

# **Record of Investigation Findings Volume 3**

**Death in Police Custody  
Sheku Bayoh  
3 May 2015**

**Additional Investigation**

**Report  
for  
Crown Office and Procurator Fiscal Service**

**OFFICIAL - SENSITIVE**

Report to COPFS - Copy 1

**VOLUME 3 – ADDITIONAL INVESTIGATION**

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## Terms of Reference 6 and 7

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### Terms of Reference 6 and 7

On 2 July 2015, the PIRC was directed by the Lord Advocate:

- (6) To investigate the allegation of criminal conduct made by Zahid Saeed
- (7) To:
  - (a) Investigate issues of race and conduct;
  - (b) Investigate allegations of potential contraventions of The Data Protection Act 1998;
  - (c) Investigate miscellaneous other matters.

## 14. Investigation of the allegation of criminal conduct made by Zahid Saeed

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On 1 July 2015, Zahid Saeed, through Mr Aamer Anwar, Solicitor, alleged that, on 3 May 2015, he was assaulted by police officers within Kirkcaldy Police Office and prevented from leaving the office. COPFS instructed the PIRC to investigate this allegation.

### Criminal Allegation

On 3 May 2015, DCs John McGregor and Simon Telford during the course of the Police Scotland investigation into the death of Sheku Bayoh took witness Saeed to Kirkcaldy Police Office in order to obtain a witness statement from him. Witness Saeed had been in the company of the deceased Sheku Bayoh in the hours leading up to his death and had reported that he had been assaulted by the deceased shortly before the incident in Hayfield Road. He had also indicated that he had seen the deceased acting in a manner that was out of character earlier that morning.

Whilst DCs McGregor and Telford were taking the statement, witness Saeed alleges that he left the interview room and attempted to leave the police office. He alleges that as he tried to do so he was grabbed on the left arm by one of the officers and held. He further alleges that, as he attempted to use his mobile telephone to record the events, the same officer pulled the mobile telephone from his hand. He reported this matter to the solicitor acting for the family of the deceased, Mr Aamer Anwar, who wrote to COPFS making an allegation of assault on behalf of witness Saeed.

The PIRC was instructed by COPFS to investigate this alleged assault.

It is noted that, in the early stages of the investigation into the death of Sheku Bayoh, PIRC Investigators took a statement from witness Saeed on 8 May 2015. He made no complaint or mention at that time about the conduct of the police officers.

On 21 and 29 July 2015, PIRC Investigators re-interviewed witness Saeed and obtained a full statement from him.

**Complainer**

Zahid [redacted] Saeed  
Born [redacted] 1983, aged 31  
Saeed home  
address [redacted]

**Officer(s) Complained about**

Detective Constable John [redacted] McGregor  
Age 36,  
Date of Birth [redacted] 1979,  
Length of Service: 17 years  
Description: 6'2" tall, short dark hair and short beard, well built.

Detective Constable Simon Telford  
Age 43  
Date of Birth: [redacted] 1973  
Length of Service: 13 years  
Description: 5'10" tall, bald, goatee beard, stocky build.

[redacted]  
[redacted]  
[redacted] [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

- | [REDACTED]

- | [REDACTED]

**Complainers Account**

Between 1030 and 1130 hours on Sunday 3 May 2015, witness Saeed states that he was contacted at home on his mobile telephone by officers of Police Scotland and asked to assist with the investigation into Sheku Bayoh who had been reported missing by witness Collette Bell after she had been contacted by witness Saeed.

Witness Saeed agreed to help and remained at his home address until he was met there about 1230 hours by DCs McGregor and Telford. Witness Saeed states that he agreed to accompany both the officers to Kirkcaldy Police Office, however he first required to attend at hospital for treatment in respect of injuries he had suffered earlier that morning when he was allegedly assaulted by the deceased. The officers conveyed witness Saeed to the hospital and thereafter to Kirkcaldy Police Office. Witness Saeed states that he was not happy about going to the police office but was willing to assist.

Enroute to the police office, witness Saeed states that they stopped at a chemist where he purchased pain killers.

On arrival at Kirkcaldy Police Office, witness Saeed states that he was taken to an interview room where he began to question both the officers about what had happened to Sheku Bayoh. He states that it was at this point that he was told that Sheku Bayoh had died. He describes becoming very upset, and the officers offering to take him home. He states that one of officers took him to the rear police car park about 1400 hours, however when the second officer joined them he said to Witness Saeed, "I need to take a statement from you".

Witness Saeed states that he was a bit confused, but realised that the officers were doing their job and agreed to return to the police office. During the course of providing his statement witness Saeed states that he was continually asking the officers what had happened to Sheku Bayoh. He also states that he was sending text messages on his mobile phone and checking Facebook, as a result of which he was receiving information about what had allegedly happened to Sheku Bayoh. He recalls asking the police officers if Sheku had a knife as he thought that he had seen this on Facebook.

Witness Saeed states that the officers were asking him a lot of background questions about Sheku Bayoh regarding his drug use and his religion, which he thought to be irrelevant. He states that he received a telephone call from witness Adeymi Johnson (brother-in-law of the deceased), during which it became apparent to him that witness Adeymi Johnson was unaware that Sheku Bayoh had died. Witness Saeed states that he received a further telephone call on his mobile phone from witness Adeymi Johnson about 25 minutes later. Following this telephone conversation, witness Saeed states that he questioned the officers about what exactly had happened to Sheku Bayoh. He states that the officers did not answer his questions and, as a result, he decided to leave the police office.

Witness Saeed states that he stood up and walked towards the door of the interview room. He describes that the officers appeared to panic and asked him what he was doing. He states that he said, "I'm leaving, I want to go home". He states that one of the officers said something in relation to his rights, but he (witness Saeed) did not hear exactly what was said but took it as some form of threat.

Witness Saeed states that he left the room, walked into a hallway and down a small flight of steps towards a fire exit door. He states that, as he got to the fire exit door, one of the officers, who he describes as, male, about 6'2" to 6'3" tall, with a brown or black beard (DC McGregor), grabbed hold of his left arm with his right hand and held him. At this witness Saeed states he said, "This is assault". He states that he said this in a normal voice and brought out his mobile telephone with the intention of filming what was happening. Witness Saeed states that the same officer who had hold of his left arm (DC McGregor) then pulled the phone out of his hand.

Witness Saeed states that at this time he was joined by DCI Houston, who is known to witness Saeed, along with a group of about five other officers. Witness Saeed states that DCI Houston told him (witness Saeed) to calm down and that the officer (DC McGregor) let go of his arm.

Witness Saeed states that he then went through the fire exit door accompanied by DCI Houston into the public counter/foyer area of the police office. He states that he then spoke with DCI Houston in this area and then went outside the office with him, standing immediately outside the

main doorway. Witness Saeed states that DCI Houston explained the reason why the police wanted a statement from him and witness Saeed agreed to return to the police office to complete giving his statement to DCs McGregor and Telford.

Witness Saeed states that, before going back into the interview room, DCI Houston told the officer (DC McGregor) to return his mobile phone which he did.

On completion of his statement, witness Saeed states that he agreed to provide a number of medical samples. He further states that he was also asked to be present when his statement was read over to him on video but he refused.

Witness Saeed states he was taken home to his parents' house by the two officers where he voluntarily handed over the clothes that he had been wearing during the incident at the deceased's house earlier that day. He states that the two officers thereafter drove him to his ex-partner's house [REDACTED]. On arrival there, witness Saeed states that he handed over his mobile telephone to the officers, having agreed with DCI Houston to its examination.

Witness Saeed states that, whilst he was with the police on that date he felt like he was being treated like a criminal, a suspect.

Witness Saeed states that he did not make a complaint to Police Scotland regarding what had happened, but did relate the events during a meeting with Mr Anwar, Solicitor, at his offices in Glasgow.

