

Executive Report

Operation Waymark

AN INQUIRY INTO THE QUESTIONS AND COMPLAINTS RAISED BY THE SAN FAMILY

COMPLAINT NUMBER [REDACTED]

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Contents

	Page
Background	3
Introduction	3
Allegations	4
Previously Reported Incidents	4
Police Activity in the Lochend Area	6
Racist Motivation	7
- Motive	8
- Critical Incident	9
- Appointment of the Senior Investigation Team	9
- Research	10
- Racist Language	11
- Perception of the Family	11
Media Release and Interviews	12
The Use of Interpreters	13
Lack of Support to the Family	14
Overarching Complaint	14
Current Position	15
Appendix 1 – Areas for Improvement	16

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1. Background

- 1.1. On 11 August 2010, Simon San, a 40-year-old male of Chinese origin, was attacked and assaulted by a group of youths in the street in Lochend, Edinburgh. He died the following morning from the injuries he sustained.
- 1.2. Prior to his death, Simon was employed as a delivery driver working for his sister, [REDACTED] at her take-away food premises, [REDACTED], Edinburgh. This shop is in close proximity to the locus of the attack on Simon.
- 1.3. Throughout the years he worked as a delivery driver, Simon was the victim of assault on three separate and unconnected occasions. During an incident at Broxburn in 2001 he was seriously assaulted and struck to the head with a bottle. This was a racially aggravated attack and was recorded and investigated as such (the other two assaults were not recorded as racially motivated).
- 1.4. On the evening of 11 August 2010, Simon was working for his sister, delivering food from her shop [REDACTED]. About 2200 hours after making a delivery he returned to the shop and parked his motorcar on the roadway near to the premises.
- 1.5. Prior to alighting from his vehicle, a group of youths, males and females, approached Simon's motorcar and started to rock it. As Simon exited the vehicle and telephoned '999', he was attacked and punched, causing him to fall to the ground and strike his head, rendering him unconscious. His mobile telephone and car keys were subsequently stolen.
- 1.6. The police and ambulance services attended at the scene and Simon was conveyed by ambulance to Edinburgh Royal Infirmary. He never recovered consciousness and life was pronounced extinct on the morning of 12 August 2010.
- 1.7. Lothian and Borders Police instigated a major investigation (Operation Millennium) into the attack and four males aged between 14 and 16 were subsequently arrested and reported to the Procurator Fiscal for his murder. The accused John Reid pled guilty to culpable homicide, less than two months after the death of Simon. The accused Rodger and Roberts pled guilty to assaulting Simon and stealing his telephone and keys. The accused Souter pled guilty to a bail offence and was referred to the 'Children's Panel'.
- 1.8. On 27 August 2010, following the funeral of Simon, his family lodged an official complaint with Lothian and Borders Police. Although the family had been unhappy with critical elements of the investigation prior to this time, out of respect for Simon they delayed making a complaint until after his funeral. The family complained about the service they had received from the police, both during the investigation and with regard to specific historical incidents reported by them to the police.

2. Introduction

- 2.1. The family complaint was referred to the Professional Standards Department and a statement was obtained from Simon's sister, [REDACTED] San on behalf of Simon's parents and their family.
- 2.2. In response to this complaint, Deputy Chief Constable Allen appointed an Investigating Officer, Superintendent McAinsh, with the remit to assemble a team of officers to inquire into the questions and complaints raised by the San family. The Deputy Chief Constable recognised the complaint as a critical incident for the Force and it was responded to under the banner of 'Operation Waymark'.

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- 2.3. On 1 November 2010, the Operation Waymark inquiry team was formed and subsequently spent several months investigating each allegation. Operational statements were obtained from officers and staff involved in Operation Millennium and other officers linked to it. During this time the Investigating Officer reported on a regular basis to the Operation Waymark Gold Group and consulted with subject experts to discuss and scrutinise the emerging findings.
- 2.4. At the end of March 2011, the Investigating Officer submitted a report detailing the findings for each allegation to Deputy Chief Constable Allen.
- 2.5. This report is a summarised version of these findings. It outlines the key areas of concern identified by the San family and observations, evidence and conclusions relevant to each.
- 2.6. It is however important to acknowledge and remember the many successful elements of the investigation that ultimately led to the quick arrest of the four accused. All necessary specialist roles were identified and filled by officers from across the Force. Dedicated Family Liaison Officers (FLO) advised the family on procedural matters, gave support, and kept them updated with the progress of the investigation. The impact on the local community was assessed from the outset of the investigation and appropriate resources were committed to the area. Good work conducted by the inquiry team in tracing witnesses to the incident led to the early identification of those responsible for the attack. The four accused were pursued and within a matter of days, they had all been arrested for the crime. The achievement of this early arrest is significant and has brought comfort to the family.

