

11 "In terms of section 33A of the~... Act 2006,  
12 I write to ask you to carry out an investigation in  
13 relation to the circumstances in relation to attached  
14 correspondence from Aamer Anwar.

15 "I have today written to the Deputy  
16 Chief Constable~... to advise him that I have instructed  
17 you to take forward the investigation into this case and  
18 I have asked him to facilitate a handover of the  
19 investigation to you."

20 So it's a letter from Les Brown, Head of Criminal  
21 Allegations Against Police Division, to the  
22 Commissioner, dated 24 August.

23 A. Yes.

24 Q. Do you recognise that letter as a further letter of  
25 instruction from the Crown?

## Transcript of the Sheku Bayoh Inquiry

- 1 A. Yes, it's a -- yes, sorry.
- 2 Q. And then if we look -- as we scroll down you will see  
3 the attachment to this letter.
- 4 A. Yes.
- 5 Q. This is a letter on Mr Anwar's headed notepaper.
- 6 A. Yes.
- 7 Q. It's dated 31 July 2015. So it's his letter of 31 July  
8 sent to PIRC by the Crown on 24 August.
- 9 A. Yes.
- 10 Q. It is a copy of a letter that was originally said to be  
11 sent to Mr Stephen House, the then Chief Constable of  
12 Police Scotland.
- 13 A. Yes.
- 14 Q. And it relates to the death of Sheku Bayoh in police  
15 custody, and as we scroll through you will see that it  
16 spills on to a fourth page. So that is page 2 we see.
- 17 A. Yes.
- 18 Q. And then keep going, you will see the last page is just  
19 at the top of page 4. This is a letter that was sent by  
20 Mr Anwar to the Chief Constable.
- 21 A. Yes.
- 22 Q. It appears the Crown have put a covering letter on it  
23 and attached it and sent it to PIRC?
- 24 A. Yes, I remember that.
- 25 Q. If we can go back to page 3 of the July letter -- sorry,

## Transcript of the Sheku Bayoh Inquiry

1           let's start at page 2 actually. Item 6. At the bottom  
2           there's reference to matters involving data protection  
3           which I will come on to at a later stage. A list of  
4           names are given, starting at the bottom of that page,  
5           and moving on to the top of page 3.

6           A. Mm-hmm.

7           Q. And then at paragraph 7 there is a request for an audit  
8           to be carried out for Alan Paton, who we have heard is  
9           one of the officers who attended Hayfield Road:

10                  "... and other officers for access to personal data  
11           as the Bayoh family are seriously concerned with regards  
12           to the serious allegations made to them."

13                  So there is mention of that there.

14           A. Yes.

15           Q. I would like you to look at another letter that is the  
16           same date. So this is a letter that is attached to the  
17           Crown Office instruction.

18           A. Yes.

19           Q. Could you also look for me please at COPFS 04726A. This  
20           letter is also written by Aamer Anwar on headed paper,  
21           it is also dated 31 July but this letter is sent to the  
22           Commissioner for the attention of John McSporrnan and  
23           Kate Frame. Do you see that?

24           A. I do, yes.

25           Q. If we look at the last page of this letter, do we see it

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- 1           is actually 11 pages? So it is substantially longer?
- 2       A. Yes.
- 3       Q. The copied letter that the Crown copied to PIRC spilled
- 4           on to a fourth page but, as you will see, the end of
- 5           this letter is 11 pages. We will see that. If we go to
- 6           the very bottom of the page you will see it has "11" at
- 7           the bottom?
- 8       A. Yes.
- 9       Q. Towards the final part of that letter do we see it
- 10           wasn't just sent to the Commissioner for the attention
- 11           of McSporran and Frame, but it was also cc'd to the then
- 12           Lord Advocate, Commissioner, Les Brown at Crown Office,
- 13           Lindsay Miller, who is a Fiscal with at that time
- 14           Organised Crime and Counter Terrorism?
- 15       A. Yes.
- 16       Q. There is quite a difference in length between these two
- 17           letters and I don't plan to go through every single
- 18           paragraph with you, but would it appear on the face of
- 19           it that Mr Anwar has sent an 11-page letter to PIRC?
- 20       A. Yes.
- 21       Q. Copied to Lord Advocate, a four-page letter to the
- 22           Chief Constable?
- 23       A. Yes.
- 24       Q. But the letter which has been forwarded to PIRC by the
- 25           Crown and which the instructions are based on is the