**Evidence which supports / refutes the Complainers account**

CCTV from Kirkcaldy Police Office was seized and provided to PIRC Investigators by witness McGregor from Police Scotland Technical Support Unit and is produced as,

- Prod No.555 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR (Label Only)
- Prod No.556 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR (Label Only)
- Prod No.557 CCTV Section 283 Certificate, PELCO DX4800 DVR Kirkcaldy Police Station
- Prod No.558 CCTV Section 283 Certificate, PELCO DX8000 DVR Kirkcaldy Police Station
- Prod No.559 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc A Master Copy (and certificate of authentication)
- Prod No.560 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc B Master Copy (and certificate of authentication)



Prod No.561	CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc A Working Copy (and certificate of authentication)
Prod No.562	CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800 DVR Disc B Working Copy (and certificate of authentication)
Prod No.563	CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc A Master Copy (and certificate of authentication)
Prod No.564	CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc B Master Copy (and certificate of authentication)
Prod No.565	CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc A Working Copy (and certificate of authentication)
Prod No.566	CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX8000 DVR Disc B Working Copy (and certificate of authentication)
Prod No.638	Pen Drive, SanDisk make

It covered the areas:

- Custody entrance (internal and external);
- Custody processing area (internal);
- Custody cells area;
- Public Front counter (internal);

Although there were CCTV cameras covering the car park of the office, no video was available and, following enquiry, Police Scotland stated that the cameras covering this area had not worked for a number of years. There are no cameras which cover the small staircase leading to the fire exit door as described by witness Saeed. There is a camera positioned in the front foyer/counter area which covers the public side of this fire exit door.

CCTV footage has been examined and shows the door being opened from within and witness Saeed in conversation with DCI Houston, with DC McGregor in the background. DCI Houston and witness Saeed are then seen to enter the front foyer/counter area of the police office where they speak for a short period of time before both then make to leave the police office by the front door. As they are in the process of doing this, the internal fire exit door opens and DC Telford comes through the door and hands witness Saeed an object that appears to be a mobile telephone. DC Telford is then seen to return to the police office by the fire exit door.

Whilst DCI Houston and witness Saeed are seen to be standing outside the fire exit door when it again opens and DS More emerges into the front foyer/counter area where he asks DCI Houston if he is 'OK'.

Witness Saeed states that when DCI Houston became involved in this incident there were also about five other officers present or in the corridor at the time. DCI Houston has been interviewed and provided a statement. He states that on 3 May 2015 he was within a room near to where witness Saeed was being interviewed. He states that he was in the company of DS Robert More when he became aware of raised voices. On looking out he says that he could see that a male that he knows as Zahid Saeed was shouting at two detective officers, one of whom he knows as Simon Telford. He states that he was unaware of what the shouting was about but it appeared to him that Zahid Saeed wished to leave the police office. [REDACTED]

[REDACTED] He states that he intervened in this argument and asked witness Saeed to speak with him outside. He states that he firstly spoke with him in the public foyer area of the police office and then outside the main entrance. He states that he was asked by Zahid Saeed what had happened to Sheku Bayou. DCI Houston indicates that he explained that he did not know and that it would assist the police to understand what had happened if witness Saeed returned to the office and completed his statement. DCI Houston states that Witness Saeed agreed to do so.

DCI Houston states that at no time did he see the two officers who were dealing with witness Saeed place hands on him or assault him. DCI Houston was aware that witness Saeed had a mobile phone with him when he was standing outside, but cannot recall DC Telford handing anything to witness Saeed.

DCI Houston advises that he was not aware of any other persons being present apart from witness Saeed, DCs Telford and DC McGregor, himself and DS More.

DCI Houston states that witness Saeed made no mention to him of being assaulted by the officers or his phone being taken from him.

A statement has been taken from DS More. His recollection of the events is that he was made aware by DC McGregor that witness Saeed was being uncooperative with regard to providing a statement and that DCI Houston was speaking to him (Saeed) outside the police office. DS More states that he decided to approach DCI Houston to ensure that everything was in order and exited the fire exit door into the public foyer/counter. On looking out of the glass doors that led outside he states that he saw DCI Houston speaking to witness Saeed; that everything appeared calm and that he (DS More) made some form of gesture to DCI Houston to confirm that he was okay. DS More states that he got a response. He cannot recall any disturbance or raised voices and did not see either DC McGregor or DC Telford grabbing witness Saeed by the arm.

### **Subject Officers' Accounts**

#### DC John McGregor

About 1025 hours on Thursday 1 October 105, DC McGregor attended by prior arrangement at Fettes Police Office. He was accompanied by [REDACTED], Solicitor [REDACTED]. On arrival he signed,

Prod No.747 Voluntary Attendance at Police Station for Interview Form

**OFFICIAL - SENSITIVE**

This was completed and signed by PIRC Investigator Little in the presence of PIRC Investigator Dodd. Thereafter a,

Prod No. 681 Solicitor Access Recording Form (SARF) - Suspects Rights

was completed and signed. DC McGregor was thereafter interviewed under tape/visual conditions. He made no comment to each of the questions asked. At the conclusion of the interview,

Label No.682 Master Copy DVD- Taped Interview of John Paul McGregor dated 01/10/2015

was sealed and signed. DC McGregor left Fettes Police Office at 1105 hours after being advised that the circumstances would be reported to COPFS.

DC Simon Telford

About 1210 hours on the same date DC Simon Telford attended by prior arrangement at Fettes Police Office. He was accompanied by [REDACTED], Solicitor, [REDACTED]. On arrival he signed,

Prod No. 748 Voluntary Attendance at Police Station for Interview Form

This was completed and signed by PIRC Investigator Little in the presence of PIRC Investigator Dodd. Thereafter a,

Prod No.684 Solicitor Access Recording Form (SARF) - Suspects Rights

was completed and signed and he was interviewed under tape/visual conditions. He made no comment to each of the questions asked. At the conclusion of the interview,

Label No.686 Master Copy DVD- Taped Interview of Simon Telford dated 01/10/2015

was sealed and signed. DC Telford left Fettes Police Office about 1246 hours after being advised that the circumstances would be reported to COPFS.

**Evidence in Support of Subject Officers' Accounts**

Both subject officers elected not to provide an account of what occurred.

**Medical Evidence**

As part of the investigation into the death of Sheku Bayoh, the complainer witness Saeed was medically examined. This was undertaken at 1830 hours on Sunday 3 May 2015 at Kirkcaldy Police Office. This examination was conducted by Dr Norrie, Forensic Physician with NHS Lothian. The following injuries were noted:

- Right maxilla 2 cm swelling, tender on palpation, normal colour;
- Top lip internal 1cm laceration on vertical plane, right of frenulum;
- Occipital area on right side on the upper section with the border of the parietal border of the skull a 2cm area of tender swelling, skin intact;
- Right post-auricular area swelling approximately 2cm, skin intact, no erythema. Tender on palpation;
- Left hand dorsal aspect a 4cm linear abrasion in the vertical plane 3cm superior to the third posterior metacarpophalangeal joint;
- Left leg a 3cm x 2 cm bruise, circular in shape and red in colour, in the lateral condyle of the femur.

There is no mention in the report prepared by Dr Norrie of witness Saeed complaining that he had been assaulted by the police.

### **Synopsis of CCTV and Photographic evidence**

The CCTV system within Kirkcaldy Police Office was seized by PIRC investigators during the course of the investigation into the death of Sheku Bayou. The entire footage on,

Label No.560 CCTV Operation Birnie, Kirkcaldy Police Station PELCO DX4800, Disc B working copy and Certificate of Authentication

has been analysed and includes the footage that has been detailed within the previous section entitled *Evidence in support of Complainers account*.

Whilst this footage captures the witness Saeed's interaction with DCI Houston and DS More it does not capture any alleged assault, nor is there any reference made to the alleged assault by witness Saeed on this footage. It does however capture DC Telford handing over an object to witness Saeed (which may be his mobile phone).

A full transcript pertaining to this particular camera within this CCTV system has been produced as,

Prod No.662 CCTV Audio and Visual Timeline Camera 13 Kirkcaldy Police Office.

### **Analysis of Evidence and Recommendation**

There is no independent evidence to corroborate witness Saeed's allegations that he was assaulted by being grabbed by the arm or that his phone was forcibly removed from him.

Both subject officers declined to provide comment on the circumstances.

Whilst DCI Houston indicates that he was alerted to "difficulties" by the sound of raised voices coming from the stairs near to the fire exit door, he does not speak to any assault. Interestingly,

witness Saeed states that his voice was not raised when he attempted to leave the police office near to the fire exit door.

His version of events further conflicts with DCI Houston's when he (witness Saeed) indicates that when DCI Houston joined him, about five other officers were present. DCI Houston's position is that he was in the company of one – DS More.

The only adminicle of evidence which could potentially be capable of supporting witness Saeed's version that his mobile telephone was removed from him is the CCTV footage which captures DC Telford handing an object, that looks like a mobile telephone to witness Saeed when he is exiting the front door of the police office to speak to DCI Houston. However, witness Saeed himself provides that his mobile phone was returned to him after he had spoken to DCI Houston and before he returned to the interview room to continue with his statement. Regardless of when the mobile telephone was returned to witness Saeed, it does not corroborate the fact that it previously had been forcibly removed from him.