3. Allegations

- 3.1. Thirty-nine allegations (all categorised as non-criminal) and eleven questions were identified from the initial statement noted from the family. For the purpose of this report, they have been summarised into the following areas of concern:
 - A lack of thoroughness in the inquiry into previously reported incidents at **Mr San's s ster's** Chinese takeaway shop.
 - A lack of action by the police in relation to youths congregating in the **[REDACTED]** area on the night Simon was attacked.
 - Failure by Lothian and Borders Police to recognise that the attack on Simon was racist and denied this was a motive at an early stage.
 - A lack of communication with the family prior to the police media release and insensitive comments made during media interviews.
 - The use of interpreters during the investigation.
 - A lack of support provided to the family.

- 3.2. The allegations also included the following overarching complaint:

"That there was a systemic failure by Lothian and Borders Police with regard to the investigation of previous reported incidents to them and the subsequent investigation of the murder of Simon San."

- 3.3. This report will outline the key elements of each of the above areas of concern.

4. Previously Reported Incidents

- 4.1. In August 2009, **Mr San's s ster** opened a Chinese take-away food premises in the **[REDACTED]** area of Edinburgh. Since that time, she has had issues with local youths who tend to congregate in the vicinity of her shop and she has on occasion reported her concerns to the police.

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- 4.2. The family were concerned that youths involved in these incidents were the same youths that had been involved in the attack on Simon. The complaint inquiry concluded that there was no evidence that any of the accused that attacked Simon had been involved in the previously reported incidents.
- 4.3. On 10 October 2009 a stone was thrown at a window of the shop, damaging it. The perpetrator was not seen and [redacted] did not report the incident at the time.
- 4.4. On 19 October 2009, a drunken male entered the shop premises and shouted and swore at staff there. [redacted] contacted the police, officers attended at the premises and details were noted. It was at this time that [redacted] also reported the stone-throwing incident that had taken place on 10 October.
- 4.5. The San family believe that both of these incidents were racially motivated and it is their view that no effort was made by the officers in attendance to establish from them if this was the case.
- 4.6. The Lord Advocate directs, that in the investigation of crime, police officers must ascertain the perception of the victim and witnesses as to the motive for the crime. This must be fully investigated and clearly recorded. Police officers should bear in mind that victims of racism may be reluctant to express their fears or beliefs, including their belief that an incident has been motivated by racism, and that victims reporting racism may often be doing so against a background of previously unreported racism. It will be necessary for officers in such cases to make every effort to ascertain the true perception of the victim as to the motive for the crime.
- 4.7. The complaint inquiry found that the officers had not adhered to the Lord Advocate's Guidelines and that there was a lack of understanding by them with regard to what is expected when presented with such circumstances. On noting the details of each of these incidents, the officers have considered that it is not the position of the police to ask about motive, but have placed the onus on the complainer. The officers failed to probe or question sufficiently to establish the complainer's perception.
- 4.8. In addition, there were failings in respect of the thoroughness of these investigations. The officers made inquiry but this was not to the standard that was expected of them. There is also no indication in the crime report, or the officers' statements submitted to Operation Waymark, that the complainer was informed of the result of their inquiries.
- 4.9. On 20 December 2009, [redacted] and her son, were working within the shop when youths started to throw snowballs at the front of the premises. They exited the shop and she was struck in the face with a snowball. A confrontation then took place between her son and the youths, whereby, he was pushed to the ground, kicked and punched. Officers attended and subsequently submitted crime reports for assault and racist abuse.
- 4.10. The family complained in relation to this incident, that a significant line of enquiry was not progressed and that the victim was not updated of the result of police inquiries.
- 4.11. The complaint inquiry concluded that a positive line of inquiry had not been pursued and as a result instigated a further investigation of this incident. Whilst ultimately this investigation was unable to identify the culprits for the assault, it was successful in eliminating each of the four accused who attacked Simon.
- 4.12. In relation to whether feedback was provided to the complainer, it was concluded that officers did inform someone at the shop of the result of the investigation, but this was not the victim. From a quality of service point of view, it was deemed that this is not to the level expected given the significance of the incident.