## Transcript of the Sheku Bayoh Inquiry

1 Chief Constable four-page letter?

2 A. On the face of it, yes. Yes.

3 Q. Not letter that was sent to PIRC --

4 A. No.

5 Q. -- direct. I would like to look at some of the

6 differences between these letters and see what impact,

7 if any, it made on what PIRC were doing in the

8 investigation. So let's look again for a moment at the

9 Crown Office letter of instruction, 24 August,

10 COPFS 02768A. If you could take it from me this is the

11 Chief Constable letter that is attached to this.

12 A. Yes.

13 Q. There is no reference to race in the Chief Constable

14 letter. If you can take that from me for the moment.

15 A. Okay. Without reading it, yes, okay.

16 Q. So in terms of the instruction received from the Crown,

17 there is no instruction on page 1, the covering letter

18 from the Crown about race, and there is no reference to

19 race in the Chief Constable's letter that is copied and

20 attached.

21 A. Okay.

22 Q. In terms of instructions from Crown, what impact did

23 that letter have on your investigation?

24 A. Well, Crown is formally instructing us to undertake

25 investigation into the points that are raised by

## Transcript of the Sheku Bayoh Inquiry

1 Mr Anwar.

2 Q. Right. So in the absence of a formal instruction in  
3 relation to race attached to that letter, what authority  
4 did PIRC have to investigate race at that time?

5 A. They hadn't received a formal instruction, if that is --  
6 I have obviously got mixed up with the email, but that  
7 is ... yes, we've not received a formal instruction but  
8 we have undertaken the matter into race.

9 Q. However, in the other letter that Mr Anwar sent to PIRC  
10 direct, so this is COPFS 04726A. This is the 11 page  
11 letter. Can we look at page 2, please, paragraph 11:

12 "It also has been alleged that ..."

13 This is the letter from Mr Anwar:

14 "... this officer has a history of racism from  
15 a young age. Can you advise whether that has been  
16 checked and considered? For instance, have family  
17 members such as his mother, father and sister been  
18 interviewed in the same way as Mr Bayoh's family were,  
19 to assist the investigation?"

20 A. Yes.

21 Q. If we could also look at paragraph 23, on page 4:

22 "Can you advise whether PIRC has identified the  
23 primary contentious features in this case, including  
24 restraint and race? This would not be to prejudgment  
25 investigation or with the purpose of ruling those issues

## Transcript of the Sheku Bayoh Inquiry

1 in or out, but to make clear the PIRC is aware of and  
2 has identified the primary concerns and issues that need  
3 to be examined and to put on public record that the PIRC  
4 recognises the important questions and issues to explore  
5 and is there to conduct a robust investigation will go  
6 some way to satisfying the family as well as public  
7 interest and concern about his death."

8 And 24, if we can move up:

9 "Has PIRC investigated if any of the nine officers  
10 involved were involved in the race case investigated by  
11 Fife Police division between 2014 and 2015 regarding  
12 text messages?"

13 Paragraph 26:

14 "As you will be aware that we are receiving  
15 assistance from Inquest, a charity that deals with  
16 deaths in custody. Many of the cases they have worked  
17 on have presented disturbing images of violence and  
18 racism, ascribing to black people stereotypical  
19 characteristics of extraordinary strength, dangerousness  
20 and criminality thus attempting to blame the victim for  
21 their own death, either by their pathological condition  
22 or their personal choice."

23 Then moving on to page 5, the second paragraph --  
24 the first paragraph talks about violence and risks. The  
25 second paragraph says:

## Transcript of the Sheku Bayoh Inquiry

1            "In the context of black deaths in custody the issue  
2            of race/racism has not been referred to by the PIRC or  
3            included in the terms of reference. Why not?"