There is no medical evidence which supports witness Saeed's allegations.

In the circumstances, it is recommended that the allegation is not upheld on the basis that there is insufficient evidence to support it.

## 15. Issues of Race and Conduct

### 15.1 Allegations by the family of Sheku Bayoh and their solicitor Mr Aamer Anwar

The family of Sheku Bayoh and their solicitor Mr Aamer Anwar have questioned whether race or racism may have played a part in the approach of the nine officers in how they dealt with the deceased on 3 May 2015. They have also questioned whether institutional racism by officers in the Fife area could have impacted on the general approach of officers in that area or to the police investigation into aspects of Sheku Bayoh's death. Specific allegations of current and historic racist [REDACTED] conduct were made against PC Alan Paton, one of the nine officers.

### 15.2 Officers Disciplinary Records

This section narrates the nine officer's disciplinary records.

[REDACTED]

1

[REDACTED]

1

[REDACTED]

**PC Alan Paton**

See 10.3

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

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- [REDACTED]

- [REDACTED]



[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

### 15.3 Specific allegations of racist [REDACTED] conduct against PC Alan Paton

#### PC Paton's Discipline Record

In light of the specific allegations made about PC Paton his police discipline record was also examined. The following allegations are recorded.

- i. [REDACTED]
- ii. Since January 2011, PC Paton has been involved in a long running dispute with a [REDACTED] neighbour at his home at [REDACTED]. This [REDACTED] has made a series of complaints to the police about the off duty conduct of PC Paton.  
[REDACTED]
- iii. PC Paton was provided with corrective advice following a misconduct investigation. It was found that, on 20 September 2010, PC Paton displayed poor communication skills when communicating with a Muslim woman, a clear lack of understanding of cultural issues and a basic lack of respect for diversity issues in terms of the provision of an interpreter. PC Paton refused to speak to the complainer, who spoke good English, on the phone and insisted on communicating with his wife, a Muslim woman, who did not speak fluent English. PC Paton entered and searched the complainer's house under warrant [REDACTED], in the absence of the complainer, after asking his wife (who did not understand what was being said) permission to enter. It was found that PC Paton failed to undertake his responsibilities outlined in the then Fife Police Race Relations Policy and Interpreting Standard Operating procedures.

[REDACTED]

- v. On 28 May 2009, PC Paton was given corrective advice after it was alleged that he made inappropriate remarks to a female complainer suggesting the complainer's son would be subject to sexual abuse while in jail.

In respect of PC Paton, only one of the complaints had a racial element. This was the complaint in 2010, detailed at 'iii' above. Fife Police concluded that PC Paton failed to undertake his responsibilities outlined in the then Fife Police Race Relations Policy and Interpreting Standard Operating procedures and he was provided with corrective advice following a misconduct investigation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegations that PC Alan Paton has a history of racism and that he made comments of a racist nature to members of his family.**

On 14 October 2015, BBC Scotland broadcast an investigative item by their journalist Mark Daly. In that programme it was alleged that PC Alan Paton had a history of [REDACTED] racist behaviour going back a number of years. Following this programme, a number of newspaper articles repeated these allegations about PC Paton. The PIRC was instructed to investigate these specific allegations by COPFS.

The allegations were primarily made by Barry Swan, brother-in-law of PC Alan Paton, who is married to PC Paton's sister Karen Paton or Swan. PIRC investigations established a deep seated rift in the family going back a number of years and that, following the death of Sheku Bayoh, Barry and Karen Swan had approached members of the Bayoh family and their lawyer, Mr Aamer Anwar, with specific allegations against PC Paton. Mr Anwar had subsequently provided this material to BBC journalist Mark Daly which, along with the content of interviews with Barry Swan, formed the basis for Mark Daly's report. Barry Swan alleged that *"As a teenager Alan Paton held racist views and in the weeks since Sheku Bayoh's death admitted to hating black people"*.

In the months preceding this television programme, Barry Swan and his wife Karen Swan met with Mr Anwar, the lawyer representing the Bayoh family, and the journalist Mark Daly on a number of occasions and provided information and affidavits to Mr Anwar. William Paton, the grandfather of PC Alan Paton also provided an affidavit to Mr Anwar. It would appear that Mr Anwar and Mark Daly also met with [REDACTED], the parents of PC Paton. Whilst notes

were taken of this meeting it is unknown if either provided affidavits. PC Paton's mother and father were approached by PIRC investigators but they refused to provide statements to the investigation.

Karen Swan states that, when she became aware that PC Alan Paton had been involved in the incident leading to the death of Sheku Bayoh, she discussed various events with her husband including that her mother had advised her that PC Alan Paton had, when he was about sixteen years old, indicated that he wanted to join the British National Party (BNP). Barry Swan stated that up to that point he never considered PC Paton to be a racist, however he could recall a few comments or off the cuff remarks made by PC Paton over the years, which Barry Swan took to be jovial and humorous. He states that there was no malice or vindictiveness surrounding these comments but they contained remarks such as, "black bastard" or "paki jokes". Karen Swan provided that she recalled that "Alan used to make racist remarks to the Asian family that lived round the corner when we lived in [REDACTED]".

A statement was also obtained from William Paton, the grandfather of PC Alan Paton, in the presence of Mr Anwar. William Paton states that whilst he cannot recall the exact date, but sometime after the death of Sheku Bayoh, he met his grandson PC Alan Paton whilst shopping in Morrison's Supermarket, [REDACTED]. William Paton, who states his memory is not the best, recalled that PC Alan Paton told him that [REDACTED] and that he (PC Paton) "was a total racist and hated all blacks". William Paton cannot recall everything that was said in this conversation, nor the context, but can remember those two specific things.

Following the BBC News programme and the allegations made by Barry and Karen Swan, PIRC investigators were contacted by Pamela Paton, wife of PC Alan Paton, who provided a statement. She denied that PC Paton was racist, outlined that she and Alan Paton were married in the Caribbean by a black minister with black witnesses. She attempted to place context surrounding the conversation between PC Paton and his grandfather, where she stated that he (PC Paton) had been outlining a [REDACTED] interpretation of how PC Paton may have been feeling about being accused of racism and his reaction to such allegations. [REDACTED]

[REDACTED]

[REDACTED]

## 15.4 Institutional Racism

PIRC investigators examined annual national police complaints statistics published by the Police Complaints Commissioner for Scotland (PCCS) for the period 2007 to 2013, data published by the PIRC for the period 2013 to 2014 and the latest available data from Police Scotland for the year 2014 to 2015.

They undertook this examination to establish whether the data indicated that a pattern of racist behaviour existed in Fife Constabulary or the new Fife Division of Police Scotland. The data was also examined to establish whether or not it was indicative of institutional racism within the former Fife Constabulary or the new Fife Division of Police Scotland.

PIRC investigators examined the data for each of the years 2007 to 2015 recorded under the category 'Discriminatory Behaviour', which is one of the complaint categories adopted nationally by Scottish police forces. Such behaviour is defined as, '*an allegation that a member of a police force engaged in a course of action interpreted as discriminatory towards an individual or group on the basis of race, sexual orientation, faith, age, gender or disability*'. More recently this definition has been amended to include discrimination on the basis of gender reassignment, marriage, pregnancy or maternity.

PIRC investigators calculated the percentages of 'discriminatory behaviour' allegations which were concluded by each force against the total number of allegations made about each force and found that:

- In the period 2007-8, an average of 1.4% of all complaint allegations received nationally related to an allegation of discriminatory behaviour, ranging from 3.6% in Northern Constabulary to 1.7% in Lothian and Borders Police. In Fife Constabulary, 2% of complaint allegations related to such an allegation.
- In the period 2008-9, an average of 1.6% of all complaint allegations received nationally related to an allegation of discriminatory behaviour, ranging from 3% in Fife, Northern, Strathclyde and Tayside to 2% in Dumfries and Galloway.
- In the period 2009-10, an average of 1.2% of all complaint allegations received nationally related to an allegation of discriminatory behaviour, ranging from 2.1% in Northern Constabulary to 0.7% in Dumfries and Galloway police. In Fife Constabulary, 1.8% of complaint allegations related to such an allegation.
- In the period 2010-11, an average of 1.1% of all complaint allegations received nationally related to an allegation of discriminatory behaviour, ranging from 2.3% in Central Scotland to 0.5% in Dumfries and Galloway police. In Fife Constabulary, 0.8% of complaint allegations related to such an allegation.
- In the period 2011-12, an average of 1.4% of all complaint allegations received nationally related to an allegation of discriminatory behaviour, ranging from 2.4% in Northern

Constabulary to 1% in Tayside and Lothian and Borders Police. In Fife Constabulary, 1.2% of complaint allegations related to such an allegation.

