

COPFS POST INCIDENT MANAGEMENT

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Role and experience

1. At the time of Mr Beyoh's death I was the Procurator Fiscal for Organised Crime and Counter Terrorism, and head of the Serious and Organised Crime Division (SOCD) which was a Senior Civil Service post (Deputy Director - SCS1A). I had been in that role since November 2013. In that role I had strategic responsibility within the Crown Office and Procurator Fiscal Service for a number of specialist areas of prosecution work including the investigation and prosecution of organised crime, serious economic crime, terrorism offences, international co-operation, proceeds of crime recovery, civil recovery, the Lockerbie bombing investigation, wildlife and environmental crime and complaints against the police. I reported to the then Director of Serious Casework.

Following a restructure of COPFS known as Shaping the Future (StF) and the promotion of Mr Harvie to Crown Agent, I became Deputy Crown Agent for Serious Casework in May 2016 (Director – SCS2) and was appointed to the COPFS Executive Board. This role replaced the Director of Serious Casework role. At that time Serious Casework teams were responsible for the preparation and prosecution of all High Court cases in Scotland and the preparation and presentation of all criminal appeals before the Appeal Court. The Group was also responsible for the investigation and prosecution of organised crime and terrorism cases, international co-operation, health and safety prosecution, unresolved homicides, fatalities investigations and the recovery of proceeds of crime (both civil and criminal processes) and complaints against the police.

2. In accordance with the practice at the time, on Sunday 3 May 2015 at 1325 I was copied into an e-mail from Stephen McGowan who was my counterpart and the Procurator Fiscal For Major Crime and Fatalities. Stephen and I reported to the Director of Serious Casework. Stephen's e-mail was advising the Lord Advocate ,

the Solicitor General and senior COPFS officials of the death in custody of Mr Beyoh, narrating the circumstances of Mr Beyoh's death as he knew them at the time and advising of the involvement of the Police Investigations and Review Commissioner. I was copied in as a senior colleague and because of the involvement of police officers.

3. There is no coroner in Scotland. The Lord Advocate has responsibility for the investigation and prosecution of crime and investigation of deaths in Scotland. There is a very strong public interest in the effective investigation of deaths, in accordance with Article 2 of the European Convention on Human Rights. The Lord Advocate's duty to act independently in the exercise of this duty is set out at section 48 of the Scotland Act 1998.

The role of the Procurator Fiscal is to discharge this investigative responsibility on behalf of (and at times acting under the direct instruction of) the Lord Advocate. It is therefore the duty of the Procurator Fiscal to make initial enquiry into all deaths of which he or she is made aware and to further investigate all such sudden, suspicious, accidental, unexpected and unexplained deaths. This is necessary in order to minimise the risk of undetected homicide or other crime.

It is also the duty of the Procurator Fiscal to provide the deceased's nearest relatives with information about the investigation at regular intervals and in a format chosen by the relatives, in accordance with commitments contained within the Family Liaison Charter, reflecting the obligations and duties of the Procurator Fiscal under Article 2 of ECHR.

4. I had some involvement in the case of Anthony Storrie which related to the death of Mr Storrie following an arrest by the police. This was an investigation carried out by PIRC and the investigation then subsequent Fatal Accident Inquiry was between 2013 and 2016. Issues arose about the status of the PIRC report and whether that was disclosable in the context of a Fatal Accident Inquiry. Race was not a factor in that case.

Police officers were called to Mr Storrie's home by friends of his, who alleged that he had been consuming a novel psychotropic substance, known as NBombs and had become violent, smashing up furniture etc. within the house. Officers attended and having subdued Mr Storrie, removed him from the house. He was then conveyed in a police vehicle directly to hospital in Paisley as the officers had become concerned about his condition and thought he should go to hospital rather than to the police station.

It was deemed by the Crown that a PIRC investigation was appropriate, and PIRC were instructed to carry out an investigation into the circumstances of his death, from the moment the police were contacted to attend, until such times as Mr Storrie was placed under the charge of the medical authorities.

A PIRC report was received, the conclusion of which was that there was no evidence to indicate that the actions of the police officers had any involvement in the death of Mr Storrie. At post-mortem however Mr Storrie was found to have a rupture to his liver, albeit there was no external injury to him.

There was ultimately no evidence to indicate that he had sustained this injury at any time other than when damaging furniture in his flat prior to the police attending.

In 2014 CAAPD referred to PIRC the death of Scott Ralston who died in July 2014. He had sustained injuries and had been seen at his home by police officers who had noted several head wounds and offered him medical assistance which he had declined. He was later found dead at this home. The report from PIRC was received in September 2014 and I recall being involved in discussions about the circumstances. It was concluded that there was no basis to find that any offence of neglect of duty had been committed by the officers. Race was not a factor in that case.

5. I have considerable experience in relation to family liaison in deaths cases. Some examples are:

- I have chaired police Family Liaison Office/Victim Information and Advice handovers in homicide cases – HMA -v Daniel Jamieson – race was not a factor;
- I have provided regular updates (in person, virtually and in writing) to bereaved family members in the UK, the USA, the Netherlands and Germany in relation to the investigation and prosecution of those responsible for the bombing of Pan Am flight 103 over Lockerbie in 1988 – race was not a factor in any of my communications with families;
- I have met with bereaved family members along with Law Officers during trial preparation stage to advise of updates in the case and next steps – HMA v Angus Sinclair – race was not a factor;
- I was appointed Secretary to Sir Anthony Campbell QC's Inquiry in the Crown decision making in the murder of Surjit Singh Chhokar and met regularly with family members and their representative – race was a factor to consider in accordance with the Terms of Reference for the Inquiry and also in liaison with the family.

The Police Investigations and Review Commissioner (“PIRC”)

6. Following my appointment to the role of Procurator Fiscal Organised Crime and Counter-Terrorism I was asked by the Law Officers in early 2014 (from memory) to read and countersign all cases being reported to the Law Officers by the Criminal Allegations against the Police Division (CAAPD) of COPFS. CAAPD had been established as a national division in January 2013.

Around mid 2013 I believe, the Law Officers had given a personal commitment that Crown Counsel's Instructions (CCI) to raise criminal proceedings against police officers acting in the course of their duties would only be issued by either the Lord Advocate or the Solicitor General. My role was for quality assurance purposes until such time as the Law Officers considered that was no longer necessary, and this meant that following the establishment of PIRC in 2013 as the casework built up, I began to see cases which were investigated by PIRC and reported to COPFS for consideration.

After Kate Frame was appointed to the office of PIRC in 2014, because of my oversight of CAAPD I was then copied into correspondence between COPFS (usually CAAPD) and PIRC about issues of mutual interest, and potential changes in practice and reporting.

A meeting took place between the Commissioner (PIRC) and the Lord Advocate in March 2015 which I attended and where there were discussions about extending the scope of cases referred to the PIRC by COPFS. In the Lord Advocate's view this would allow the public to have confidence in the objectivity of the investigation (namely it was not the police investigating other police officers) and that as we operate within a discretionary framework, it was for COPFS and PIRC to continue to refine the categories of case to be referred.

I was then involved in a separate meeting with the Commissioner and her head of operations on 21 April 2015 for a general discussion on how liaison was working between COPFS (both Scottish Fatalities Investigation Unit and CAAPD) and PIRC.

7. My understanding of the relationship between COPFS and the PIRC is that in accordance with section 33A(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) is that the Procurator Fiscal has the power of direction over the commissioner to instruct an investigation where there is an indication that a person serving with the police may have committed an offence. Under section 41A(1)(a) of the 2006 Act the PIRC must comply with any lawful instruction issued by the prosecutor.

In my view this reflects to a significant extent the Procurator Fiscal's power of instruction over the police as set out in the duty of the Chief Constable under section 17(3) of the Police and Fire Reform (Scotland) Act 2012 where the chief constable must, when directing constables, police cadets and police staff in the carrying out of their functions, comply with any lawful instruction given by the appropriate prosecutor in relation to the investigation of offences.

8. In relation to the investigation into the circumstances of Mr Beyoh's death initially I was copied into the instructions and directions given to the PIRC in the aftermath of Mr Beyoh's death and had no direct role in instructing any inquiries. In a different role from 2016 onwards I had responsibility for strategic engagement with the Commissioner.

9. I had no involvement in relation to the decision as to whether anyone from COPFS should attend Kirkcaldy in person on 3 May 2015 after Mr Beyoh's death. I would say however from experience of fatalities investigations that it is no longer the regular practice for Procurators Fiscal to attend a locus such as this, not least to ensure the integrity of the scene and to minimise the potential for scene contamination. Much is dependent on the nature of the event and the reason that attendance at the scene could add value. In this case Mr Beyoh had been taken to hospital; in my view there was no immediate need for a Procurator Fiscal to attend at the scene.

On call Procurators Fiscal are of course on hand to discuss issues with the Senior Investigating Officer and their teams and provide advice and direction if required. In relation to Mr Ablett's attendance at the post-mortem examination, that in my view would have been in accordance with the guidance at the time in the Serious Crime manual and the Deaths manual in relation to suspicious deaths - a member of legal staff required to be present at the post mortem.

It is not my experience that Procurators Fiscal as a matter of routine attend post incident management meetings, or police Gold Groups. Gold Groups are in my experience about post incident consequence management for serious/critical incidents, and are police led; while I have in my career attended some in relation to my counter terrorism role ([REDACTED]), I have not done so as a matter of course, and it was fact and circumstance specific.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the aftermath of Mr Beyoh's death I was advised at a meeting with the police on 1 September 2015 on another matter that there was to be a march in Fife the following weekend, walking a particular route. I was advised by the police that there was to be a Gold group on 2 September chaired by ACC Nicolson looking at consequence management, reassuring the community, rebuilding trust etc but not touching at all on the investigation. My view was that it was not appropriate or necessary for COPFS to be present at that but that if anything came out of it which was of relevance to the Crown's role in the ongoing investigation then ACC Nicolson would let me know.

10. I was not aware that Mr Green was at the scene of a light aircraft crash reported late afternoon on 3 May 2015. As I have stated above, in my view the attendance of the Procurator Fiscal at the locus is fact and circumstance specific; in 2014 there was a draft Memorandum of Understanding in place between COPFS, Police Scotland and the Marine, and Air Accidents Investigation Branches recognising that in any incident involving the Accident Investigation Branches (AIB)

there will be two parallel investigations. The AIBs carry out a technical and safety investigation into the cause of the air or marine accident.

Police Scotland, on behalf of the Procurator Fiscal will carry out an investigation into any sudden deaths which occur and any allegations of criminality. Given the nature of the parallel enquiries there requires to be cooperation and coordination of the parallel investigations, and in establishing the cause of any accident or incident it is recognised that the necessary technical expertise to carry out the safety investigation will normally lie with the relevant AIB.

I am unaware for the reasons for Mr Green's attendance at this aircraft crash, but I am aware from my involvement with the AAIB in other cases that the attendance of the Procurator Fiscal at an incident such as this *could* assist in managing the parallel investigations and ensuring that the actions of one investigating agency do not impact the other in their separate and distinct roles.