4            Next paragraph:

5            "You will be aware that evidence of racial  
6            stereotyping by the Met led to a most damages censure of  
7            the police when a public inquiry attributed the bungled  
8            police investigation into the racist murder of  
9            Stephen Lawrence to institutionalised racism."

10           And then the next paragraph:

11           "The Bayoh family is concerned that racial  
12           stereotyping may have been a contributory factor in the  
13           death of Sheku Bayoh, resulting from restraint/use of  
14           force. The question of racism has from the very  
15           beginning been the elephant in the room. Can you advise  
16           how this forms part of the investigation process?"

17           Then in paragraph 27 there is mention of "violent"  
18           and "aggressive" and the use of language, and value lead  
19           in terms. So you can see in relation to this much  
20           longer letter there are a number of references --

21           A. Yes, absolutely, absolutely.

22           Q. -- to race. Do you remember PIRC receiving that letter?  
23           Have you ever seen that letter?

24           A. I remember in the context there was a letter received  
25           from Mr Anwar that had 50-odd points or whatever, and

## Transcript of the Sheku Bayoh Inquiry

- 1 I believe that was answered by the Commissioner.
- 2 Q. This is 53 paragraphs about points that are raised.
- 3 A. Yes. I remember when we received the instruction from  
4 Crown and, as you said, it was front sheeted, I was  
5 a bit concerned, so: is this how Crown instruct us now?  
6 Just put a front sheet on a letter and send it to us and  
7 say: investigate that. Which to me is not: please  
8 conduct investigations under terms of section such and  
9 such and investigate the following, which is the normal  
10 manner in which we get it. Some of the other items that  
11 you identified there in relation to going about race,  
12 obviously examination of the -- you know, were any of  
13 the nine principal officers involved in the incident  
14 involving the three officers in Fife. That was areas  
15 that we looked at. That was an area, you know, that we  
16 looked at. Did I see that at that time? Or when I saw  
17 that? I don't know. My recollection is that the first  
18 that the family raised the area of race was at the  
19 meeting with the Commissioner, which is just a couple of  
20 days after that. I think -- is that dated 31 August?
- 21 Q. That is 31 July.
- 22 A. Oh, 31 July. So we are actually, sorry, a month later.
- 23 Q. The letter is -- both letters are 31 July from Mr Anwar.
- 24 A. Yes.
- 25 Q. The Crown Office instruction letter is dated 24 August.

## Transcript of the Sheku Bayoh Inquiry

1           So his letters are 31 July. The Crown get in touch with  
2           the Commissioner on 24 August.

3           A. 24 August.

4           Q. Yes.

5           A. Then there was a meeting with the family just -- was it  
6           a week after that? The first couple of days --

7           Q. I think the beginning of September. I am about to say  
8           the 2nd, but I might be wrong.

9           A. My recollection is the 2nd. Sorry, I'm just --  
10          I don't have my daybook there for that date.

11          Q. We have your daybook if that would assist you. It is  
12          PIRC 04521. Unfortunately I think it is on screen  
13          rather than hard copy.

14          A. Sorry. Thank you.

15          Q. But if we look for 2 September, which will be towards  
16          the end of that book. Sorry, I don't have a page number  
17          to give you at this stage.

18          A. Yes, and -- yes, I understand about the meeting on  
19          2 September and that is where -- to the best of my  
20          recollection, that was the first that the family  
21          raised -- certainly with myself about the matter of  
22          race. What would be interesting to see is the page of  
23          when the letter was received by the Commissioner.

24          Q. I think what we may be better doing, rather than  
25          scrolling through the screen hoping to spot something,

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1 is to get a hard copy for you, Mr Little, and we will do  
2 that overnight. Can we look at the policy log. This  
3 might be of some assistance as well. This is  
4 PIRC 04153. If we can look at item 64.

5 A. Thank you.

6 Q. You will see this is an entry made on 25 August, so the  
7 day after the Crown Office letter we have been looking  
8 at.