- In the period 2012-13, an average of 1.2% of all complaint allegations received nationally related to an allegation of discriminatory behaviour, ranging from 1.6% in Dumfries and Galloway to 0.5% in Fife.
- In the period 2013-14, an average of 1.9% of all complaint allegations received nationally related to an allegation of discriminatory behaviour. The statistics are not precisely comparable as the former forces reported figures based on the newly forming divisions of Police Scotland. However, they range from 2.9% in Glasgow to 0.3% in Fife.
- In the period 2014-15, an average of 1.08% of all complaint allegations received nationally related to an allegation of discriminatory behaviour. They range from 1.51% in Glasgow to 0.2% in Tayside. The Fife Division figure was 1.25%

Overall in the seven year period between 2007 and 2014, the average number of complaints of discriminatory behaviour made against employees of the legacy police forces and Police Scotland stood at 1.4% per year of all complaints. The figure for Fife Constabulary or Fife Division of Police Scotland was an average of 1.37%.

PIRC investigators considered the possibility that some police forces, including the former Fife Constabulary, may not have captured and properly recorded the complaints they received. They therefore examined the last external audit of police complaints recording, conducted by the former PCCS in two phases, 2010-11 and 2011-12. The audit found that, nationally less than 1% of expressions of dissatisfaction by the public had not been properly recorded as a complaint. This ranged from 0.2% in Northern and Strathclyde to 0.6% in Central, Tayside, Fife, Grampian and Dumfries and Galloway.

From the above analysis of the available data, while it appears that there is information to demonstrate that discriminatory behaviour accounted for an average of between 1.08% and 1.9% of all complaints received by the police between 2007 to 2015, there is no evidence to indicate that racism or discriminatory behaviour was present in Fife Constabulary or Fife Division of Police Scotland to a greater or lesser extent than in other police areas of Scotland. The average number of complaints of discriminatory behaviour, which includes allegations of racism, per year made in Scotland is 1.4% of all complaints against the police. The average number of such complaints made in Fife from 2007 to 2014 was 1.37%.

### 15.5 Racist incidents relevant to this investigation

With a view to assessing and determining whether racism may have had a bearing on the approach by Police Scotland staff towards dealing with Sheku Bayoh, and Police Scotland's investigation in the immediate aftermath of Sheku Bayoh's death, Police Scotland were asked to provide PIRC investigators with details of all allegations, criminal complaints or misconduct complaints of racism or racist behaviour against all officers who served with the former Fife Constabulary or who are or have served with Fife Division of Police Scotland.

PIRC investigators confirmed that there were a total of 33 allegations, criminal complaints or misconduct complaints of racism or racist behaviour held on the Centurion Complaints system which related to officers who either served or had served in the Fife area.

Each of the incidents (apart from one incident which is detailed later) was researched by PIRC investigator Little who was provided with access to Centurion system.

**A.** Firstly a search was made to establish if any of the nine officers involved in the restraint of Sheku Bayoh featured in any of the complaints. This search identified two incidents:

- i. PC Paton was provided with corrective advice following a misconduct investigation. It was found that, on 20 September 2010, PC Paton displayed poor communication skills when communicating with a Muslim woman, a clear lack of understanding of cultural issues and a basic lack of respect for diversity issues in terms of the provision of an interpreter. PC Paton refused to speak to the complainer, who spoke good English, on the phone and insisted on communicating with his wife, a Muslim woman, who did not speak fluent English. He entered and searched the complainer's house under warrant [REDACTED], in the absence of the complainer, after asking his wife (who did not understand what was being communicated) permission to enter. It was found that he failed to undertake his responsibilities outlined in the then Fife Police Race Relations Policy and Interpreting Standard Operating procedures.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Secondly a search was undertaken to establish if Sheku Bayoh, his family members or any of the principal witnesses:

- Colette Bell, born [REDACTED] 1988;
- Aminata Bayoh, born [REDACTED] 1949;
- Kadijatu Bayoh or Johnson, born [REDACTED] 1977;
- Kosna Bayoh, born [REDACTED] 1975;
- Adeyemi Johnson, born [REDACTED] 1977;
- Adama Jalloh, born [REDACTED] 1980;
- Martyn James Dick, born [REDACTED] 1986;
- Zahid Mohammed Saeed, born [REDACTED] 1983;
- Kirsty Macleod, born [REDACTED] 1988;
- Lorraine Bell, born [REDACTED] 1966;
- James Hume, born [REDACTED] 1976;

featured in any of the 33 incidents. Only one such incident was identified.

- iii. On 25 August 2009, Adeyemi Johnson (brother-in-law of the Deceased) along with another male made a complaint against two police officers of acting in a racially motivated and unprofessional manner. The complaint was resolved and it was found that there was no evidence of misconduct on the part of the officers. Full details are contained within,

Label No.691 Copy of Complaint about the Police File Ref. No: [REDACTED]

C. Thirdly, each of the police officers/members of police staff mentioned in each of the 33 identified records were checked against the list of nominals held on the PIRC investigations database relating to the investigation into the death of Sheku Bayoh. Only one officer was identified, however on closer examination it was found that whilst his name had been recorded by PIRC investigators, a statement had not been sought from him as his involvement was not connected to the PIRC enquiry.

**Sending of SMS and MMS of a racial nature by Serving Police Officers**

One specific incident of concern identified by PIRC investigators was that of three police officers serving in Fife Division who were required to resign as an alternative to dismissal when they were discovered to have sent or received text and/or MMS messages of a racial nature. COPFS asked that PIRC undertake investigation to establish if any of the nine officers involved in the restraint of Sheku Bayoh were connected to this matter or were in contact with the three officers.

The complaint files of the three officers were obtained from Police Scotland,

[REDACTED]

[REDACTED]

[REDACTED]

Examination of the files revealed that on 28 and 29 October 2014 a misconduct hearing was held by Police Scotland in respect of [REDACTED]. At the hearing each of the officers was required to resign forthwith as an alternative to dismissal. The officers resigned however, on 27 November 2014, a notice of appeal was received in respect of each of the officers. The appeals process is still on going.

The circumstances leading to the misconduct hearings are that, on 26 June 2013, [REDACTED] was detained and interviewed by officers from Police Scotland Counter Corruption Unit on suspicion of having attempted to pervert the course of justice. At that time [REDACTED] mobile phone was seized and examined.

[REDACTED] was later reported to CAAPD for a number of offences against the Data Protection Act 1998. It is understood that no decision has been taken by CAAPD regarding this incident.

Examination of [REDACTED] mobile phone was undertaken and a report containing [REDACTED] pages of information showing approximately [REDACTED] SMS and MMS messages produced. This data was examined and six SMS (Text Message) strings identified which contained, or appeared to contain, racist language.

One photograph was recovered from the phone memory which showed a smiling [REDACTED] wearing police issued equipment, seated on a couch holding a four foot tall "Gollywog" Toy. This picture had been sent to [REDACTED] by [REDACTED], possibly having been taken by [REDACTED] on 26 June 2012.

Two of the SMS strings are between [REDACTED] and [REDACTED]. The first, on 20 November 2012, shows [REDACTED] texting "Me n the animal, will pop down ryt now lad n get the paki". The second, on 21 December 2012, shows [REDACTED] telling [REDACTED] that [REDACTED] had been at the gym where [REDACTED] saw "Two Black Bastards" and states that [REDACTED] had caught something from them"

In reply [REDACTED] suggests that [REDACTED] would have caught "Swamp Fever" and goes on to suggest that [REDACTED] should "eat a banana".

The third SMS string on 2 February 2013 is between [REDACTED] and [REDACTED]. [REDACTED] tells [REDACTED] how [REDACTED] had, "drug detections every day" and follows it up with "and Gollywogs"

In response [REDACTED] states "I'm working wi one now" and subsequently names the officer stating that [REDACTED] is from [REDACTED]. [REDACTED] responds "Oh. That Blacky".

There are another three SMS strings between [REDACTED] and three unattributed telephone numbers which contain racist references.