We had a significant amount of learning coming out of the Police Scotland helicopter crash at the Clutha Bar in Glasgow in November 2013, for which Mr Green led the Crown's response. He had significant previous experience of managing scenes like this and in my view would be one of the most qualified members of COPFS staff, if not the most qualified, to assist.

10. From recollection Mr MacLeod prepared a note for Mr Farrell in February 2020 as Mr Farrell was the recently appointed head of CAAPD who had not been involved previously in the investigation. The note was to set out a background/timeline of the COPFS work in relation to the investigation to assist preparation for a meeting that Mr Farrell and I were due to attend with government colleagues. It was therefore intended as a high-level summary of the timeline of COPFS work on the investigation, 18 months or so after Crown Counsel's Instructions had been obtained, and I don't disagree with that summary insofar as it goes.

The Police Investigations and Review Commissioner (PIRC) was instructed by the Crown to investigate the circumstances of Mr Beyoh's death. Further instructions were issued to the PIRC subsequently to investigate inter alia allegations by the family of the deceased they were provided with misleading and erroneous information concerning the death by the Police Service of Scotland; whether there was inappropriate conferring between police officers; and whether there was evidence of unauthorised and illegal access to police information systems in relation to information relating to the number of named individuals including the deceased, members of his family and the solicitor representing the family.

PIRC were also instructed to enquire into and to report on whether there was evidence of racism associated with the death of Mr Bayoh or evidence of racism within the former Fife Constabulary.

12. I recall seeing reference to the issue of the rib fracture and its inclusion in officers' statements in June 2015 in the narrative of the facts from the Crown precognition. I was made aware of the fact that the rib fractures had been discovered by Dr Shearer in a call from Les Brown immediately after he had been told, and we agreed that Mr Beyoh's family should be told via their legal adviser, as well as the PIRC officers who were carrying out the investigation.

I remember discussing with Mr Brown on a subsequent call, following receipt of the police officers' statements, that if an inappropriate disclosure of the nature of those rib injuries had been made to the officers, it would be difficult to ascertain from whom the information had come. I don't recall any suggestion that it was from the PIRC investigation *specifically* as other parties were in receipt of the information. If there was an inappropriate disclosure of the information in my view, from what I knew of the circumstances, and from recollection of discussions at the time, there was no evidence to demonstrate from whom it had come and nothing to indicate that it was for example, from PIRC in particular.

It was also entirely possible that there had been an inadvertent but unintentional disclosure of the information.

I did not raise this with PIRC.

13. The Procurator Fiscal is in overall charge of any investigation into a sudden and unexplained death. The duties incumbent on the Crown in relation to a PIRC investigation are similar to those in relation to a police investigation – direction and instruction to the PIRC investigators as the investigation progresses to ensure that all viable lines of inquiry were identified and carried out with a view to ensuring that any criminality was identified. While I was not involved in the day-to-day management of the investigation into Mr Beyoh's death, I had responsibility and supervision of the team members who were. At the time of My Beyoh's death the PIRC had only been in existence for two years, but there was nothing in my dealings with the PIRC officers that in my view departed from what I would deem to be normal practice.

The main issue in this case that it was, for a number of reasons, a high profile and sensitive case – it involved the death of a black man in police custody on the street, in public. The fact that Mr Beyoh was black was clearly a consideration in the investigation given the findings of Sir William MacPherson of Cluny in 1998 in relation to the death of Stephen Lawrence in London in 1993, and the findings of Sir Anthony Campbell QC in 2001 in relation to the Crown decision making in Scotland in relation to the death of Surjt Singh Chhokar in 1999.

14. I was aware of the Memorandum of Understanding between COPFS and the PIRC as I read it when I took over responsibility for CAAPD in early 2014.

My understanding is that a full investigative report with statements was to be provided. An interim report was received just over a week after Mr Beyoh's death setting out the nature of the inquiries carried out by PIRC and what was planned. Given the issues of the lack of statements from the officers who restrained Mr Beyoh, I was aware that a report was to be submitted as soon as reasonably practicable, and, from memory although I cannot find a note to that effect, there was a request for submission of a report within 3 to 4 months.

15. On 29 April 2015 following a meeting I had with the Commissioner and her Director of Operations (referred to at paragraph 6 above) a proposed revised MOU was sent to COPFS. I discussed the proposed revision with both the head of SFIU and the head of CAAPD. The new revision was agreed in principle in late April 2015 by COPFS but final sign off was put on hold as there was a meeting scheduled for mid-May 2015 where the categories of case for referral by COPFS to PIRC were to be discussed with the Law Officers. In the intervening time period Mr Beyoh died and it was agreed that further revisal of the MOU should await the outcome of the investigation into Mr Beyoh's death and any learning from that which could be incorporated into it.

16. From recollection the (then) Crown Agent had been involved in the quarterly meetings with the PIRC but he agreed from early 2017 onwards that I should attend as the senior COPFS representative along with either the Procurator Fiscal for High Court or the Procurator Fiscal for Specialist Casework. The first one I have a record of attending was on 16 March 2017 which I see is a production in the inquiry.

The Commissioner sought confirmation of the Health and Safety Executive (HSE) position in relation to the investigation and was advised that they were declining to be involved but that health and safety issues were being considered in the course of precognition, input would be sought from the COPFS Health and Safety division and would be fed into that process, with independent expertise being sought if required.

There was a discussion of the issues which had arisen with the Ashley Wyse statement (which had been incomplete) for which the Commissioner apologised. This has been reviewed and the difficulty arose because of the manner in which statements are transmitted by PIRC to COPFS and the CLUE system operated by PIRC, because statements require to be transmitted in Word format, and not directly from CLUE. It would seem that the important part of the Wyse statement was intended to be copied from the word document and pasted into the briefing document which was received by COPFS, but it was cut rather than copied, thereby

removing it from the Word document received from PIRC and disclosed to the Beyoh family legal representatives.

It was confirmed all 469 statements were being compared to ensure no further errors and the interim solution would seem to be to convert the Word documents to PDF to prevent inadvertent removal of text.

I took an action to write to the family's legal representatives to confirm the meeting with PIRC, the terms of the review and that COPFS were content that this was an administrative error which was being addressed both in terms of PIRC systems but how information is transmitted to COPFS.

Article 2 ECHR issues were also discussed. PIRC confirmed that the family had discontinued PIRC Family Liaison Officer contact and while meetings and updates were offered, the initial meeting had been cancelled and there had not been a response to further requests to meet.

The next meeting I have a note of related to one in July 2017 but there was no discussion of the investigation into Mr Beyoh's death.

The next meeting I have an agenda for is 12 January 2018. The minutes were due to be taken by PIRC as we rotated that role and COPFS had taken the minutes for the previous two meetings, but I do not now seem to have a note of the meeting. There is no reference to the investigation into Mr Beyoh's death on the agenda.

Lord Advocate

17. The Lord Advocate at the time of Mr Beyoh's death was briefed regularly on the progress of the investigation and in particular some of the barriers to progress that COPFS and the PIRC were experiencing, specifically the reluctance of the officers involved in the restraint of Mr Beyoh to provide witness statements. My experience of working with the Lord Advocate both in my role as Deputy Crown Agent and as Procurator Fiscal for Organised Crime and Counter Terrorism is that he wished to be reassured that all high profile, complex and sensitive cases were

investigated with fairness and integrity and to that end were appropriately resourced and progressed expeditiously, particularly where the investigation related to a fatality or fatalities.

I met with the Lord Advocate regularly (at least every fortnight if not weekly) to discuss the range of cases being investigated across Serious Casework by the teams for which I had responsibility, and the investigation into the death of Mr Beyoh was one which featured regularly in these meetings.

He had made it clear at the outset of the investigation in a conversation with me that he did not wish this to be “*another Stephen Lawrence*” or a phrase to that effect, and he was very aware of the impact on Mr Beyoh’s family, and of the wider community of the death of Mr Beyoh, a black man, in police custody, to the point that he prepared a submission to his Cabinet colleagues the week after Mr Beyoh died to advise them of the nature of the Crown investigation. I took this to be a series of steps that the Lord Advocate was taking to guard against any suggestion that the organisation for which he was responsible could be accused of institutional racism.

He confirmed the mechanism of the investigation underway and the steps which were being taken which he hoped would build the confidence of Mr Beyoh’s family in the investigation. In particular he advised that:

- PIRC was instructed by the Crown Office and Procurator Fiscal Service to investigate and report on the circumstances of the incident.
- This is exactly the type of situation which the Scottish Government envisaged during the legislative process to reform the police service in Scotland when PIRC was established to ensure that, in situations such as this, the single police service was not responsible for investigating itself.
- The independence of PIRC from the police, acting under the direction of the Crown Office and Procurator Fiscal Service, achieves this aim and is recognised and supported by the police through formal protocols and day to day working arrangements.

- PIRC was therefore responsible for all aspects of the investigation including liaison with his family, and would report the matter to the Crown Office and Procurator Fiscal Service following which a decision on criminal proceedings and the holding of a Fatal Accident Inquiry would be taken by Crown Counsel.

He also emphasised that it would be important throughout this investigation to build and maintain the confidence of the deceased's family in the independence and thoroughness of the investigation. To that end, he confirmed he had agreed to meet Mr Beyoh's family to outline the investigative process and answer any questions which they may have. He accepted that it was too early to have answers for them but was hopeful that this meeting would help to build the confidence of Mr Beyoh's family that the matter was being investigated appropriately and that the decisions which would follow would be based on the available evidence and the law.

18. When my diary allowed, I met with Mr Beyoh's family along with their legal representative and senior COPFS officials, including but not limited to Stephen McGowan, Alasdair MacLeod and Les Brown, and latterly Senior Crown Counsel Ashley Edwards KC. I did not manage to attend all of the meetings that the Lord Advocate had with the family, but from memory attended the majority of them. I have it noted that I met with the family on 5 or 6 occasions at various stages of the inquiry.

The purpose of the meetings was to update the family on the progress of the investigation, to give an outline of what other type of types of investigation the Crown was instructing PIRC to carry out, or was carrying out via the Crown team in CAAPD, to seek the family's feedback and any lines of inquiry (within reason) that they wished to have carried out and to involve them as much as it was possible to do in the investigation, in line with the Crown's duties and obligations under Article 2 of the European Convention on Human Rights.

In that regard, the Lord Advocate (Mulholland) gave a commitment to the family that they would receive disclosure through their legal representative of statements and expert reports, CCTV and police airwave recordings ingathered in the course of the PIRC investigation, which was not a decision he took lightly as it was a significant and rather unusual step, but he wanted to reassure the family that the investigation

was open and transparent and that he was committed to providing them with information and answers if at all possible. It would also allow them, if they so chose, to instruct their own experts with the assistance of Mr Anwar as their legal representative.

19. Over the course of my career I have met with bereaved families with a number of Lords Advocate – Lord Boyd, Lady Angiolini, Lord Mulholland, Lord Wolffe and the current Lord Advocate.

The reasons for the meetings have differed. Sometimes the meeting will be to provide the family with regular updates on the investigation into their loved one's death and if there is to be a prosecution (which I have done in both cold cases and more recent fatalities). Sometimes the meetings will be because there have been delays to the outcome of the investigation, and to explain what those delays are and to offer timescales for resolution. Sometimes because the family members have complaints about the manner in which the case has been investigated, or the manner in which they have been treated by investigators (both police and prosecutors).