9 A. Yes.

10 Q. It is an instruction from Crown Office: investigate all  
11 the circumstances set out in the letter from Mr Anwar to  
12 Crown Office. But you will recall that the letter that  
13 was attached to the Crown Office instruction was the one  
14 that Mr Anwar sent to the Chief Constable?

15 A. Yes.

16 Q. The four-page letter.

17 A. Yes.

18 Q. But:

19 "In this regard the Inquiry will now progress the  
20 following main lines of Inquiry and actions will be  
21 raised accordingly.

22 "1. Race. Examine whether race or racism,  
23 institutional racism with the Fife area of Police  
24 Scotland and in the approach of individual officers  
25 played any part in or impacted on how officers dealt

## Transcript of the Sheku Bayoh Inquiry

1 with Sheku Bayoh.

2 "2. In pursuance of the last, examine the PSD ..."

3 That is Professional Standards Department:

4 "... of officers involved in incident for racist or  
5 discriminating behaviour and report accordingly.

6 "3. Examine the PSD history of PC Alan Paton and  
7 historic incidents/allegations of assault.

8 "4. Undertake an audit of Police Scotland IT  
9 systems operational in Fife to determine if the nine  
10 officers or any officers unlawfully accessed the [data]  
11 of the persons named in the letter.

12 "5. Correspond with Mr Anwar setting out Scottish  
13 position in law regarding conferring, collusion,  
14 resignation, compulsion about providing statements, IPCC  
15 position contrasted with PIRC Scottish system."

16 Can we look at the start of that? If that was seen  
17 as the instruction from Crown Office, which is noted by  
18 John McSparran on the day after the letter is sent,  
19 25 August?

20 A. Yes.

21 Q. And he mentions race and racist issues to be  
22 investigated, that presumably must have come from the  
23 letter that Aamer Anwar sent direct to the Commissioner?

24 A. Yes.

25 Q. Rather than the terms of reference in the letter of

## Transcript of the Sheku Bayoh Inquiry

- 1 instruction from the Crown to PIRC?
- 2 A. Yes.
- 3 Q. So it has been interpreted at some point by Mr McSparran  
4 that, as of that date, PIRC were instructed by Crown to  
5 investigate race; is that fair to say?
- 6 A. Yes.
- 7 Q. And that is probably based on the letter that Mr Anwar  
8 sent PIRC dated 31 July, and I say that advisedly. That  
9 is the letter he sent to PIRC dated 31 July?
- 10 A. Yes.
- 11 Q. So this would have been the first point at which it was  
12 recognised that the family through Mr Anwar were  
13 concerned about race and, although there seems to have  
14 been some mix up here with the letters, from that stage  
15 PIRC were instructed or considered themselves instructed  
16 by the Crown to investigate race?
- 17 A. Yes.
- 18 Q. Right. Thank you. As a result of that, it would appear  
19 from the daybook at least that certain steps were then  
20 instigated in relation to investigating race?
- 21 A. Sorry, from my daybook?
- 22 Q. From this daybook it appears that PIRC were then --  
23 certain steps were ordered in relation to investigating  
24 these issues of race.
- 25 A. Right, but not on 25 August, for myself.

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1 LORD BRACADALE: I think here we are talking about the  
2 policy log rather than --  
3 A. The policy log. Because I was down in London on  
4 25 August.  
5 MS GRAHAME: Sorry, I realise that. I have made a mistake.  
6 I am talking about the document on the screen, which is  
7 the policy log.  
8 A. Yes. Thank you. I understand that.  
9 Q. My mistake. So at least from 25 August and the entry in  
10 the policy log by John McSporran he took the view that  
11 PIRC were now instructed to investigate race?  
12 A. Yes.  
13 Q. And that that then resulted in certain actions being  
14 required. So it was from this moment that PIRC started  
15 to pursue particular lines of investigation directed  
16 towards the issue of race?  
17 A. Okay. So over the passage of time, I apologise, I have  
18 made a mistake in my Rule 8 in respect of that. I  
19 lifted that from the -- whether that was a mistake, me  
20 lifting that date from the such -- but my recollection  
21 is, for myself, the first that the matter of race was  
22 raised that I was aware of and I take -- I fully take  
23 that, was on the meeting with Ms Frame on ... I think  
24 the 2nd. I can see certainly just looking -- quickly  
25 looking at my statement that I made, my second statement