When Police Scotland CCU identified that [REDACTED] where involved in the exchange on their personal mobile phones of racist language and behaviour via text / MMS, a decision was taken by Police Scotland that this aspect should be further investigated by officers from the Professional Standards Department (PSD)

Following consultation with COPFS, DCC Neil Richardson was requested to provide to the PIRC, "Full details and all paperwork about the investigation undertaken by Police Scotland or Fife Constabulary in respect of the three officers dismissed for sending racist or offensive text messages"

In order to clarify what telephony work was undertaken during the course of either the CCU or PSD investigations, a number of meetings were held between PIRC investigators and various senior officers in Police Scotland. During the course of those discussions it was established that the PSD investigation had initially identified that there may potentially be offences under the Communication Act 2013, Section 127.

PSD sought advice from CAAPD regarding the seizure under warrant of the mobile phones of [REDACTED]. CAAPD provided that such an application would fail.

PIRC obtained from Police Scotland a,

Prod No.751 [REDACTED] from [REDACTED] (mobile phone).

PIRC investigators then checked the [REDACTED] pages of information containing approximately [REDACTED] SMS and MMS messages against the phone numbers of the nine officers involved in the arrest of Sheku Bayoh. **Their numbers do not appear in the download report.**

PIRC obtained from Police Scotland a,

Prod No.769 Copy DVD re telecoms data – [REDACTED] and certificates of authentication

which contained and was produced as,

Prod No.770 Copy of Prod No. 769 - Itemised billing of [REDACTED] mobile telephone [REDACTED]



PIRC investigators then checked [REDACTED] phone information against the phone numbers of the nine officers involved in the arrest of Sheku Bayoh. **Their numbers do not appear in the download report.**

No telephone data for [REDACTED] was obtained by Police Scotland during the course of their investigation.

From the available information, there appears to be no personal mobile telephone contact between the nine officers who were involved in the arrest of Sheku Bayoh and [REDACTED]. It cannot be determined whether there was any contact between [REDACTED] and the nine officers.

Report to COPFS - Copy 1

## 16. Allegations of potential Data Protection Act offences

### 16.1 Allegations of potential offences under the Data Protection Act 1998

On 18 August 2015, Mr Aamer Anwar, Solicitor for the family of Sheku Bayoh made a number of allegations against the nine initial police officers who attended and dealt with Sheku Bayoh on the morning of Sunday 3 May 2015 in Hayfield Road, Kirkcaldy.

Mr Aamer alleged that the officers detailed below who had been at the incident at Hayfield Road on 3 May 2015, had unlawfully undertaken checks on police computer systems in breach of the Data Protection Act 1998. He communicated these allegations in letters to the PIRC and to the Lord Advocate. The Lord Advocate directed the PIRC to investigate the allegations.

The officers named were:

- PC Alan Smith
- PC Scott Maxwell
- PC Craig Walker
- PC Ashley Tomlinson
- PC Alan Paton
- PC Daniel Gibson
- PC Nicole Short
- PC James McDonough
- PC Kayleigh Good

And the individuals whose data they were alleged to have unlawfully accessed were:

- Colette Bell, born [REDACTED] 1988;
- Aminata Bayoh, born [REDACTED] 1949;
- Kadijatu Bayoh or Johnson, born [REDACTED] 1977;
- Kosna Bayoh, born [REDACTED] 1975;
- Adeyemi Johnson, born [REDACTED] 1977;
- Adama Jalloh, born [REDACTED] 1980;
- Martyn James Dick, born [REDACTED] 1986;
- Zahid Mohammed Saeed, born [REDACTED] 1983;
- Kirsty Macleod, born [REDACTED] 1988;
- Lorraine Bell, born [REDACTED] 1966;
- James Hume, born [REDACTED] 1976;
- [REDACTED]
- Mohammed Aamer Anwar (Solicitor).

Audits were conducted on the following police computer systems for the period 3 May 2015 to 18 August 2015:

- Crimefile (P Division, Fife, system for the management of: Crime Reports; Vehicular Accidents; Standard Police Reports; Missing Persons and Sudden Deaths);
- Police National Computer (PNC);
- Criminal History System (CHS);
- Scottish Intelligence Database (SID).

## 16.2 Wider allegations of offences under the Data Protection Act 1998

Mr Aamer Anwar further alleged that unnamed staff of Police Scotland may have unlawfully undertaken checks on police computer systems on the persons listed in the last section, in breach of the Data Protection Act 1998. He communicated these allegations in letters to the PIRC and to the Lord Advocate. The Lord Advocate directed the PIRC to investigate this allegation. PSD of Police Scotland were requested to undertake and provide systems audits.

The purpose and functions of the various police systems is explained as follows:

**Crimefile:** This database is utilised by P Division (legacy Fife Constabulary) within Police Scotland for the recording and management of crime reports, standard police reports, wanted persons, vehicular accidents, missing persons and sudden deaths. Each person listed on Crimefile has a Crimefile Nominal Record. Crimefiles involving specified nominals are linked within the system to their Crimefile Nominal Record.

The search facility in Crimefile allows a user to search for the crime report, known as the Crimefile, [REDACTED]

A user must have successfully completed their Crimefile training prior to gaining access to the Crimefile database. A Crimefile user does not need to stipulate the reason for their research in the database, however access should only be for a legitimate policing purpose.

**Police National Computer (PNC):** The Police National Computer (PNC) system is a national computer system used by the police service to access and update central databases of information which can be used as a management, operational support and investigative tool. The PNC aids police with crime detention, prevention and administration by providing several databases which can be interrogated and updated. For example, PNC will process conviction and antecedent history, warning signals and wanted and missing persons. A PNC user must have successfully completed their PNC training prior to gaining access to the PNC.

All checks carried out on the PNC must be for a policing purpose and when a request is made for a check to be carried out, the requesting officer or staff member must provide their personal details to the operator conducting the check, reason for the check and if applicable a location.

**Criminal History System (CHS):** The Criminal History System (CHS) contains conviction information, antecedent history, pending cases, live and historical police undertakings and court bail. It is also used as a tool to aid police with crime detection, prevention and administration by providing access to structured data about individuals which can be interrogated and updated. A CHS user must have successfully completed their CHS training prior to gaining access to the CHS.

All checks carried out on the CHS must be for a policing purpose and when a request is made for a check to be carried out, the requesting officer or staff member must provide their personal details to the operator conducting the check.

**Scottish Intelligence Database (SID):** The Scottish Intelligence Database (SID) is the police database for all criminal intelligence for Police Scotland. A user must have successfully completed their SID training prior to receiving access to SID.

A SID user does not need to stipulate the reason for their research in the database, however access should only be for a legitimate policing purpose.

On 19 August 2015, Detective Sergeant Katrina Thompson, [REDACTED], Police Scotland was instructed to carry out an audit of the above police systems to establish who had accessed the records of the individuals listed above between the periods specified, and in particular to establish if any of the nine police officers listed above had accessed any of the records and, if so, to establish if this was for a legitimate policing purpose.

DS Thompson undertook a full audit of the above systems, the results of which are contained within,

Prod No.699      Record of Police Scotland Audit x 35

This Initial audit established that [REDACTED] without further information it could not be established which if any record referred to Mr Aamer Anwar, the solicitor who represents the family of Sheku Bayoh.

The full result of the research of the police systems and the information contained in the transaction reports x 35 was summarised by DS Thompson within,

Prod No.737      Copy of briefing paper dated 16/09/2015 re Result of Audits in respect of Operation Quoich.

This identifies that none of the nine named officers have carried out a search on or accessed any record pertaining to the individuals named by Mr Anwar.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Sheku Ahmed Tejan Bayoh** Bn 30/09/1983. On 30 October 2015, Police Scotland were requested to conduct another audit with regard to the records, if any, held in respect of Sheku Ahmed Tejan Bayoh Bn 30/09/1983 and to check if the nine officers listed above had accessed the records and, if they had, to confirm the lawful purpose for such accessing.

This audit was undertaken by Detective Sergeant Stephen Clark, the result of which are contained within,

Prod No.719 Record of Police Scotland Audit x 5

From the information contained in the above audits, DS Clark produced,

Prod No.738 Copy of briefing paper dated 03/11/2015 re Result of Audits in respect of Operation Quoich.

This report confirms that [REDACTED] each of the systems has not been searched by any of the nine named officers.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On 5 November 2015 Police Scotland were further tasked with carrying out an audit in respect of

- a. **Mohammed Aamer Anwar** born 1967
- b. **Aamer Anwar** born 1967

DS Stephen Clark conducted this audit for the period 3 May 2015 to 2 November 2015. This identified that Mr Anwar [REDACTED] was recorded on SID [REDACTED]

[REDACTED] This audit identified that none of the nine officers listed above had conducted a search of police systems in relation to Mr Anwar.