When Mr Wolffe succeeded Lord Mulholland, there was no difference in approach to the family. The commitment to provide disclosure of materials continued until Crown Counsel was due to make a decision about the case and whether there were to be criminal proceedings, at which point it was felt that further disclosure would not be appropriate.

What I would say was different was the manner of engagement with the family, and by that I simply mean that they are two very different people and the interaction and engagement with the family differed as a result.

20. In my experience, the involvement of a Law Officer in an investigation to an extent is not unusual, given that they have overall responsibility for that investigation. The Lord Advocate was acutely aware of the implications of this being an investigation into the death of a black man in police custody and involving restraint, which was in itself unusual.

I have it noted that Lord Advocate intended to meet with the Beyoh family every two months or so.

Family liaison

21. The nature and extent of COPFS role in liaison with the deceased's family depends on whether there is a criminal investigation, or whether it is a sudden and unexplained death, where there are on the face of it no suspicious circumstances. That process is now governed by the COPFS Family Liaison Charter.

There is a protocol between Police Scotland and COPFS dealing with family liaison, and that outlines the process where police and COPFS work together to provide bereaved families with information and support during certain investigations.

If there is a criminal investigation carried out by either the police or PIRC, liaison with the family will be dealt with by trained Family Liaison Officers (FLOs) until such time as there is a "handover" to COPFS, usually to COPFS Victim Information and Advice (VIA) officers. FLOs are always deployed in homicides and where there is a death in custody.

It is for the Senior Investigating Officer to decide when it is appropriate for the FLO to hand over to VIA at COPFS, and at such time there is a formal handover meeting. The meetings I have been involved in have been at the local Procurator Fiscal's office, usually at a time when the police have submitted a final report and most of the main inquiries have been carried out.

22. The duties and responsibilities to a deceased's family in a PIRC investigation are no different and it is a matter of partnership working between COPFS and PIRC.

As I have referred to at paragraph 16 above, my understanding was that although in the investigation into Mr Beyoh's death, the PIRC had the capability to deploy suitably trained Family Liaison Officers (FLO) and did so at first, this was later declined by the family and all communication thereafter from the PIRC to the family

was routed through the family's legal representative Mr Anwar. I am not aware of the reasons for this request, but it is not unusual in my experience for a request like this to be made.

Similarly, although there is VIA officer support at COPFS for CAAPD, from the early days of the investigation it was agreed that all contact and arrangements to meet and update the family would be through Mr Anwar so there was no handover as would normally be recognised in the protocol.

From the very early stages of the investigation the family were receiving updates from either the Lord Advocate in person, or in writing, or via the head of CAAPD or me to Mr Anwar.

23. My role in family liaison involved writing separately to Mr Anwar on issues arising during the course of the investigation. Paragraph 18 above sets out my further involvement. I had no role in deciding what to disclose to Mr Beyoh's family. That was a decision taken by the then Lord Advocate Lord Mulholland and he issued an instruction to that effect in the first few days of the investigation based on the PIRC investigation and expert witnesses instructed.

24. Mr MacLeod describes Mr Anwar as being provided with significant disclosure on an exceptional basis solely to enable the family to instruct their own experts; he then adds that the family were asked to and to provide input to the investigation. Another reason was because the Lord Advocate (Mulholland) wanted to ensure the Crown's article 2 duties and obligations were met and that they could be assured that Mr Beyoh's death at the hands of the state was being investigated fairly, thoroughly and independently.

This was highly unusual for the Crown during the early stages of a live investigation and Mr McSparran recognises this in his assessment. I have experience of materials such as witness statements or summaries and expert witness reports being provided to bereaved families after the investigation has concluded and often under court order in contemplation of civil proceedings, but not in the course of the investigation.

There was the potential therefore for different information being provided to the family by different organisations, again acknowledged by Mr McSporran. What mitigated that risk to a significant extent, however, was the involvement of Mr Anwar, a very experienced solicitor who has represented a number of bereaved families and would be in a position to advise and guide them through that process.

I have set out in my statement the reasons, as I understood them, for the Lord Advocate's decision in this case and given my discussions with him about the learning from Stephen Lawrence and Surjit Chokkar inquiries. My impression was that it was clear that race was a factor in this decision.

25. The Victim Information and Advice service is provided by COPFS to victims and witnesses in certain categories of criminal case, and also to bereaved next of kin. The role is not one of legal advice but to help those who are referred to the VIA service to understand the criminal justice or death investigation process in Scotland and what to expect as the investigation into the criminal act or the death progresses. VIA also provided information about court dates, bail/remand status of accused, outcomes at court and where relevant, the reasons why no criminal proceedings are being taken.

VIA staff can also refer victims or witnesses to other agencies for support such as Rape Crisis, Victim Support, Scottish Women's Aid, Cruse, PETAL etc

In a death investigation where there is the possibility of criminal proceedings, as described above, there will be a handover at a relevant stage from the police or PIRC to VIA where VIA will become responsible for providing information and updates to family members in accordance with COPFS commitments under the Family Liaison Charter, and in accordance with the family's wishes about the method and frequency of communication.

There was no VIA involvement in this case, although VIA resource was available to CAAPD. In the early stages of the investigation there was communication with Mr Beyoh's family by both PIRC and COPFS, and in late July 2015, just prior to going on leave, I went with Les Brown to meet with Mr Anwar, the family's legal

representative, at his office [REDACTED]. I do not have a note of this meeting as I had been at a meeting at [REDACTED] prior to that on a sensitive terrorism investigation so I had left my notebook locked in my office at [REDACTED] as I was going home after the meeting and did not want to have that notebook with me, but I recall there was a discussion of how we were to communicate with the family and Mr Anwar asked that all communication was to be routed through him. On that basis we agreed that CAAPD would continue to provide information and updates as requested. My recollection is that Deborah Coles of INQUEST was also at the meeting. I did attend a meeting with Mr Brown, Ms Coles and Mr Anwar at his office and I think that this was the same meeting.

The fact that there was to be communication in this manner is not an unusual practice as in my experience some victims, witnesses and families prefer not to have VIA involvement or would like communication through their solicitor or representatives.

Police officers' status

26. The role of COPFS in determining a person's status as that of a witness or suspect in an investigation into a death in custody will depend on the nature of the investigation and any request for assistance, instruction or guidance from the investigators. In some cases, the circumstances will be relatively clearcut and the status of any particular individual will be readily identifiable. In general, I would expect experienced investigators to be able to determine that, and it will therefore be an operational matter for them to make that decision, but in other cases where the is complex and complicated, Procurators Fiscal and/or Crown Counsel have been asked for assistance, or guidance and instruction in relation to an individual or individuals' status.

The nature of a person's status is clearly of significance in an investigation; across the UK the doctrine of policing by consent is applied therefore as a witness or potential witness to a crime, there is no legal requirement to provide a statement or to co-operate in an investigation. The State through police or other law enforcement

therefore has no power to compel individuals to provide assistance to an investigation.

There is also the issue of fairness - if an individual is a suspect, then s/he is afforded certain rights and protections under the law. This means that while there is the power of arrest, an individual must be cautioned to emphasise the right to silence because in Scotland no adverse inference can be drawn from silence, and at common law suspects cannot be compelled to incriminate themselves. There is also the right to have access to a solicitor during interview if it determined that an individual is a suspect.

If no suspect has been identified by law enforcement during the investigation, Procurators Fiscal and/or Crown Counsel can after consideration of any report submitted, take the decision that a particular individual is a suspect and instruct that s/he be arrested and interviewed.

27. The difficulty for the investigation at that time was that there were no statements provided by the officers involved in the restraint of Mr Beyoh and therefore no indication from them of what had happened in the build up to them restraining him in the street or of their view of his actions. There was therefore a consensus that their lack of co-operation with the investigation was detrimental to the work of both the PIRC and COPFS and was hampering the investigation.

I was involved in a number of discussions about the status of the officers, and my personal view was that they were witnesses. There was no basis in the immediate aftermath of Mr Beyoh's death upon which to determine that any particular officer was a suspect - the details of what had happened on 3 May 2015 were sparse given the lack of provision of operational witness statements by the officers on Scottish Police Federation and legal advice. The view of the legal adviser to the officers was that they enjoyed the same rights as a member of the public until their status was clarified. I disagree with this assessment. They were witnesses to an incident which had happened in the course of their duties, and I think that they were under an obligation as serving police officers to assist the investigation.

There had been a disparity of practice across the 8 geographic police forces before the creation of the Police Service of Scotland about what the obligations were on an officer to provide an “operational statement” if they were the subject of a complaint, and work had been ongoing between COPFS (through CAAPD) and Police Scotland Professional Standards Department to agree a protocol about what the officers could and would be asked to produce. From memory that was not finalised at the time of Mr Beyoh’s death but the general view in COPFS was that under the general duties of a constable in terms of section 20 of the Police and Fire reform (Scotland) Act 2012, officers were under a duty to provide a statement setting out what had happened.

I also recall that the Lord Advocate wrote to the Chief Constable in June 2015 to highlight the practice he expected Police Scotland to follow in this investigation and to express his concern about the stance being adopted by the officers. His view was that they were not assisting the inquiry into the circumstances of Mr Beyoh’s death but recognised they were acting under legal advice.

In hindsight we could perhaps have engaged more with the legal representatives for the officers, and the Police Federation to seek to encourage co-operation with the investigation.

28. COPFS can provide undertakings to individuals involved in a death in custody or death following police contact that they would not be prosecuted in order to obtain their account of an incident. I have seen such undertakings given to prison officers for example in of a death in custody in prison to secure their account of events.

The risk with such a process is that if evidence of criminality comes to light the Crown has created a personal bar situation where no matter what the evidence, the individuals cannot be prosecuted. From recollection such an undertaking was not considered in this case as a) police officers have different rights and duties incumbent on them given their oath of office and b) within 5 weeks of Mr Beyoh’s death statements of a sort were provided. It would not in my view have been appropriate at such an embryonic stage of the investigation to have given an

undertaking of the sort envisaged here particularly where we did not even have a final cause of death for Mr Beyoh.

29. At the time of Mr Beyoh's death the law governing detention, arrest and charge was a combination of the Criminal Procedure (Scotland) Act 1995 and common law. Interview under caution would have been feasible but the officers had had legal advice, and in my experience because they had a right to silence and not to incriminate themselves, this situation often results in a "no comment" interview.

[REDACTED]

None of the decisions taken in this case in my view were influenced by media reporting. Decisions were taken based on professional assessment of the case and the duties incumbent on us as prosecutors.

30. I agree to an extent with what Ms Frame set out in her letter of 10 September 2015 to Mr Anwar. PIRC officers had the status and powers akin to those of a police constable so *could* have detained and interviewed the officers involved in restraining Mr Beyoh, but in order to do so those PIRC officers would have required to have reasonable grounds to suspect that the police officers had committed an offence punishable by imprisonment.