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1 I made to Crown, that I was away on the 25th. I was  
2 down in London, actually meeting with Dr Karch on that  
3 date. So I wasn't about on 25 August. Where I was on  
4 the days after that, it is not quite clear here,  
5 although I certainly have on Friday, 28 August, I handed  
6 CCTV footage over to Mr Brown. But that is my  
7 recollection, yes. I'm not doubting that. I'm not  
8 doubting that.

9 Q. Then can we look at COPFS 02557. This is another letter  
10 from the Crown. There might be a slight glitch with the  
11 computer. We can resolve that tomorrow. But  
12 essentially my understanding is that there was  
13 a subsequent letter sent by the Crown, which I will be  
14 able to show you tomorrow, sent to the Commissioner,  
15 dated 2 September. I think if we look at your Inquiry  
16 statement, paragraph 222, there's reference to this. So  
17 it's paragraph 222 of 421. You will see there, if we  
18 can go back to 221 actually, we can see reference to the  
19 letter:

20 "On 2 September Crown Office wrote to the  
21 Commissioner. Were you aware of this correspondence at  
22 the time or subsequently?"

23 And you do recall this further instruction. Then we  
24 can move on to the next paragraph, paragraph 222:

25 "The letter asked the Commissioner to confirm that

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1 issues of race and whether there was any evidence of  
2 racial motivation was a primary focus in the PIRC  
3 investigation."

4 And your response is:

5 "I have no recollection as to what I understood back  
6 in 2015. What I can confirm is that from the outset the  
7 matter of race was under consideration at all times."

8 But my understanding is -- and we will be able to  
9 look at this tomorrow -- the Commissioner put in writing  
10 a query whether evidence of racial motivation was  
11 a primary focus in the PIRC investigation and,  
12 regardless of any mistakes or confusion --

13 A. Yes, yes.

14 Q. -- that had arisen previously, this was the first letter  
15 from the Crown that specifically raised the issue of  
16 race and asked PIRC to investigate?

17 A. Okay. So it was much later than what I -- yes.

18 Q. Would you accept that that could have been a point at  
19 which --

20 A. Yes, yes.

21 Q. -- there was a formal letter or a formal correspondence  
22 from Crown asking about the issue of race?

23 A. Yes. And I do see in my response to 221 I am able to  
24 say that a number of actions were detailed -- were  
25 handed out on -- or were raised on 8 September in

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1 response to that.

2 Q. Is this in the policy log --

3 A. No, no. In my response to question 221.

4 Q. I see:

5 "I do recall this further instruction. The changes  
6 it made is that each of the points was allocated out for  
7 action to number of the [members] of the investigation  
8 team detailed within my daybook entries dated  
9 8 September 2015."

10 So there were actions taken after that instruction?

11 A. Yes, instructions, yes.

12 Q. Then you will see as we move down the page that there is  
13 a reference at 223 to a meeting that took place --

14 A. Yes, this is the meeting I was talking about. Yes --

15 Q. -- between the Commissioner and the family, their  
16 solicitor, John Mitchell, Alistair Lewis, Michael Tait  
17 and yourself, Mr Little?

18 A. Yes.

19 Q. And that was on 3 September?

20 A. Yes.

21 MS GRAHAME: We will come on to that and the different  
22 aspects.

23 I wonder if that might be an appropriate time to  
24 break?

25 LORD BRACADALE: Yes. We will stop there and continue the

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1 evidence tomorrow morning at 10 o'clock.

2 (4.13 pm)

3 (The Inquiry adjourned until 10.00 am on Wednesday,

4 14 February 2024)

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