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- 4.13. It was also identified by the inquiry team that the police have not recognised either Simon or [Mr San's sister] as being repeat victims, or [Mr San's sister's] premises as being a repeat locus for crime.
- 4.14. The family is frustrated and angered by the omissions in the police inquiry. They feel that their needs have not been met by the police response to both the reported incidents and the antisocial behaviour that is prevalent in the vicinity of [Mr San's sister's] shop. They feel let down in this regard. An element of reassurance has been provided to the family by the knowledge that those responsible for the attack on [Mr San's sister's] son were not the same people who attacked Simon.

5. Police Activity in the Lochend Area

- 5.1. During the Advocate Depute's summing up of evidence at a court hearing for John Reid, references were made to a police initiative in the [redacted] area of Edinburgh on the night Simon was attacked. This left the San family with several questions that they sought answers to by way of their complaint. They were concerned that the police had missed opportunities to impact on the behaviour of the accused and remove them from the [redacted] area.
- 5.2. On the night of the attack on Simon, officers were working in plain clothes on an initiative to tackle and deter anti-social behaviour in a number of problem areas, including [redacted]. This was part of two weeks of activity working in partnership with City of Edinburgh Council.
- 5.3. The officers spoke to a number of youths in the area of [redacted] and particulars were taken from some, but none were the subsequent accused. The officers state that the youths they spoke to in the area were not causing any trouble however, because of the nature of the initiative, they dispersed them.
- 5.4. The complaint inquiry has established that police officers on the initiative had no contact with any of the accused on the night Simon was attacked. The family has been made aware of this information and has been provided with the answers to their questions (see 3.1) in respect of this aspect.
- 5.5. During the previously mentioned court hearing, it was brought to the family's attention that John Reid was subject to a Supervision Requirement. The family were concerned at the lack of action taken by officers given that this was the case.
- 5.6. The family was under the impression that the regulation of Supervision Requirements regarding children is a police responsibility. However, when a Supervision Requirement has been imposed, the Local Authority has a duty to put it into effect and the responsibility of the management of such requirements does not sit with the police.
- 5.7. The officers are unlikely to have had knowledge of any supervision orders relating to any of the youths. In addition, it is apparent that the accused John Reid did not arrive in the area until after the officers had departed.
- 5.8. An explanation of the police responsibility for individuals under supervision was provided to the family along with an outline of the local joint initiative that took place close to the locus on the night of the attack on Simon. Knowing that police officers involved in the initiative had no contact with any of the accused has provided an element of reassurance to the family.

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6. Racist Motivation

- 6.1. The police failings on this specific element throughout the investigation into the attack on Simon have been one of the key sources of distress, frustration and anger for the family. It is undoubtedly the basis for making their concerns known formally to the police. In their original letter of complaint dated 24 August 2010 (received 30 August), the first question asked is "*why the police are not taking account of the family's perception that this is a racist incident*". This letter was written twelve days after Simon died.
- 6.2. The Stephen Lawrence Inquiry Report defines a racist incident as being '*any incident which is perceived to be racist by the victim or any other person*'. This definition was adopted by the police service in Scotland and guidance for officers is contained in General Order 26/05, 'Recording and Investigation of Hate Crime'.
- 6.3. The inquiry report into the murder of Surjit Singh Chhokar in 1998, completed by Dr. Raj Jandoo (herein referred to as the Chhokar Report) states at paragraph 6.55, that, "*a perception is only a perception: it is not the same thing as an allegation, and it is certainly not the same thing as evidence*". That is, an allegation or evidence are not necessary for an incident to be deemed racist.
- 6.4. The complaint inquiry concluded that Lothian and Borders Police failed to recognise that the attack on Simon was racist. This was not only at the outset of the investigation, but also as it progressed. Key elements that contributed to this collective failing were:
 - A misguided assessment that the motive for the attack was robbery.
 - Failure to identify this as a 'Critical Incident'.
 - The relevant training of the senior investigation team.
 - A lack of emphasis on precursor incidents and the historical background of the accused.
 - Little emphasis placed on racist language used by the accused shortly after they attacked Simon.
 - Not establishing the perception of the family.
- 6.5. This report provides an insight into each of these elements over the next six pages. In addition, it refers to another contributing factor summarised as 'a lack of intrusive leadership by senior officers,' at relevant stages throughout.
- 6.6. On the night Simon was attacked he had returned to the shop in his motorcar, after making a delivery. He parked in the same place he regularly parked his vehicle. A group of youths, numbering about 15, had congregated in the street near to where he had parked. Prior to Simon exiting his vehicle, the accused approached it and began rocking it from side to side while the other members of the group looked on.
- 6.7. Simon alighted from his vehicle and called '999' from his mobile telephone requesting police assistance. The four attackers became aggressive and threatened Simon, before John Reid then punched him once to the face, knocking him over, whereby he struck his head on the ground and was rendered unconscious.
- 6.8. Reid was seen to subsequently pick up the mobile telephone and car key and then pass the key to Roberts who attempted to start the engine of Simon's motorcar. All four accused then made off from the crime scene into a nearby lane.
- 6.9. In response to four '999' telephone calls from Simon and witnesses to the emergency services, ambulance and police personnel were despatched to the scene. Personnel in attendance quickly established that Simon was suffering from a head injury and was in a serious condition.