At that time investigations were ongoing to establish if a crime had been committed. If the PIRC had detained the officers without grounds to do so that would have been unlawful and could have exposed the officers and the Commissioner herself to civil

litigation. Where I disagree with Ms Frame in her letter of 10 September, and it is a minor point, is when she states:

“If they are considered to be a witness, they may have the same rights as any civilian and therefore cannot be compelled to provide a statement.”

In my view the officers were on duty and were witnesses to an incident and therefore as stated in paragraph 27 above, under section 20 of the Police and Fire Reform (Scotland) Act 2012 were under a duty to prevent and detect crime, to maintain order, to protect life and property etc. Also under Schedule 1 to the Police Service of Scotland (Misconduct) Regulations 2014 there are set out standards of professional behaviour to which a police officer in Scotland is expected to adhere, including but not limited to, issues of honesty and integrity, authority respect and courtesy, equality and diversity, use of force, challenging and reporting improper conduct etc.

I do not think it was prejudicial and against any of the officers' interests at that stage to provide an account of events as there was no suggestion that suspicion had crystallised on any officer or officers, and that they were therefore in the category of suspect and requiring to be afforded certain rights and protections under the law.

My view is that it was crucial to establish a cause of death before determining whether it was appropriate for an officer or officers to be detained and interviewed under the 1995 Act. It was important to establish what factor or factors led to Mr Beyoh's death, for example was there any evidence which could be attributed to excessive force? Police officers are entitled to use necessary, proportionate and reasonable force in the exercise of their duties but was that the case here? Were there failings in how they were trained in terms of officer safety, and restraint techniques, or of use of Pava or CS spray?

The Crown and PIRC were not just assessing the actions of the individual officers but also the police force itself in terms of its potential corporate liability under the Health and Safety at Work etc Act 1974 and corporate culpable homicide under the Corporate Manslaughter and Corporate Homicide Act 2007.

At the point these letters were written I do not consider that there were any reasonable grounds to suspect that an officer had committed an offence [REDACTED]

In relation to the difference between an investigation under section 33A(b)(i) and 33A(b)(ii) the circumstances of Mr Beyoh's death were inextricably interlinked with the actions of the police. The emphasis of the investigation was to establish whether the officers had acted lawfully and within the limits of their authority and police powers, and establishing the cause of Mr Beyoh's death was crucial to determining whether there had been criminal offences committed. Conversely it did not follow that because there had been a death in custody that criminality was bound to be established.

The decision about whether there were reasonable grounds to suspect that a crime had been committed was initially an operational one for the PIRC investigators. It was of course open to them to discuss with the Crown and to seek advice and direction as they thought appropriate.

31. I agree with the Lord Advocate's point in his letter to the Chief Constable dated 5 June 2019 that determining whether a police officer is a witness or a suspect is primarily a matter for PIRC's own operational judgement, certainly in the first instance. I have been involved in discussions in other complex investigations where when I was advised by the police that they were planning to detain a suspect under section 14 of the 1995 Act, I instructed them not to as I did not consider that reasonable grounds existed to do so. However not all decisions by law enforcement to detain and interview are "sense checked" with the Procurator Fiscal.

Even in a complex high-profile case such as this, I would expect a Senior Investigating Officer who would have been trained appropriately and in accordance with recognised standards under the Authorised Professional Practice (APP) or similar, to have come to a decision on this before a discussion with the Crown took place.

I don't however consider that Ms Frame's position is necessarily inconsistent with the Lord Advocate's.

32. Reasonable suspicion is established by the individual facts and circumstances known to the investigator at the relevant time.

If the PIRC has been instructed to conduct an investigation and prepare a report of findings when there is a fatality, then a report would be submitted even there is no reasonable suspicion in respect of any individual because that would be the first stage in the process. This is not in any way unusual.

If an individual has died in police custody or following contact with the police, then the first aspect of the investigation is likely to establish whether there is any criminality linked to the individual's death. Following that further work would require to be carried out by the Crown because it is mandatory for there to be a Fatal Accident Inquiry in those circumstances. It is not therefore unusual for there to be a precognition prepared for Crown Counsel setting out the nature of the investigation, the narrative of the facts as known and recommendations based on those findings, when there are no reasonable grounds to suspect particular individuals, as that precognition would thereafter be of assistance in preparation for any Fatal Accident Inquiry.

The status of the police officers could have changed in the course of the investigation as further evidence, particularly expert evidence, came to light. Being determined as a witness at one stage in an investigation does not mean that status cannot change.

Additionally in the case of Mr Beyoh's death the status of the Chief Constable of Police Scotland as a corporate entity was also being considered in the context of potential charges under the Health and Safety at Work Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.

33. I have reviewed my note of the meeting with Ms Frame, Mr Mitchell, Mr Brown and the Lord Advocate on 14 May 2015. I have not noted any specific instruction from the Lord Advocate to that effect.

What I have noted is the Lord Advocate expressing significant concern that the officers had not provided statements, which he called a “disgrace”. He wanted Police Scotland to be advised that the officers were hampering the work of PIRC. There was a discussion at the meeting about what were known as operational statements (where officers would prepare a statement in circumstances where a complaint or allegation of criminality had been made against them and/or fellow officers) and the Lord Advocate indicated that he was incredulous in this case that there were no sanctions for the officers who refused to provide statements.

I have nothing noted, nor do I recall, a specific instruction from the Lord Advocate that the officers were to be treated as witnesses, albeit at that stage that was the only status they could possibly have had, as this meeting was only 12 days or so after Mr Beyoh’s death and there was not a clear picture of what the police actions had been.

Ms Frame may have taken this discussion about provision of witness statements as an instruction from the Lord Advocate and if she has noted something to that effect then I am not in a position to gainsay that.

In that meeting I recall specifically the Lord Advocate’s concern was that as serving police officers, when the PIRC were seeking to establish what happened in their interactions with Mr Beyoh they had refused to co-operate, and he felt that they were under a duty as serving police officers to produce witness statements. This is certainly reflected in his letter to the Chief Constable on 5 June 2015 where his view that the status of the officers was an operational decision for the PIRC to make, he stated that:

“They are being required to give a statement by PIRC who must be assumed to have applied their own judgement to the status of the officers concerned”.

34. I have noted the discussion focused on the mechanism by which the officers' accounts of what happened could be obtained (as witnesses). There may very well have been a discussion of what would happen if incriminating statements were made, as what Ms Frame has outlined in her letter would be the process followed.

The terms of the Lord Advocate's letter to the Chief Constable less than 3 weeks later would tend to suggest that he did not view that discussion on 15 May as a formal instruction.

Ingathering of evidence and analysis

35. COPFS is responsible for the investigation of any death in custody. If it is a death in the prison estate, then COPFS would instruct the police to investigate and report on the findings of the investigation which would establish the cause of death of the person in custody. Depending on that cause of death the investigation would inform decisions on whether there was any evidence of neglect of duty or criminality and whether there would be criminal proceedings against prison officers for example, or a Crown censure of the Scottish Prison Service (as SPS cannot be prosecuted) or both. Thereafter that investigation outcome would assist in preparation for a Fatal Accident Inquiry which is mandatory in such cases.

Where the death is in police custody PIRC would be instructed to investigate to provide structural independence from the sole police force in Scotland, but the same principles would apply in terms of the investigation of the circumstances of the death, what the involvement and contact with the police was. Police Scotland would have no role in the investigation and would be expected as "employer" of the officers to request information about the investigation through formal channels, bearing in mind that the actions of individual officers and the policies and practice of the force itself will be under scrutiny.

36. The first description of events in I received relation to Mr Beyoh's death was in the e-mail on 3 May 2015. Given the structure of COPFS over the course of the

investigation, I was thereafter briefed regularly by Mr Brown and others in CAAPD about the events leading up to and including Mr Beyoh's death.

Mr Brown would update me regularly by phone and e-mail, and would share with me relevant correspondence and updates received from the PIRC as the investigation progressed. I was thereafter copied into and asked to approve briefings to the Law Officers about the progress of the investigation, as well as evidence and reports from expert witnesses. This was in accordance with COPFS practice at that time where many submissions to Law Officers were approved by the relevant Deputy Crown Agent.

When my role within COPFS had changed in 2016 I retained oversight of this particular investigation for continuity purposes and because I had met Mr Beyoh's family on a number of occasions and it was thought to be good practice and helpful for the family to have continuity via senior COPFS officials, particularly as in June 2016 Lord Mulholland demitted office as Lord Advocate.

37. Over the course of the investigation, more detail became available about the actions of the police officers, and that was supplemented by analysis of CCTV footage and airwave transmissions, as well as witness statements from the relevant police officers, and the Crown precognition exercise where witnesses were interviewed by experienced Procurators Fiscal.

A far more detailed timeline of events was therefore available in terms of Mr Beyoh's initial interaction with the police, the circumstances leading to his restraint, the timings and nature of the restraint and when medical assistance was offered. More information was obtained about the nature and extent of the training of the individual officers, about Mr Beyoh and his medical condition and the likely effect on him of the drugs traced in his system.

It was also very clear how much this differed from the initial account of his death which was provided to his family.

38. At the time, my sole focus was how Mr Beyoh died. In light of the question, I have now applied my mind to this.

The final post mortem report supplemented by toxicology analysis indicated that it was not possible to identify what the most significant factor in Mr Beyoh's death was, and his cause of death was recorded, ultimately, as "*Sudden death in a man intoxicated by MDMA (ecstasy) and alpha-PVP, whilst being restrained.*"

My understanding of the case law in this area [MacAngus & Kane v HMA 2009] is that if the only evidence in connection with a drugs related death is that an accused person had supplied unlawfully a controlled drug to a person who subsequently died by taking that drug voluntarily, this would not provide a sufficient evidential basis for a charge of culpable homicide. Such a charge would therefore be relevant only if the Crown could prove that the supplying or administration was reckless. If the deceased person was an adult and took the drug(s) deliberately in the knowledge of their likely or potential effect(s) would be factors to take into account when assessing when a charge of culpable homicide is relevant.

From what I know about the circumstances of Mr Beyoh's ingestion of what were thought to be controlled drugs (as evidenced by witness statements provided in the course of the investigation) as well as the final cause of death, my view is that even if this had been considered at the time of the overall investigation, the MacAngus test is unlikely to have been met.

In the normal course of events if there is a potential drug related death, it is for the Police Service of Scotland to investigate under the direction of the Crown. In relation to whose responsibility it would have been to investigate the supply of controlled drugs to Mr Beyoh, had it been a consideration, my view is that it would have been inappropriate for the Crown to instruct the Police Service of Scotland to investigate.

The PIRC was instructed to investigate Mr Beyoh's death in police custody and it was clear from the outset that the family's trust in the police was undermined by the information provided to them about the circumstances of Mr Beyoh's death in the initial stages of the investigation. In these specific circumstances I do not think it

would have been appropriate to instruct the police to investigate drugs supply where this was linked inextricably to Mr Beyoh's subsequent actings and a potential contributory factor in his death.

Whether the Crown could instruct the PIRC to investigate depends on the interpretation of section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006. There is of course a specific statutory remit to the role of the PIRC and the investigation of the supply of drugs to Mr Beyoh would not in my view be covered by section 33A(b)(i) of the Act as that relates to investigation of any circumstances in which there is an indication that a person serving with the police may have committed an offence.