A search of the systems identified that the following officers had accessed the SID record pertaining to Mr Anwar:

- [REDACTED]
- [REDACTED]
- [REDACTED]

As detailed within,

Prod No. 719    Record of Police Scotland Audit x 5

[REDACTED]

Following the provision of this information, Police Scotland were asked to provide statements from every serving police officer and member of staff in relation to each of the checks identified through all the audits giving their reason for undertaking the checks in accordance with the Data Protection Act 1998.

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

This resulted in the submission of 69 statements. Examination of the statements raised some concerns regarding the justification of the checks outlined below, as an immediately apparent reason for officers or staff undertaking the checks or accessing the records was not evident. On 29 January 2016, the PIRC asked Police Scotland to supply additional statements from these officers/members of staff in order to clarify concerns.

In response to this request Superintendent McLeod of PSD submitted,

Prod No.749    Email + Letter dated 01 March 2016 from Supt Audrey McLeod

In the letter, Supt McLeod stated that Police Scotland would not be approaching the identified officers or members of staff for clarification for the following reasons:

1. *The officers and staff were not provided with the audit record to allow them to give more precise information about their policing purpose. A number of the systems require a reason code to be input which provides the policing purpose and would have assisted in the compilation of the statements. Staff provided statements without this information.*
2. *Officers and staff are not routinely required to provide statements justifying their access and there is no policy which requires them to keep a record of each check they make, therefore it is*

*not surprising that individuals who work on numerous systems on a daily basis have no recollection of why the checks were made. This does not infer that they have acted criminally.*

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

*4. If PIRC considers that there are any ulterior motives for the checks being carried out, then further statements cannot be obtained from staff and instruction will be required from CAAPD to interview the individuals under caution, in the same way PSD would deal with an "on duty inference of criminality." From the information already gleaned there are no grounds, in my opinion, to interview anyone under caution.*

Superintendent McLeod provides the following comments on the reasons for officers or staff undertaking checks:

**Statement of [REDACTED]:** *This officer has provided a policing purpose for the check albeit [REDACTED] cannot recall the name of the officer who requested the check. The policing purpose was for the compilation of a Community Impact Assessment in respect of the death of Mr Sheku Bayoh. Under no circumstances does this infer criminality in respect of a breach of the Data Protection Act 1998.*

**Statement of [REDACTED]:** *This officer provides an explanation of a policing purpose in that [REDACTED] carried out a check for [REDACTED] Divisional Commander who required confirmation of a mobile telephone number belonging to a family member of Mr Sheku Bayoh. Under no circumstances does this infer criminality in respect of a breach of the Data Protection Act 1998.*

**Statement of [REDACTED]:** *The reason code on the audit report identifies that the check was carried out for Operation Birnie for DC [REDACTED] Forbes. It has been confirmed that DC [REDACTED] Forbes was involved in Operation Birnie. [REDACTED] did not have access to the audit report at the time the statement was completed so could not provide this information at the time [REDACTED] statement was provided. I am satisfied that the audit report confirms [REDACTED] had a legitimate policing purpose.*

**Statement of [REDACTED]:** *This officer was part of the SCD Major Investigation Team. [REDACTED] explains in [REDACTED] statement that [REDACTED] was instructed to research systems in respect of the nominal concerned and [REDACTED] thereafter updated the Senior Investigating Officer with the results. While the statement is brief [REDACTED] position is clearly that the check was carried out.*

**Statement of [REDACTED]:** *A further audit check has now been carried out which shows the Crimefile activity for [REDACTED] on the specified date. This shows significant activity in numerous records within Crimefile on that specific shift, which is part of [REDACTED] role as [REDACTED] has indicated in [REDACTED] statement. The work on the nominal which is of interest to PIRC has not been in isolation and appears to be in line with [REDACTED] access to other records. I am satisfied that [REDACTED] statement and the more recent audit report confirms [REDACTED] was working on numerous records in*

Crimefile as part of [REDACTED] role and therefore there is nothing to indicate that [REDACTED] access was anything other than for a policing purpose.

**Statement of [REDACTED]:** [REDACTED] clearly articulates [REDACTED] role and the purpose of all the checks that [REDACTED] carried out on the dates in question. While [REDACTED] cannot recall the specific check on that nominal [REDACTED] rationale for accessing the nominal in question is highly plausible and in line with [REDACTED] role at that time. A further audit check has now been carried out which shows the Crimefile activity for [REDACTED] on the specified date, which further supports [REDACTED] position. This audit was not available to [REDACTED] to view on the completion of [REDACTED] statement. I am satisfied that [REDACTED] statement and the more recent audit report confirms [REDACTED] had a policing purpose.

**Statement of [REDACTED]:** [REDACTED] explained in [REDACTED] statement that [REDACTED] role involves checking multiple police systems on a daily basis. [REDACTED] cannot recall the specific check however gives a probable explanation. A further audit check was carried out which shows the Crimefile activity for [REDACTED] on the specified date. This shows significant activity in numerous records within Crimefile on that specific shift, which is part of [REDACTED] role as [REDACTED] has indicated in [REDACTED] statement. The work on the nominal which is of interest to PIRC has not been in isolation and appears to be in line with [REDACTED] access to other records. I am satisfied that [REDACTED] statement and the more recent audit report confirms [REDACTED] was working on numerous records in Crimefile as part of [REDACTED] role and therefore there is nothing to indicate that [REDACTED] access was anything other than for a policing purpose.

**Statement of [REDACTED]:** The statement provided has been examined along with the PNC audit record. The PNC audit record reason code clearly confirms [REDACTED] assertion that the check was carried out in relation to the creation of a warrant. I am satisfied that the audit report confirms [REDACTED] had a legitimate policing purpose.

**Statement of [REDACTED]:** The statement provides that the CHS check for Sheku Bayoh carried out by [REDACTED] was for Detective Sergeant Dursley. The audit check carried out for the CHS checks for [REDACTED] shows that the check was carried out by [REDACTED] for Detective Constable [REDACTED] of the East SCD Major Investigations Team who was part of Operation Birnie. Both these checks have been carried out for policing purposes.

### Access to records of Mr Aamer Anwar

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

On 28 January 2016, the contents of each of the statements by the aforementioned staff and their reasons for accessing or gathering and processing intelligence on Mr Anwar was raised by PIRC investigators McSporran and Little at a meeting with Detective Chief Superintendent Cuzen of the CCU, Detective Superintendent Dewar of the Police Scotland National Intelligence Bureau and Superintendent McLeod of PSD.

At this meeting Detective Superintendent Dewar agreed to PIRC investigators McSporrán and Little's request to provide an overarching statement outlining the justification for Police Scotland gathering and processing intelligence on Mr Anwar and categorising such intelligence as counter-terrorism intelligence. This request was confirmed in an email sent to Police Scotland on 29 January 2016. Detective Superintendent Dewar retired from Police Scotland [REDACTED], prior to providing such a statement.

On 17 February 2016, PIRC investigators McSporrán and Little had a meeting with Detective Chief Inspector (now Det Supt) Simpson who was identified by Police Scotland as being the officer who would provide an overarching statement. However, in an email dated 22 February 2016, DCI Simpson stated that she believed it was for the three officers who provided the statements to justify and explain the rationale for such intelligence gathering.

Police Scotland through Chief Superintendent Auld of PSD has intimated on several occasions that a Senior Officer would provide a full overarching statement on this matter, however none has been submitted to PIRC.

On 17 March 2016, an operational statement was received from PS Bassano, who is based within the National System Support for Police Scotland, with a remit to provide specialist police support, operational knowledge and expertise in relation to the Scottish Intelligence Database (SID). She acts as the single point of contact within Police Scotland's Intelligence community and supports the strategic portfolio lead Specialist Crime Division and Local Policing in relation to policy, practice, process and procedure for the use of SID. Incumbent in this role is the support and development of Police Scotland's SID Standard Operating Procedure (SOP) which details the rules, conventions and data input standards for SID in line with legislative and operational requirements.

Within this detailed statement, PS Bassano provides an overview of Police Scotland's procedures in respect of the handling of intelligence. She does not refer to or explain the creation or reviewing of the intelligence relating to Amer Anwar as referred to in the statements provided by [REDACTED], [REDACTED] and [REDACTED].

This matter was discussed with Police Scotland senior management who again intimated that a senior officer would provide a statement providing explanation Police Scotland's reasons for gathering and storing intelligence on Mr Anwar, specifically addressing the concerns about the information contained in the statements of [REDACTED], [REDACTED] and [REDACTED].