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- 6.10. Police officers thereafter conducted inquiries to establish what had happened and who the perpetrators were. Officers from the Criminal Investigation Department (CID) were notified and they took the lead in the inquiry.

Motive

- 6.11. The assessment that the motive for the attack on Simon was robbery is misguided. All of the available evidence indicates that this was an assault and theft. The motive for the original attack on Simon whilst he was within his vehicle is not known and was not explored fully.
- 6.12. Shortly after the attack on Simon senior Divisional officers were informed of the circumstances and details available. Following initial inquiry and based on what was known at the time, the previous convictions, pending cases and personal knowledge of a potential named suspect and his associates, an early assessment was made that the motive was robbery. These officers discussed whether or not the attack was racially motivated and they agreed that there was nothing to suggest it was at that time.
- 6.13. The initial assessment of robbery is at odds with a night officer's report submitted on Thursday 12 August 2010, which indicates that the offence committed, was assault and theft. There is no mention of robbery. This is of relevance as the conclusion that this was assault and theft shows a belief that there was no intent to commit theft when the accused started rocking Simon's motorcar. If accepted, this could have opened up a line of enquiry relating to why the accused started to rock the motorcar.
- 6.14. Initial research undertaken that night on a possible suspect (later eliminated from the enquiry) showed that he had convictions for racist breaches of the peace, racist threats and racist assault, but none for robbery. This information does not appear to have caused the officers to reflect on the initial assessment that the motive was robbery.
- 6.15. The investigation team do not appear to have considered the possibility of more than one motive. There is no evidence of premeditation involving the four accused to actively target a Chinese man on the evening of 11 August 2010. Similarly there is no evidence from witness statements or from the interview of the accused, that any kind of premeditation took place surrounding the commission of a robbery.
- 6.16. The Chhokar Report, paragraph 6, highlights that in the attack on Surjit Singh Chhokar, the police may have identified a primary motive, but they failed to establish if there was a racist component to the crime. This failure was particularly damaging to the family. There are similarities to this in respect of this investigation.
- 6.17. A Community Impact Assessment (CIA) was completed early in the investigation. In addition to identifying impact, it provides clear evidence of the mindset of the investigation and incident command team in relation to motive. At the commencement of the CIA, at 0400 hours on Thursday 12 August 2010, an officer wrote, "*there is information that the motive for the assault on the male was robbery*".
- 6.18. At 1230 hours on the 12 August 2010, an entry reads as follows. "*The main risk as perceived was that this had been a hate crime, evidence to date is categoric that this is not the case. There is nothing in the evidence to suggest that further attacks will follow in either retribution or indeed from the assailant. To minimise any perception in the community of hate crime, contact will be made with community reps and media outlining this and additional reassurance patrols will be out in place.*"
- 6.19. The impact of these statements and apparent mindset on the inquiry, only four hours after the death of Simon, should not be underestimated.