If it is accepted that the MacAngus test is not met, and I appreciate that others may disagree with me on that point, then a charge of culpable homicide would not be live issue, and what the investigation would cover is the unlawful supplying of controlled drugs to Mr Beyoh; in that scenario the circumstances of and factors contributing to his death would not be relevant for the investigation, the actings of police officers in relation to Mr Beyoh would also be irrelevant. It would in my view be outwith the statutory terms of section 33A(b) (i) and ultra vires for the PIRC to be instructed to investigate drugs supply.

I think therefore the only way in which the PIRC could have been instructed by the Crown to investigate the supply of controlled drugs to Mr Beyoh would be if it was felt that this fell within the terms of section 33A(b)(ii) namely to investigate, on behalf of the relevant procurator fiscal, *the circumstances of any death* [my emphasis] involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 – in this case a death in custody as defined in section 2 of the 2016 Act.

I do not consider that the terms of section 33A(b)(ii) are wide enough to allow for a lawful instruction of the PIRC by the Crown to investigate drugs supply to Mr Beyoh. It would not be necessary for the Procurator Fiscal to discharge duties and obligations under the 2016 Act to prove any contravention of the Misuse of Drugs Act

1971; it would be sufficient to establish that Mr Beyoh was under the influence of those drugs at the time of his death, and that would be done through the toxicology evidence.

For completeness I can advise the Inquiry that I have experience of a historical investigation involving among other things allegations of criminality by police officers in a “legacy” (pre-2013) police force. Trust had broken down completely between the Police Service of Scotland and the bereaved family when further evidence relating to the investigation came to light in 2016, and the PIRC could not investigate as the officers involved were no longer serving. In that instance a police force from outwith Scotland agreed to investigate and worked closely with Crown Counsel and me in a review and investigation and provided a report with recommendations at the end of that process. While the Crown had no power to instruct or direct that particular investigation the process worked well.

39. I do not recall being involved in the discussion referred to in the e-mail dated 24 August 2015 but I understand Mr Brown to have been expressing justifiable concern at that stage regarding the information about Mr Beyoh being placed in the recovery position contrasted with Mr Brown’s own understanding of what the recovery position entailed and the information received from the hospital about how Mr Beyoh was restrained on his arrival at the hospital. To put that in context however, that was at an early stage of the investigation upon submission of the first PIRC report, after which significant further investigation was instructed by the Crown, and also carried out independently by the Crown to establish in more detail a timeline of events and analysis of actions of the individual officers.

Assessment of witness credibility and reliability is a crucial part of any investigation by the Procurator Fiscal and is standard practice. This aspect was addressed by the Crown investigation and the credibility and reliability of officers’ accounts and is referred to specifically in the analysis of evidence prepared by the CAAPD team as part of the precognition to be submitted for Crown Counsel.

40. In my e-mail to Les Brown dated 8 December 2016 I was not expressing an opinion. I was questioning in the context of previous discussions that we had had on

the issue of officer safety training and techniques for de-escalation of a situation, how the police could be trained to on how best to assess, in a potentially very short space of time, what type of substance an individual might be affected by and therefore what techniques were best deployed to calm the situation down, recognising that different substances have different effects on different individuals. This follows on from, in particular, the first 2 questions set out as potential queries to be posed to an independent officer safety expert.

My experience from countersigning CAAPD cases was that often officers were very quick to deploy methods in accordance with their training which could be viewed as exacerbating the situation, such as drawing batons, deploying CS spray, tasers etc, rather than trying to engage with individuals to try and calm them down and avoid direct confrontation. My e-mail simply reflected my concern at that time that such training might not be possible, and my concern that the default setting of many police officers confronted with a potentially dangerous situation (both to themselves and the wider public) would be to draw some sort of weapon to deal with and try to contain the situation - particularly in what I have described as a collapsing timeframe.

Post mortem examination and the release of Mr Bayoh's body

41. I think I have covered this above in my statement in relation to Mr Ablett's attendance at the post mortem but it is not standard practice for the Procurator Fiscal to attend every post mortem instructed. There are thousands of deaths which are reported to the Crown every year where there are no suspicious circumstances but where there is no readily identifiable cause of death, and in such cases the Procurator Fiscal must instruct a post mortem examination conducted by one pathologist, and supplemented by whatever additional tests or analyses the pathologist in discussion with the Procurator Fiscal considers would assist in ascertaining the cause of death.

In these non-suspicious deaths, the post mortem will either consist of a non-invasive "view and grant" procedure where it is an external examination of the deceased, or post mortem dissection or autopsy. This will allow a cause of death to be

determined, will also rule out the potential for any criminality to go undetected, and will allow the deceased to be released to their relatives for burial or cremation. The Procurator Fiscal is not present at such examinations.

Where a death has occurred which may potentially be suspicious it is expected that the Procurator Fiscal will be in charge of the investigation at the outset working closely with, in general, the police. Where criminality cannot be ruled out guidance in the Deaths Manual of practice and the serious crime protocol calls for full forensic examination of the locus and sampling, a two doctor post mortem and proper crime scene protocol and preservation. All available evidence must be collected and preserved. The Procurator Fiscal will attend the post mortem.

The investigation of deaths in lawful custody by the Procurator Fiscal is governed by separate, supplementary guidance and confirms that the form of the investigation conducted by the Crown will vary on a case-by-case basis, but there are certain standards which must be achieved to ensure that there has been an effective investigation under Article 2 of the European Convention on Human Rights.

There is no requirement in the guidance for the Procurator Fiscal as a matter of course to attend the post mortem when there is a death in custody. It will be dependent on the facts and circumstances of the fatality reported. Following consideration of the sudden death report, a decision must be made as to whether to instruct a single or a double doctor post mortem examination.

Where there is no suggestion of criminality or a health and safety failing, then a single doctor post mortem examination will normally be sufficient.

PIRC must be directed by the Procurator Fiscal to investigate deaths in police custody.

42. I had no involvement in the post mortem examination and reporting process in Mr Beyoh's case.

43. I was not involved in the decision for the Lord Advocate to offer to visit Fife to speak with the Imams. From the terms of this e-mail from the Lord Advocate's Private Office this may well have been a decision that the Lord Advocate had taken and was simply advising the officials to whom the e-mail was copied that the offer had been made to Mr Beyoh's local MSP.

In my experience the Lord Advocate had always been heavily involved in equality, diversity and inclusion work in the prosecution service, and in this case the Crown was investigating the death of a Muslim man, in police custody and I read this e-mail as an offer to go and speak to the Imams in the locality where Mr Beyoh lived to explain the involvement of the Crown, what our role was and perhaps to explain why there had been a delay in releasing Mr Beyoh's body to his family, as the continued retention of his body was not in accordance with Islam where there is an expectation that a funeral will take place as soon as possible, and within 24 hours of a death if that can be managed. I don't know whether the offer made was unprompted or following representations from Mr Beyoh's family or their representative but from experience of working with the Lord Advocate, it would not have been unusual for him to have made such an offer unilaterally to assist understanding of the Crown's role and to offer reassurance.

My understanding is that an Imam is the religious leader of a mosque whereas an Iman is faith and belief in the context of the Islamic religion. I became aware of this while undergoing equality and diversity training in COPFS.

I do not know if this meeting took place.

European Convention on Human Rights ("ECHR")

44. During the investigation there were multiple discussions amongst officials about COPFS obligations under Article 2 of ECHR, both in terms of the nature of the unprecedented levels of disclosure provided to the family via their legal representative, but also in terms of the nature and extent of the Crown investigation on the basis that this was a death at the hands of the State.

Article 2 is referenced in a series of briefing documents, e-mails and correspondence to which I was copied in, or authored in the course of the investigation, recognising that in accordance with our guidance, the investigation's conclusions must be based on a "thorough, objective and impartial analysis of all relevant elements". Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible. COPFS must ensure that all lines of inquiry relevant to the death are considered including responses received from third parties, expert opinion and concerns raised by nearest relative. The investigation must be prompt and be open to public scrutiny depending on the facts and circumstances of the death, and supportive of the participation of nearest relatives.

I do not recall any specific discussion referencing Article 14 as it specifically relates to protection from discrimination on race and religious grounds, but all of those involved in the investigation were conscious certainly in my discussions with them of the Crown's obligations and core values to treat all with professionalism and respect.

COPFS was the subject of significant scrutiny following the death of Surjit Singh Chhokar and subsequent failings identified in the Crown decision-making process thereafter the recommendations of both inquiries instructed by the then Lord Advocate Lord Boyd, and the implementation of the recommendations of those inquiries is and was embedded in the work of the Crown.

45. Article 2 was considered in the precognition process by the Crown certainly in relation to the duties of Police Scotland (through assessment of officer training from recollection).

The role of the PIRC in the investigation certainly afforded it the structural independence from Police Scotland as envisaged by the case of Ruddy v HMA and it is clear from the minutes of the quarterly meeting with PIRC in March 2017 that there was some concern about PIRC abilities to discharge that duty particularly in relation to keeping the family involved, because of the discontinuation of FLO support.

Media engagement

46. The Crown is in overall charge of the investigation and therefore in general will be responsible for final clearance of any “media lines” sought to be issued by Police Scotland or PIRC to ensure as far as possible that nothing enters the public domain which could prejudice an ongoing investigation. While not seeking for example to fetter Police Scotland’s particular role in ensuring public confidence and providing community reassurance, that requires to be balanced against putting too much information into the public domain while the matter is under investigation, which might either compromise or jeopardise the investigation or which might turn out to be incorrect.

It will be therefore for the Crown to clear any lines sought to be issued by Police Scotland or PIRC following a death in police custody where there is a live investigation ongoing.

47. Media reporting of the matter was flagged to officials working on the investigation as part of daily media briefings where high profile cases and/or COPFS were mentioned. I am conscious that it can never be fully informed and often contained inaccuracies or speculation.

I am not aware of colleagues or the Lord Advocate being influenced in actions and decision making by what was reported in the media.

48. In both my role as PF Organised Crime and Counter Terrorism, and latterly as Deputy Crown Agent Serious Casework I have significant experience in this. I would often be asked to consider lines that our media relations department were seeking to issue in response to requests for comment by the media on the range of cases being prepared by the teams for whom I had responsibility.

While I did during the time of the investigation in to Mr Beyoh’s death chair a number of pretrial briefings with the media on other cases being prepared by our teams, and that involved collective meetings with radio, print and TV journalists to provide non

attributable background information about cases which were due to come to trial in the High Court, I had no direct contact with the media in relation to Mr Beyoh's case.

49. I am not aware of the Police Scotland draft statement on 3 May 2015 nor of the reason for the statement not being released but could understand if it was because of Crown intervention. The narrative perhaps for good reason does not reflect the nature of the engagement between the officers and Mr Beyoh but could be read as suggesting that he was still in possession of the knife at the time he was apprehended. It therefore covers some of the issues I was aware of, from the e-mail I received on 3 May 2015 to advise of Mr Beyoh's death, but it contains more detail than I would be comfortable with releasing at such an early stage of an investigation.

On the basis that the PIRC had been instructed another option would have been for the PIRC to release a statement to the media, but I appreciate that some of the intention in the police seeking to release a statement would be for public reassurance.