On 1 April 2016, PIRC investigator Little was advised by Chief Superintendent Auld, Head of PSD, that Detective Inspector Anderson of the National Intelligence Bureau would provide an overarching statement regarding this matter. Later that day PIRC investigator Little contacted DI Anderson and made him aware of the information required, at which point he declined to provide such a statement.

Chief Superintendent Auld was again contacted and asked as a matter of urgency to nominate an officer who would provide the overarching statement.

On 14 April 2016, a statement was received from Detective Inspector Wilson, who is based at Fettes Police Office, Edinburgh. In this statement DI Wilson intimates that he has been instructed to review the statements relative to the use of the SID as provided in the statements of [REDACTED], [REDACTED] and [REDACTED], with a particular focus on the reason for creating the intelligence and viewing of intelligence log(s) and/or the nominal record held in the name of Aamer Anwar. In providing this statement DI Wilson indicates that he has viewed the SID log which was referred to by [REDACTED], but has not been provided with the SID audit trail relevant to the intelligence log/nominal record under consideration.

In his statement DI Wilson confirms that the intelligence log created by [REDACTED] meets the standard grounds for recording and disseminating intelligence material. He notes that this intelligence log has been badged as 'Refract', which is the general term used when submitting all counter terrorism intelligence, and states that it is not clear whether the subject term 'Refract' should have been used. He qualifies this by stating,

*"Albeit the intelligence log composed and sanitised by [REDACTED] does not make any reference to counter terrorism intelligence, there may have been additional material information available to [REDACTED] and/or any subsequent reviewer(s) of the intelligence that influenced the wording of the header. Such determinations are based on the information available at the time and the experience of the staff member involved. From the information provided to me, I am unable to offer opinion as to who included 'REFRACT' in the relevant header or as to whether this was appropriate."*

With regard to the statement provided by [REDACTED], DI Wilson states,

*"[REDACTED] provides [REDACTED] rationale for accessing a SID log/nominal record relative to Aamer ANWAR. Albeit [REDACTED] does not expressly state the policing purpose for which [REDACTED] carried out the search that led to [REDACTED] viewing the log/nominal record, in my opinion, [REDACTED] statement is consistent with [REDACTED] role and I consider that [REDACTED] was justified in carrying out the type of systematic research described."*

With regard to the statement provided by [REDACTED], DI Wilson states,

*"[REDACTED] provides [REDACTED] rationale for accessing a SID log/nominal record relative to Aamer ANWAR. Albeit [REDACTED] does not expressly state the policing purpose for which [REDACTED] carried out the search that led to [REDACTED] viewing the log/nominal record, in my opinion, [REDACTED] statement is generally consistent with [REDACTED] role but does not fully capture what - if any - methodology or rationale [REDACTED] applies to searching SID. I consider that [REDACTED] would have been justified in carrying out the type of research described only if the research was for a specific policing purpose and met the 'need to know' threshold."*

Following examination of DI Wilson's statement PIRC investigators sought clarification by way of an email dated 22 April 2016 on the following areas:

Log submitted by [REDACTED]:

**OFFICIAL - SENSITIVE**

- The intelligence log makes reference to a demonstration at [REDACTED]. However the meeting about which the log is submitted was not the demonstration at [REDACTED], it was a public meeting by the [REDACTED]. It was attended by various speakers including, Mr Aamer Anwar, [REDACTED]
- It is stated that, in order to identify them and link them into the SID log, [REDACTED] searched their names on SID and linked them to the SID log. By implication, this means that the persons had nominal records in SID.
- The log was 'badged' as Refract – Counter Terrorism intelligence.
- It is stated by DI Wilson, 'Albeit the intelligence log composed and sanitised by [REDACTED] does not make any reference to counter terrorism intelligence, there may have been additional material information available to [REDACTED] and/or any subsequent reviewer(s) of the intelligence that influenced the wording of the header. Such determinations are based on the information available at the time and the experience of the staff member involved.'
- It is the PIRC understanding that to meet the standard grounds for processing intelligence a reason for such processing should be given. In this regard, [REDACTED] has 'badged' the intelligence as counter-terrorism intelligence but no reason is given for this.
- Please provide an explanation why a public meeting attended by lawyers [REDACTED] should be linked by Police Scotland as being related to terrorism matters.
- The statement makes an assumption as to why [REDACTED] linked the log as being of terrorism interest but provides no reason for this. Please submit a statement from [REDACTED] to explain [REDACTED] actions, which should include [REDACTED] reasons for so doing.

Log submitted by [REDACTED]:

- [REDACTED] states that [REDACTED] checked Mr Aamer Anwar's SID record, although [REDACTED] does not recall doing so. [REDACTED] role is to check all people who have a link to organised crime groups. [REDACTED] believes that [REDACTED] checked Mr Anwar's record as [REDACTED] may be linked to people who are members of OCGs in [REDACTED] capacity as a lawyer.
- Please outline on what basis Police Scotland stores intelligence on lawyers who represent clients.
- Please explain on what basis Police Scotland was acquiring and processing material on legal representatives, specifically Mr Aamer Anwar.

On 29 April 2016 an additional statement was received from DI Wilson. He states that he has not been provided with [REDACTED] rationale for the inclusion of 'Refract' in the relative subject header of the intelligence log, that there is no requirement to document such rationale. He states that, whilst Police Scotland publishes Intelligence Requirements that describe the type of information sought relative to counter terrorism, there is no definitive guidance which constitutes counter terrorism intelligence.

He further states that a public meeting attended by lawyers [REDACTED] should only be linked by Police Scotland as being related to terrorism matters if there is valid justification for doing so, as per the subjective opinion of the creator/reviewer of the intelligence log based on the subject matter and his/her professional judgement.

He intimates that whilst the subject matter is valid, there is no apparent justification for [REDACTED] having linked this log to terrorism.

DI Wilson further states:

*A public meeting attended by lawyers [REDACTED] should only be linked by Police Scotland as being related to terrorism matters if there is valid justification for doing so, as per the subjective opinion of the creator/reviewer of the intelligence log based on the subject matter and his/her professional judgement.*

*As aforementioned, where it is not clear whether intelligence falls into this subject, the term REFRACT should be included and clarification sought. The relevant log has been reviewed. The reason for including the REFRACT header is not recorded on SID. Although the subject matter is valid, there is no apparent justification for [REDACTED] having linked the aforementioned log to terrorism. Consequently, the REFRACT header and link has now been removed.*

*Going forward, action is being taken to ensure the appropriate use of SID headers, which will be in the form of advice and guidance to all officers, in particular supervisors and those performing the role of LIO.*

*Police Scotland should only store intelligence on legal representatives when the standard grounds for the recording and dissemination of intelligence are met. These grounds can be summarised as follows:*

*It is believed that the recording and dissemination of intelligence material is likely to be of value in*

- *The interests of National Security;*
- *The prevention or detection of crime and disorder;*
- *The maintenance of community safety;*
- *The assessment or collection of any tax or duty or of any imposition of a similar nature; or*
- *Otherwise serves a significant public interest.*



*Information relative solely to lawful business practice does not meet these grounds.*

*A review of intelligence relevant to legal representatives is ongoing. Material specific to Mr Aamer ANWAR forms part of this review. The review has identified information relative to Mr ANWAR's lawful business practice that was incorrectly recorded as intelligence. This information has now been removed from the Scottish Intelligence Database.*

*To mitigate the risk of such information being incorrectly recorded in the future direction will be provided to all officers particularly LIOs and Divisional Intelligence Managers reaffirming the obligation to adhere to the review and retention principles contained within the Standard Operation Procedure pursuant to the Data Protection Act 1998, ACPOS Manual of Standards for the Recording and Dissemination of Intelligence Material and the NCIS Code of Practice.*

*Additionally, as a consequence of the apparent errors that have been highlighted through the PIRC investigation, a report is being submitted to the Professional Standards Department for a conduct assessment flowing from the actions of those officers identified within the PIRC correspondence.*

### **16.3 Police Scotland – PNC and Data Protection non-compliance**

From the information supplied by Police Scotland in respect of systems access by some officers and staff, it was not possible to determine whether such access met the requirements of the Data Protection Act 1998 and additional information as detailed in the last section was sought from Police Scotland.

Superintendent McLeod states in,

Prod No.749 Email + Letter dated 01 March 2016 from Supt Audrey McLeod

*“Officers and staff are not routinely required to provide statements justifying their access (to systems and data) and there is no policy which requires them to keep a record of each check they make, therefore it is not surprising that individuals who work on numerous systems on a daily basis have no recollection of why checks were made.”*

Prod No. 725 Police Scotland PNC Use and management Standard Operating Procedures v.2.0,

provides:

3.6 Validity of Checks:

3.6.1 Operators must ensure the validity of any check they are requested to carry out and that the person requesting it is authorised to receive the information.