50. I don't have much experience of the role of the Scottish Police Federation (SPF) in Police Scotland's media engagement, but I am not aware in any case in which I have been involved, of them seeking COPFS approval before releasing a statement. Their role is to represent the interest and welfare of the officers who are members, and they are not bound to sense check any media release with the Crown before it issues, unlike Police Scotland as an organisation.

51. I am not aware of the reasons why the draft attributed to Chief Superintendent McEwan was not released although I have offered some views as to why that may have been at paragraph 49 above. I was not aware of any concerns on the part of the officers involved, although I can understand that they would have been worried by media speculation.

They would also have known, or would have been expected to know however that in the situation where there is a death in police custody, the PIRC would be involved

under the direction of the Crown and that Police Scotland would be very restricted in what it could say publicly about the investigation.

In my experience, whether a statement on a serious or critical incident is released by Police Scotland, COPFS or the PIRC, that has little effect on curbing media speculation because the statement and any answers in response to additional questions from the media are by their very nature lacking in specifics to ensure that nothing is done which could prejudice the ongoing investigation.

52. I was not aware of the statement attributed to Chief Superintendent Garry McEwan in the Dundee Courier but from experience if it did not involve commentary on the circumstances of Mr Beyoh's death or the investigation, and simply offered condolences to his family then I would not be concerned as it was not about the circumstances in which he died.

53. I was not aware of the PIRC's draft statement on or before 6 May 2015, but again, I would not have sanctioned a release like this because as I understand it, that was not the final cause of death and further toxicology and other tissue analysis was required.

If at that time Mr Beyoh's death was unascertained pending toxicology it would have been entirely inappropriate for this statement to be released not least because Mr Beyoh's family would have been taken by surprise. It is entirely inappropriate for a bereaved family to find out anything about the investigation of their loved ones' death from the media. Asphyxia was not the final cause of death and to release a statement such as this into the media at that time would have been irresponsible and inappropriate.

54. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]

55. At the quarterly meeting with PIRC dated 16 March 2017 Ms Frame was concerned that the Crown stating that further work would be carried out, after the submission of the final PIRC report, before a decision could be taken on the issue of criminal proceedings created the impression that the PIRC report was in some way deficient. As can be seen from the note of the meeting, I advised that the background note to any media release from the Crown in that regard made it clear that further inquiry by the Crown was standard practice. I took an action to speak to our media relations team about the potential to add a line to any media release following the submission of a report from the PIRC, making it clear that it was standard practice for the Crown to carry out further inquiries. In my view there was no harm in including the line in the formal release, other than making it lengthier and unlikely to be carried in full by the media outlet so any amendment to extend the release may not have had the desired effect.

Parallel investigation

56. I became aware when the PIRC report was submitted that a statement had been taken from one of the officers involved on or around 13 May 2015 by Mr Sallens, so that was some time after the fact. I wasn't aware that was a parallel investigation as such, but I do not think it is unusual for the SPF as the staff association for the officers, to take a positional statement from its members.

Given the time at which I became aware of this, I did not raise it with the SPF.

57. I was not aware of witness accounts that investigators on behalf of the SPF provided them with information from other sources that made them feel uncomfortable.

58. I was aware of the report of the SPF findings as it was also sent to the Crown by Mr Watson. In my view it did not affect the approach of COPFS to the investigation. [REDACTED]

[REDACTED] I would not say I dismissed it, but nor did I consider it to have any impact on the Crown investigation which was independent of any other investigation(s).

59. The first part of my note from 12 August 2015 is not a note of a meeting with Mr Beyoh's family but the note of a pre meet before the anticipated meeting with the family. I was present at that meeting along with the Lord Advocate, John Logue and Stephen McGowan. I have not attributed the comment about the PIRC report being a "piece of rubbish" to anyone, simply noted that it was said, and I cannot now recall whether that was said by someone at the meeting directly, or them quoting someone else. I say that because of my use of quotation marks, which suggests one of the attendees at the meeting was quoting someone else.

In any event there was a general consensus that the initial report from the PIRC required significant follow up, as evidenced in the letter from Mr Brown to the PIRC on 2 September 2015 setting out various lines of inquiry over 4 pages, that the Crown wished to have followed up.

Investigation into the purported leak to the Mail on Sunday of the decision not to prosecute

60. Engagement by COPFS with the media is governed by Chapter 17 of the COPFS Book of Regulations (paras 17.39 to 17.50). The guidance is clear that Procurators Fiscal and their staff should not deal with enquiries by journalists or media organisations themselves and that any media requests should be routed through the media relations team. Except as authorised by this chapter 17 guidance, or Crown Counsel in specific cases no information should be given to the media or

any other person about the progress of an investigation and whether proceedings are contemplated against a named individual. Unauthorised release of information to the media by a COPFS official is therefore an incredibly serious matter. Not only is it a breach of the Book of Regulations it could amount to a criminal offence under section 170 (1) of the Data Protection Act 2018 in that it could amount to disclosure of personal data to another person without the consent of the data controller.

It is therefore a breach of the professional standards expected of COPFS staff but also potentially a criminal offence depending on the nature of the information provided to the media. This can initially be dealt with by the Professional Standards and Ethics Committee (PSEC) which was established to

- Protect the integrity of COPFS
- Protect all employees from exploitation by criminals
- Promote ethical conduct and professional practice

PSEC is chaired by the Deputy Crown Agent (DCA) Operational Support on behalf of the Crown Agent. At the time of the Sunday Mail issue this was Mr Logue. The PSEC also consists of the Director of Human Resources, the Deputy HR Director with responsibility for Employee Relations, the Data Protection Officer and the Departmental Security Officer in order that full consideration is given to potential security and employment issues.

It oversees all matters relating to criminal charges (primarily against employees but including charges against family and close friends of employees), malpractice, unethical behaviour and security breaches.

I am unaware of a situation like this arising before but initially the investigation would focus on what information is in the public domain and assess from where the media could have obtained it, namely is it potentially an unauthorised disclosure from COPFS or could it have been obtained from other sources.

The investigation would then look to assess how that information could have been disclosed – could it simply have been through communication verbally or does it seem that the media has access to documentation. Thereafter the investigation

would consider who within COPFS had access to the information and could have been in a position to disclose it.

The difference between disclosure of information, or documents is minimal when it comes to the potential culpability of staff, but the difficulty would be in evidencing that an unauthorised disclosure had taken place.

61. I became aware of the intention of the Mail on Sunday to publish the article on the purported Crown decision in this case on Friday 21 September 2018, but not of the detail. As is usual practice the Mail on Sunday had contacted COPFS Media relations in advance setting out that they intended to publish an article confirming there would be no criminal proceedings in relation to any of the police officers involved in the restraint of Mr Beyoh and offering the Crown an opportunity to respond. This was drawn to my attention by a senior media relations manager as soon as the request came in from the Mail on Sunday.

A brief line in response was agreed confirming that we were due to meet with the family in the near future to advise them and it would not be appropriate to comment any further at that time. It was also agreed that I would contact Mr Anwar as the family's representative to let them know that this was due to be published, and also the Lord Advocate and Scottish Government officials.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

62. My role in the investigation within COPFS into the source of the information was, following my discussion with the Lord Advocate on 23 September, to seek advice from the Departmental Security Officer (DSO) on how to assess whether there could have been an unauthorised disclosure by someone within COPFS. What I asked for advice on is set out in the e-mail chain of 24 September involving me, John Logue as Deputy Crown Agent Operational Support, and the Departmental Security officer.

63. I don't recall anything specific about the discussions other than what is set out within the e-mail chain, in particular there was nothing so detailed in the Mail on Sunday article that suggested the information had come from someone within COPFS with a detailed knowledge of the investigation and its outcome. It also did not reflect the full range of factors taken into account by Crown Counsel when deciding that no action was appropriate, suggesting that no documents or detailed briefing had been provided to the media.

64. I could not be satisfied that the source of the article was not someone within COPFS, and there required to be an investigation co-ordinated by another part of COPFS, but in my view those working on the case were staff of the utmost integrity who in their careers had dealt with equally high profile and sensitive cases.

Additionally in my view there was also nothing to be gained by the Crown providing this information to the media in advance of a meeting with the family; quite the opposite. It had the potential, and to an extent did, undermine the relationship with Mr Anwar and Mr Beyoh's family and created a significant degree of additional work

for the COPFS investigation team and others in response to the suggestion that we had “leaked” information.

I did not consider at that time that the investigation had concluded before it began. I was canvassing options on how an investigation might operate via the Departmental Security Officer, bearing in mind that I was one of the individuals who had access to the decision not to take proceedings and would not be involved in the investigation itself. I was not asking the DSO to exonerate COPFS staff rather to provide options on how it might be assessed whether the information had come from COPFS.

The Lord Advocate had asked me to commence an investigation into the matter and was not aware of the discussions of how that might progress. I think that the Lord Advocate asked me to commence an investigation because I was the Deputy Crown Agent for Serious Casework and was responsible for the staff who were preparing the case and who had access to the information; I don't think he had appreciated that I would be one of the members of staff who required to have their [REDACTED] records checked.

My intention was to brief the DSO and thereafter ask my colleague John Logue, as Deputy Crown Agent for Operational Support and chair of PSEC to oversee the investigation.

65. I cannot recall the discussion with Mr Logue and can only assume now with the passage of time that it was around the practicalities of identifying who had access to the decision, [REDACTED]. I did not have responsibility for the investigation as I was one of the members of staff involved so I do not know what suggestions of the DSO were progressed. I agreed a series of parameters with Mr Logue and he took on oversight of the investigation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

66. I agree with Mr Logue's assessment in his e-mail to me of 24 September 2018 that this was not the sort of disclosure that usually generated a "leak" inquiry. A "well-placed source in the justice system" did not in my opinion refer solely to COPFS; Scottish Government officials within Police Division of the Justice Directorate were also aware of the options under consideration. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Had it been a member of COPFS staff as the source I would, from experience, have expected the article to reference "sources close to the prosecution" or "close to the investigation" or similar. The wording of the article suggested to me that it was not a disclosure of evidence or material from COPFS.

67. In my e-mail to Mr Logue I referred to the possibility that the leak might be discussed at "LOB". LOB is Law Officers' Briefing, a weekly meeting with the Law Officers to discuss the range of high profile and complex cases COPFS was dealing with. The investigation into Mr Beyoh's death was one of a number of such cases which would be on the agenda for discussion on a regular basis.

LOB was attended at that time on a weekly basis by the then Crown Agent Mr Harvie, and all 3 Deputy Crown Agents attended every 2 weeks. It was therefore a likely forum in which the Lord Advocate would wish to discuss this issue. From my e-mail to the Lord Advocate on 26 September 2018 I see that there was a discussion about the nature of the information included in the media article, the fact that the article did not mention documents [and state for example "documents seen by the Mail on Sunday show"] and the source was quoted as being well placed in the justice system. The media article had no specific detail about the Crown's decision, and I think that it was a reasonable assumption that there was no document provided to the journalist.

68. My e-mail of 26 September makes it clear that while I had asked the DSO to discern whether there was inappropriate sharing of information, Mr Logue would oversee the investigation as I was one of the individuals whose access to systems and e-mails was to be checked. While I had discussed the matter with the head of COPFS media relations and did not think that the media reporting was indicative of a disclosure of documents, the system checks that had been instructed would in my view have identified whether for example documents had been e-mailed or printed via COPFS systems. The checks could for example identify whether documents or information had been sent from an official COPFS account to a personal e-mail account.

69. [REDACTED]

While there may have been a reference to “ticking the boxes” in an earlier e-mail from the DSO I am not of the view that it suggested that COPFS was simply going through the motions and therefore that what was in contemplation was a “box ticking exercise”; rather that it was doing all that could be done in the circumstances, and that it was taken seriously by those involved. Others outwith COPFS had a clear steer as to the options available to the Crown and it was my understanding that Mr Logue had encouraged senior staff within Justice Directorate at Scottish Government to conduct a similar exercise to the one he was overseeing.

As I have said above, I think it was entirely inappropriate that a decision by the Crown would be printed in the media before the deceased’s family had been informed of the decision and advised in detail of all of the factors taken into account when coming to that decision. This had the potential to undermine further the

relationship with the family and it was important that the Crown did all it could to ascertain whether there was inappropriate contact with the Mail on Sunday.

70. Using the words such as “leak” and “investigation” in my view were not appropriate because this was not a situation where we could be satisfied that confidential information known only to COPFS staff had been provided to the media, necessitating formal interviews with staff for example, particularly as can be seen in my e-mail of 2 October 2019, by that time there had been feedback to our media relations team that the information forming the basis of the media reporting on the decision had not come from COPFS officials.

71. The e-mail referred to in this question was not sent by me, nor was I involved in consideration of the outcome of COPFS inquiries as I was one of the members of staff whose actions were being scrutinised.

For assistance, in my current role however I am now Chair of the Professional Standards and Ethics Committee (PSEC) and while in that role I have not been involved in any investigations regarding allegations of provision of information to the media, I have commissioned investigations into staff members where there has been information or intelligence brought to PSEC attention to suggest that they have shared case related information outwith COPFS when not authorised to do so.

The types of searches on COPFS IT systems, social media, phones etc are the types of initial internal investigations usually carried out by the DSO with the agreement of PSEC to see if there is any credence to the intelligence, and to ascertain whether further action is necessary; depending on the outcome of those investigations there may require to be a disciplinary investigation commenced and/or referral by COPFS to the police for formal investigation and action, particularly where the police have more intrusive powers that COPFS as employer has. To that extent, and from experience I have obtained since 2021 when I took up my current post, I can state that the investigations carried out in 2018 are what I would expect to have been carried out by the DSO.

Learning from other investigations

72. I was aware of the findings of the Inquiry into the investigation of the murder of Stephen Lawrence by Sir William MacPherson of Cluny, and the issues he identified within the Metropolitan Police Service of institutional racism. Further, having been Secretary to Sir Anthony Campbell QC's non statutory inquiry into the actions of the Crown and the Crown's decision making regarding the murder of Surjit Singh Chhokar, which followed closely after the MacPherson review, I was conscious of the issues considered in that Inquiry which focused on the Crown, particularly Sir Anthony's definitions which he outlined in his report:

Racism is in legal terms unlawful racial discrimination and it may be direct or indirect. Direct discrimination includes less favourable treatment of a person on the ground of colour or some other forbidden ground. Indirect discrimination arises where members of different ethnic groups are treated equally in a formal sense but where a practice, procedure or rule puts the members of one ethnic group at a substantial disadvantage compared with another without any objective justification. Direct and indirect discrimination may occur without any intention to discriminate or any discriminatory motive.

And:

In the context of this inquiry I take institutional racism to mean racial discrimination which is not only an individual discriminatory act but is systemic, in the sense that it results from a practice or procedure that operates within the institution.

During my examination of the decisions that were made I have been alert to the danger of what has been described by Lord Nicholls of Birkenhead as "subconscious motivation". As he said "All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated...."

COPFS underwent a significant series of reforms after both Sir Anthony Campbell's report and that of Dr Raj Jandoo, Advocate, to ensure that the organisation was not only tackling racially motivated crime appropriately through training and awareness raising across the organisation, but that its recruitment policies sought to encourage those from the black and minority ethnic population to apply to and work for the organisation to ensure that it better reflected the diversity of Scottish society.

Additionally, in October 2017, Dame Elish Angiolini QC a former Lord Advocate published a report commissioned by the Home Office into deaths in police custody; this report was scrutinised by the CAAPD team preparing the report into Mr Beyoh's death to ensure that any learning, findings and recommendations could be taken into account in their work.

The recommendations of relevance to the Beyoh inquiry in the Angiolini report included restraint, mental health of suspects, training for police officers, and separation to prevent conferral; there were also comments about the disproportionate response by police to suspects who are of Black and Minority Ethnic (BAME) background where it was documented that restraint tends to last for longer, there is less attempt to de-escalate through non-physical means etc.

There was a section on the concept and controversy of "excited delirium" which featured in the Beyoh investigation, and I considered that many of the recommendations from that report would be what in the Beyoh case, if there were to be no criminal proceedings, the Crown would be asking a sheriff in an FAI or a judge in a public inquiry to address.

The investigation into Mr Beyoh's death was high profile, complex and sensitive, not least because this was the first case in which I had been involved where a black man had died in police custody.

73. In my role in Serious Casework, and before that when I had responsibility for organised crime and terrorism policy and prosecutions, I was in regular contact with

my contemporaries in CPS to share learning and good practice in cases or investigations of common interest.

In late 2017 I had discussions with the Head of Special Crime and Counter Terrorism Division at CPS as the CPS had a high-profile sensitive death in custody case where there was a considerable lack of trust in the police and they were looking to see if COPFS could assist in identifying an expert in restraint from outwith England and Wales who could assist. I advised that we were encountering the same issue in an ongoing investigation regarding a death in police custody (Mr Beyoh's case although I did not name him at that time) [REDACTED]

[REDACTED] The College of Policing had been unable to assist, and this is one of the issues that was holding up Crown Counsel's consideration of the circumstances.

I advised the CPS that we were in discussion with the solicitor of the family of the deceased (who was also being advised by Deborah Coles of INQUEST) regarding an expert and that I had initial discussions with the Chief Executive of the Mental Welfare Commission regarding someone from the health sector (perhaps based at the psychiatric State Hospital at Carstairs) but with significant caveats recognising that restraint in a healthcare setting is very different from an arrest or detention scenario.

I did not have any anyone at that stage I could recommend and advised the CPS that in previous restraint/excessive force cases since Police Scotland became a single force, COPFS had instructed "OST experts" from English forces (usually Greater Manchester Police (GMP) or the Metropolitan Police Service (MPS) but that it was clear given the findings regarding a lack of uniform standards and training in the Angiolini report, that would no longer be possible. We agreed to keep in touch on the matter.

I was in contact again with the CPS in mid-December 2017 to discuss a possible expert from the Police Service of Northern Ireland and I also shared some information and the cv of an expert in the safety and effectiveness of restraint and in particular "positional asphyxia" to see if that could assist the CPS.

Similarly in the course of the investigation into Mr Beyoh's death we were keen to learn from CPS colleagues about their experience of investigating deaths in police custody and restraint deaths in particular. We wanted to discuss how they dealt with such cases and what expert evidence they obtained. We had a particular interest in the review of No Proceedings marking in the Sean Rigg case. We were looking to:

- Confirm how CPS reach assessment of criminal threshold in relation to deaths during restraint process [REDACTED];
- Ascertain what expert evidence was crucial;
- Understand how they evaluate recorded footage;
- Understand their method of instruction of restraint experts and how they evaluate opinion;
- Confirm how they evaluate the adequacy of training given to officers

We were looking for reassurance that we were not missing anything obvious and that way we were proceeding was broadly consistent with CPS practice, subject of course to the jurisdictional differences. We were provided with senior CPS contacts with whom the CAAPD team could discuss preparation of the final reports in the investigation into Mr Beyoh's death.

73. I recall 3 meetings where Ms Coles was present and have notes from two of them. I recall being introduced to her at Mr Anwar's offices (with Mr Brown) around July 2015 where her role as an advisor to the family was set out. As I have explained earlier in my statement, I do not have a note of that meeting as I had for security reasons left my notebook locked in my office at [REDACTED]. Mr Brown may have taken a note at that meeting.

The next meeting I have noted is 15 October 2015 with the Lord Advocate and Mr Anwar. Ms Coles advised us at that time of Dame Elish Angiolini's appointment by the Home Secretary to chair the review into deaths in custody. She also advised of the role of Dame Ann Owers as chair of the Independent Police Complaints Commission who had come from a human rights/Inspectorate of Prisons background

and set out what she saw as failures in police investigations – not capturing evidence in the “golden hours”, stopping collaboration of officers, treating them as suspects until proved otherwise. These points were taken into account in the Crown investigation.

Additionally Ms Coles expressed concern about the role of SPF and the fact that their view was they were looking after the wellbeing of officers but there was no clarity of that role particularly where they were giving advice on the provision of statements.

Ms Coles also expressed concern at the instruction of particular expert witness by the PIRC – Dr Karch – and indicated that he was not someone the IPCC would instruct.

The Lord Advocate confirmed that in his view there had been a misinterpretation by Police Scotland of a previous memorandum from COPFS about when operational statements in a police complaint scenario were required and he repeated his view was that lack of provision of statements was not commensurate with officers’ duties to report crime and that operational statements should be required until confirmation that they were suspects.

I do recall the potential imitations in the scope of an FAI being discussed with Mr Anwar and the family in particular the fact that post incident actings and liaison with the family could not be in scope, but I am unsure if that was at a meeting at which Ms Coles was present.

Ms Coles was present at the meeting with the family in October 2018 when the reasons for the decision to take no criminal proceedings was explained to the family.

75. I have highlighted above the nature of the discussions that I have noted where Ms Coles was present. She had extensive experience of assisting families bereaved following a death in custody. The observations and recommendations in the Angiolini report which were of relevance to the investigation into Mr Beyoh’s death are set out in para 72 above.

Race

76. I do not have experience of racism being a factor to investigate in relation to a death in custody or following police contact. I recall when I was countersigning CAAPD cases in 2014/15 that some investigations (not involving fatalities) were prompted by allegations that officers had used racist language, or that the detention and/or arrest of a suspect was because they were not white, but from memory none resulted in a recommendation for prosecution of the officers.

Where I have been involved in an investigation into whether racism was a factor was when I was secretary to Sir Anthony Campbell in 2001 when he was conducting his inquiry into Crown decision making, and in particular whether the race of the deceased impacted in any way on the decisions taken by the Crown in preparing and presenting the prosecution case.

77. It was important to take into account Mr Beyoh's race at all stages of the investigation, in particular to understand whether the police response to the calls from the public, and the manner in which they sought to detain him was in any way affected because he was a black man and indicative of racial bias.

78. At the meeting with the family on 14 May 2015 my note indicates that Mr Anwar when setting out the family's position asked that the question of race should be looked at by PIRC.