- 3.6.2 A valid reason code and location must be given, and if the person is enquiring by telephone and the operator is in any doubt as to their identity, the call must be returned to a valid number.
5. System Access
- 5.3 The originator bar must be completed in full for all checks carried out on the system. Operational police officers requesting a check be carried out on their behalf by a third person should ensure that the check is logged in a notebook / PDA. All non-operational staff should ensure that the reason for a PNC check is auditable through a recognised system.
- 5.19 Reason Codes
- 5.19.1 It is vital that all checks carried out on PNC must be for a policing purpose and can be verified.
- 5.19.2 When a request is made for a check to be carried out the requesting officer / staff member must provide their Number, Reason and Location. PNC operators should not carry out a check unless these details have been provided.
- 5.19.4 Officers and staff must be in a position to justify obtaining PNC details and be able to provide these for audit if requested. In all circumstances details of checks should be recorded by the requesting officer either in a specific register, notebook or by reference to recognised computer information system, e.g. Command and Control, Crime Report, HOLMES, SID, etc.

Prod No. 722 Police Scotland Data Protection Standard Operating Procedures v.1.0

provides:

- 3.3.11 Any search of police systems must be for a policing purpose. There must be a clear and legitimate reason for any search of any police system.
- 3.4.1 It is an offence under Section 55 (Data Protection Act 1998) for a person knowingly or recklessly, without the consent of the Data Controller, to:
- Obtain or disclose personal data or other information contained in personal data, or
  - Procure the disclosure to another person of the information contained in personal data.
- 3.4.3 Police Scotland will audit access to personal information held on police systems. Validations will be issued regularly to any police officer or member of police staff, who accessed data, to provide a reason, verified by their line manager, for any access to

personal data. As such, police officers or members of police staff should ensure that any fields requiring 'enquirer' or 'reasons' are properly completed.

Chief Inspector McLeod of PSD undertook the audit of systems in respect of this investigation providing,

Prod. No.719 PIRC010515/719 Record of Police Scotland Audit x 5

Chief Inspector McLeod stated verbally to PIRC investigator Little at the time of providing the audit report that she had checked the report and found nothing amiss. When this report was examined it was apparent that, in some instances, the reason for police officers or staff undertaking checks was not given and it was not possible to determine whether the checks were undertaken lawfully.

Examination of the various Police Scotland and national SOPs, policies, etc. in respect of systems used to store personal data indicates that officers and staff should record their reasons for undertaking checks of police systems or, where such persons may work in an office or have a role which involves undertaking numerous such checks, have a system in place to create an overall record or audit of checks undertaken. Where they undertake a check on behalf of another person they must record who that person was and the reason that person required a check to be undertaken.

From the material provided by Police Scotland it appears that there may be widespread non-compliance by Police Scotland and its staff in respect of requirements to record the reason for undertaking checks of systems, in compliance with the Data Protection Act 1998 and other systems rules, policies and procedures.

## 17. Miscellaneous other Enquiries

### 17.1 Social Media

Following a letter from Mr Anwar, COPFS requested that the PIRC examine social media sites for evidence of inappropriate conferring by principal officers

To date no evidence has been found on open social media to indicate that inappropriate conferring has occurred on social media sites. However, given that the social media identities of the principal officers are unknown, enquiries have been undertaken against their 'real' names on open social media sites which are accessible to everyone. It is recognised that the social media names or identities may be different and bear no correlation to a user's real name. Further probing of social media operated by the officers would necessitate RIPA/RIPSA authorities which, in the circumstances, are not considered to be justifiable without further specific information, which provides a clear indication that an offence has occurred. Speculative investigation in this area is not proportionate.

### 17.2 Police Scotland communications with the Media on the morning of the incident

COPFS further instructed the PIRC to investigate who within Police Scotland provided details to the Media on the morning of the 3 May 2015 that an officer had been stabbed and to confirm that PIRC investigators had interviewed the three politicians that provided press release statements on the morning of the 3 May 2015.

All the media statements made by Police Scotland on 3 May 2015 were examined by PIRC investigators. PIRC investigators have attempted to establish if the media were briefed by Police Scotland that an officer had been stabbed.

PIRC investigators ascertained that about 0800 hours on Sunday 3 May 2015, Alison Shields, Strategic Communication and Engagement Advisor, (Police Scotland's Head of Communications), received a telephone call from Colin Mackay, who at that time was the political journalist/editor for the Bauer Group which included Radio Clyde and Radio Forth. In this call Colin Mackay intimated that he had heard that an officer had been stabbed. Alison Shields was unaware of the incident he was referring to as she was on leave at that time and advised Colin Mackay that she would check and arrange for him to be provided with a response. She did not ask him for his source and would not normally do so.

Alison Shields thereafter asked Lucy Adamson, Police Scotland Strategic Communications Advisor, who was covering as on-call Head of Communications, to deal with the matter. Lucy Adamson was similarly unaware of the incident. After confirming and clarifying that an officer had not been stabbed she contacted Colin Mackay and provided him with that clarification. All media responses by Police Scotland on that date were thereafter handled by Katherine Findlay, duty media officer, in consultation with Lucy Adamson and Chief Superintendent McEwan, Fife Divisional Commander.

The communications released by Police Scotland disclose that there is no mention of an officer having been stabbed. Colin Mackay has not been approached for a statement.

In his statement to PIRC investigators, Detective Superintendent Campbell states that he was aware that a radio station had broadcast inaccurate information that a female officer had been stabbed and that this radio station was contacted and asked to withdraw that broadcast.

PIRC investigators obtained statements from David Torrance MSP, Claire Baker MSP and Kenneth Selbie, Local Councillor in Kirkcaldy. They stated that they were not contacted by or provided with any form of briefing by Police Scotland on 3 May 2015. They stated that they were contacted by members of the media (on that date) and felt compelled to give some form of response to the media, based on information from that media source. Kenneth Selbie states that he did try to contact Police Scotland via the 101 number to gain some insight into the incident, prior to speaking to the media but to no avail. On 4 May 2015, Kenneth Selbie states that he was approached by Adeymi Johnson, brother-in-law of the deceased Sheku Bayoh, whom he knows, and asked by Adeymi Johnson to reflect upon his comments which had appeared in the media.

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## 18. Findings

### PIRC Findings:

- Zahid Saeed alleged that he was assaulted by police officers within Kirkcaldy Police Office on 3 May 2015 and prevented from leaving the office. It is considered that there is a lack of sufficient evidence to uphold his allegation.
- From analysis of available data, there is no evidence to indicate that racism or discriminatory behaviour was present in Fife Constabulary or Fife Division of Police Scotland to a greater or lesser extent than in other police areas of Scotland. The average number of complaints of discriminatory behaviour, which includes allegations of racism, made per year in Scotland is 1.4% of all complaints against the police. The average number of such complaints made in Fife from 2007 to 2014 was 1.37%.
- No personal mobile telephone contact was identified between the nine officers who were involved in the arrest of Sheku Bayoh and officers who served at Kirkcaldy Police Office and who were required to resign following the discovery of racist text and MMS messages on mobile phones.
- There were no computer based searches of police systems carried out by the nine arresting officers against the deceased, the family of the deceased, his associates or their lawyer Mr Aamer Anwar.
- Police Scotland gathered and stored intelligence on Mr Aamer Anwar [REDACTED]. Some of this intelligence was labelled as 'Refract' (Counter Terrorism Intelligence). Additionally, Police Scotland gathered intelligence on Mr Anwar's business practice. There does not appear to be a legitimate reason or explanation for these practices.
- As a result of the PIRC identifying these matters to Police Scotland, it has agreed to take action to remove this intelligence from its systems and is to issue revised guidance to all its officers on the acquisition, processing and retention of intelligence in compliance with the Data Protection Act 1998 and Human Rights legislation.
- A significant number of Police Scotland staff, both police officers and civilian staff, did not, in respect of this investigation, record their reasons for accessing police systems: Scottish Intelligence Database (SID); Police National Computer (PNC); Criminal History System (CHS); Crimefile, or record their reasons for undertaking such checks, in accordance with the Data Protection Act 1998.
- From the material provided by Police Scotland it appears that there may be widespread non-compliance by Police Scotland and its staff with the requirements of Data Protection Act 1998 and other systems rules, policies and procedures.

- There is no evidence which suggests that Police Scotland briefed media outlets that an officer had been stabbed during the incident on 3 May 2015.

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