79. I have not noted the exact phrase but the note in the margins of my notebook the phrase 'you know me on this "race stuff"' relates to the Lord Advocate's response to Mr Anwar asking for the question of race to be looked at by the PIRC. This was said in the presence of Mr Beyoh's family and he was looking to reassure them that the issue of race was one which was very much front and centre of the investigation for which he had overall responsibility.

During this discussion the Lord Advocate confirmed that there would be a detailed investigation by the PIRC so therefore independent and not involving the police. He

advised the family that at the very least there would be a Fatal Accident Inquiry as Mr Beyoh had died in police custody. He also indicated that if there was sufficient evidence linking an assault to Mr Beyoh's death then there could be a prosecution for murder or culpable homicide and indicated that he would have no hesitation in raising a prosecution if that evidential threshold was met.

He then advised that the PIRC report would then go to CAAPD for precognition and further work by the Crown with a report being prepared by CAAPD for Crown Counsel to make the final decision.

The issue of race therefore came up in the context of discussion Mr Beyoh's ancestry – the fact he was born in Sierra Leone – and that race was to be a factor to be considered in the course of the investigation by PIRC, reporting into the Crown.

80. I do not recall ever having been involved in an investigation of police contact where the deceased was not white, but after the inquiries by Sir Anthony Campbell QC and Dr Jandoo into the murder of Surjit Chhokar, Lord Advocate's guidelines were issued to the police (and Procurators Fiscal) in 2002 about the investigation of racially motivated crime, including the assessment of cultural needs of the victim and/or their family, and there was a thematic review of the Crown's response on race issues in 2005.

In my experience the issue of race would be considered in the investigation as a matter of course.

Training

81. During my career I have attended internal COPFS training as well as external law enforcement and coroners' training on the investigation of sudden deaths, managing major and critical incidents, the role of the coroner and the impact of the ECHR on the role of COPFS. I have attended courses run by law enforcement for Senior Investigating officers and Family liaison officers and completed my Certificate in Forensic medicine.

I have attended a number of in person courses, as well as carrying out regular online refresher training through civil service learning (CSL) on equality, diversity and inclusion and unconscious bias.

I am trained to manage large and complex investigations and have undergone the Windsor Leadership Trust course for emerging strategic leaders.

82. It is important to have teams within the organisation which reflect Scottish society and promote policies and practices that tackle direct and indirect discrimination. It is crucial to understand cultural sensitivities and requirements for those with whom our organisation comes into contact and to treat people with professionalism and respect.

83. There is an Equality, Diversity and Inclusion hub as part of our learning and development portal in COPFS. It is an online resource which has an e-learning package for all new employees in the organisation entitled "Valuing Equality, Diversity and Inclusion" and there are also continuous learning resources for others within the service, including links to the CSL online resource for all UK civil servants.

Over the course of my involvement in the investigation I refreshed my Equality and Diversity training annually on CSL and after the investigation concluded I contributed an article on behalf of the COPFS Inclusion network about my own experience, as someone of mixed race, within COPFS.

84. Training I have carried out since which has been developed more recently is that about being trauma informed and trauma aware. I have undertaken NHS led courses in Scotland focusing on the criminal justice system as well as training delivered by the Survivors' Trust in England. I feel that the training would have assisted my engagement and improved the relationship between the Crown and Mr Beyoh's family.

Records

85. There is no requirement as such to take and retain contemporaneous notes or a record of involvement in an investigation, but I see it as good practice. I have

maintained this practice for over 25 years. With the roles I was undertaking in the course of the investigation into Mr Beyoh's death there were literally dozens of complex investigations at differing stages across Serious Casework and it was important that I kept notes of meetings to discuss progress and decisions made.

Although not in place at the time of Mr Beyoh's death, but introduced in 2017 by me in cases subject to the High Court large case protocol, Case Management Panels (CMP) must be convened to monitor progress of the investigation and decision making by Procurators Fiscal and Crown Counsel in the course of the investigation. There is a template prepared by the legal manager in the case, and the panel is often chaired by a Deputy Crown Agent. The template includes all progress since the previous CMP (usually 6 to 8 weeks between meetings) and any instructions issued by Crown Counsel in that intervening period.

Case Management Panels are also held and recorded for certain large and complex deaths investigations, both homicides and those likely to be subject of a Fatal Accident Inquiry.

86. I kept notes of meetings in relation to the investigation and all my notebooks have been retained and stored securely. I have also retained e-mails sent and received in the course of the investigation. These were retained on the COPFS server in a separate folder as per my own practice and are a record of all emails exchanged and received.

Miscellaneous

87. From experience, this investigation was lengthy but not unduly lengthy. From receipt of the final PIRC report in August 2016 to instructions being received by Crown Counsel took 2 years. Given the complex nature of the investigation, the requirement to identify and instruct expert witnesses across a range of disciplines, consideration of their reports and consultation with them accommodating their busy diaries before finalising the narrative and analysis of the evidence for Crown counsel with input from health and safety division specialists, it is not in my view unduly lengthy.

A timeline was prepared to highlight the extent of the Crown investigation.

Consideration was given to whether additional resource could have been deployed to assist the team taking into account the varying case related pressures across Serious Casework, which included a number of complex investigations, but it was decided (by me, in consultation with the Procurator Fiscal for Serious Casework) that the dedicated resource for the team was sufficient in all the circumstances to deliver a quality investigative product for Crown Counsel within a reasonable timeframe.

At that time the majority of sudden deaths investigations were concluded within the published target which was 12 weeks, but this was not a straightforward set of circumstances and there were a number of complex multiple fatality investigations being overseen by the Crown which took considerably longer to conclude, and the investigation into Mr Beyoh's death was one of them.

While those cases which take longer to resolve are only a small percentage of the investigations dealt with by COPFS, I recognise that the length of time taken not only impacts significantly on bereaved relatives but can undermine confidence in COPFS. That is why there has been such a large uplift in staffing levels across the organisation following a series of resource bids to government, commencing in 2018.

88. From the very early stages of the investigation the prospect of a public inquiry was a consideration, with a final view to be taken on that after the decision on criminal prosecution was made, recognising of course that such a decision was one for Scottish Ministers and not the Crown.

The issues that Mr Beyoh's family had raised in the very first meeting with the Lord Advocate in May 2015 such as communication with them after Mr Beyoh's death, the manner in which they were told about his death and the inaccurate information provided, how his partner's home was searched, the post incident actions of the wider police force whereby the officers were placed in a situation where they could confer and thereafter the officers' failures to provide witness statements for almost a

month were not issues that a Fatal Accident Inquiry could address. A sheriff's determination after an FAI must set out:

- (a) when and where the death occurred,
- (b) when and where any accident resulting in the death occurred,
- (c) the cause or causes of the death,
- (d) the cause or causes of any accident resulting in the death,
- (e) any precautions which—
 - (i) could reasonably have been taken, and
 - (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided,
- (f) any defects in any system of working which contributed to the death or any accident resulting in the death,
- (g) any other facts which are relevant to the circumstances of the death.

It was felt by those of us involved in the investigation that if Crown Counsel did not instruct criminal proceedings, an FAI could not in any way address the significant issues of post incident management and practice that caused Mr Beyoh's family such concern.

[REDACTED]. The investigation was carried out in accordance with our usual practices and procedures and was not affected by the prospect of the possibility of there being a public inquiry commissioned; the Crown was not only supportive but was advocating at official and ministerial level for a public inquiry were criminal proceedings not instructed.

89. There were no deviations from normal practice in the investigation other than the decision to provide extensive disclosure to Mr Beyoh's family via their legal representative. I consider that race was a factor in that decision, and by that I mean that the Lord Advocate wanted the investigation to be as open and transparent as possible given the circumstances of Mr Beyoh's death and the fact that whether race was a factor in his death was a crucial pillar of the overall investigative strategy.

90. The significant challenge encountered during the investigation was the inability to compel Police officers who had been involved in a critical incident in the course of their duties, to provide witness statements.

It was also difficult to identify expert witnesses from policing who had the qualifications and experience to be able to assist the investigation in terms of identifying any particular deficiencies in training on de-escalation and restraint. I do not consider race to have been a factor in either of those challenges.

91. If the findings of the PIRC report do not result in criminal proceedings but learning is identified for Police Scotland then that learning and recommendations for changes in practice (if any) will be shared with Police Scotland usually through the Deputy Chief Constable for Professionalism.

The PIRC report itself would not be shared albeit again, extracts or gists could be provided if thought to be helpful for Police Scotland. The reason the report would not be shared in its entirety is that PIRC is a reporting agency to COPFS and historically the position was that Standard Prosecution Reports (SPRs) were not disclosed by the Crown and initially Public Interest Immunity (PII) was asserted as the reason.

That position has softened over the years, initially with the McLeod case in 1998 where the Crown indicated that it would no longer be asserting that SPRs as a class of report to the Crown attracted PII, and latterly in terms of the overall disclosure obligations of the Crown changing first with Holland and Sinclair in 2006 and then with the Criminal Justice and Licensing (Scotland) Act 2010 where an accused will receive part of the SPR summary of events when a complaint or petition is served in custody cases and the Crown is seeking a remand.

Extracts of SPRs are also shared where it is lawful and appropriate to do so taking into account commitments and obligations under GDPR, the law enforcement directive (LED) and the Data Protection Act 2018. It may therefore be shared under the appropriate lawful authority which may include a court order under section 1 of

the Administration of Justice (Scotland) Act 1972 if civil proceedings are in contemplation or have been commenced.

The Crown precognition is not shared with any party. It is assessed to be privileged material in accordance with the Outer House decision in Whitehouse but again if there was learning for Police Scotland then that would be shared in an appropriate format.

In other CAAPD cases I have received instructions from Crown Counsel to advise the police that there were to be no criminal proceedings against officers but that the force is recommended to consider them for misconduct proceedings. The Crown however cannot insist on this and has no role in the misconduct process.

[REDACTED]

92. In the e-mail chain commencing 27 November 2017 the Lord Advocate was disappointed with the timing of progress on a number of high-profile cases within Serious Casework, including the investigation into Mr Beyoh's death, and the reasons for the delay in preparing a final report were explored. Crown Counsel had instructed further work to be done and additional consultations with expert witnesses were required, leading to additional reports being instructed.

[REDACTED]

[REDACTED]. My follow up e-mail to the Procurator Fiscal for Specialist Casework identified the additional significant pressures across the function caused by the increase in sexual offences being reported, as well as [REDACTED]

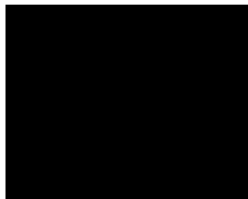
[REDACTED]

[REDACTED]. My position was that the staffing within the function had

been sufficient at the time of the Shaping the Future restructure in 2015/16 with the ability to flex resources, but the increase in reported caseload since then had made it difficult to plan and deliver within initially identified timescales, hence the discussion in the e-mail about additional submissions regarding resources.

Although I had asked for a transfer of resource from elsewhere in COPFS that had not been forthcoming as quickly as I had hoped as the increase in workload was not restricted to the area of business for which I was responsible and I was committed to continuing to deliver high quality investigative product but with the caveat that it would take longer than hoped, because of resourcing pressures across the Service.

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



Lindsey Miller
Deputy Crown Agent (Operational Support)
4 January 2024