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- 6.20. The CIA also provides evidence of a lack of understanding of family and community needs. Whilst the impact of this incident on the local community was considered by means of this assessment, it gave no specific consideration to the impact on the local or national, Chinese or ethnic community. No specific risks were identified in the written 'Risk Assessment' section.
- 6.21. The rationale for the initial assessment of motive is questionable, and an open mind should have been kept at this early stage in the inquiry. As further information came to light it is clear that a reassessment of motive should have been made.
- 6.22. Critical Incident
- 6.23. The fact that a Chinese person had been assaulted by a group of white males and subsequently succumbed to his injuries is, in itself, unusual and significant. It is considered that having been presented with these circumstances this should have been declared a 'Critical Incident'.
- 6.24. As per General Order 26/2005, a 'Critical Incident' is defined as any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, his/her family and/or the community. This is of particular relevance to instances of Hate Crime.
- 6.25. Senior officers within Lothian and Borders Police who had knowledge of the investigation did not identify Simon's attack as a 'Critical Incident'.
- 6.26. At 0700 hours on Thursday 12 August 2010, senior Divisional officers discussed the initial assessment of the incident and agreed that there was no information or evidence at that time to suggest this was a racially motivated incident. They did not identify the significant impact that it was likely to have.
- 6.27. About 0900 hours same date, the daily Executive Meeting took place at Force Headquarters and the death of Simon was discussed. This discussion included the possibility that the attack may have been racially motivated along with the definition of a racist incident. The chair of the meeting, acknowledges within his statement to the complaint inquiry, that considering people at the meeting were suggesting it might be, he should have directed that the attack be dealt with as a racist incident from that point on.
- 6.28. At 1800 hours same date, a representative from the Force Executive attended the Operation Millennium evening briefing. All of the senior officers present informed him that there was an absence of evidence in respect of any racist motivation and assured him that all relevant inquiry in this regard was being undertaken as a matter of course.
- 6.29. Operation Waymark found no information to suggest that any of these officers considered the real significance of this incident for the San family, the Force or the Chinese communities. Not declaring this as a 'Critical Incident' has set the course for the direction of the investigation. In addition, if any of these senior officers had perceived this to be a racist incident, they should have ensured that it was investigated and recorded as such.
- 6.30. Appointment of the Senior Investigation Team
- 6.31. The appointment of an untrained officer to a significant investigator's post left both the officer and the organisation exposed and at risk. This has impacted on the investigation throughout.

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- 6.32. Whilst the individual was an experienced detective officer, this was his first murder inquiry in this role and he had not at that time completed the relevant training course at the Scottish Police College. This does not appear to have been considered in his appointment.
- 6.33. This appointment led to a subsequent role being identified that was at odds with normal practice.
- 6.34. The complaint inquiry found that management policy files did not contain details of critical decisions or the reasons for them and there were no minutes or notes taken for any briefings or meetings held by the investigation team. There was no audit trail, with the exception of one memorandum, detailing what contact was made with the COPFS.
- 6.35. There was a lack of clarity of role for the senior detectives involved in commanding this investigation. Each has articulated a slightly different perspective and believed that the other was attending key meetings. It is also likely that this confusion has led to a breakdown in communication with the family (see 'media release and interviews').
- 6.36. Research
- 6.37. Within the investigation there was a lack of emphasis on precursor incidents and the historical background of the accused. The pre-cursor incidents involving Simon and his family were never fully assessed and although some of the historical behaviour of certain individuals was racist, this has not been fully considered by the investigating team.
- 6.38. The investigation team was well resourced and included an analyst, who assisted with any required research. It is apparent that the pre-cursor incidents involving Simon and his family were never fully considered as the Operation Millennium time line for the incident started on the 11 August 2010 and did not give historical information regarding other incidents.
- 6.39. Simon's nephew had been the subject of a racist assault only seven months previously outside the same shop owned by **Mr San's sister** and this should have been taken into consideration.
- 6.40. Simon and his family have been subject to numerous acts of anti social behaviour and violence over the past few years. As such it would have been reasonable to assess that they might have felt vulnerable and isolated while holding the view that a member of their family had yet again been targeted.
- 6.41. The investigation quickly identified a line of inquiry, which focused on a group of youths who were known to frequent the Lochend area. The background of all the accused and other named individuals at the locus at the time of the attack on Simon, or, suspected of being in the area at this time, is considered to be of vital importance.
- 6.42. Critically, in the summary of analysis for one of the accused, it is recorded that, '*xxx is racially prejudiced and has been influenced by xxx*'. The same accused has been reported for a racist offence. Two of the other accused had previously been charged together for an incident where the victim was a Chinese shopkeeper.
- 6.43. If the information obtained about the background of the four accused and their associates had been examined more thoroughly, a different assessment as to the likely motive for the attack on Simon might well have been made, or at least explored more.

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6.44. Racist Language

6.45. The Operation Millennium investigation team placed little emphasis on racist language used by the accused shortly after they attacked Simon. Although several members of the investigation team claim to have read the statements, they state that the statements contained no, or only limited, evidence or information to suggest the crime was racially motivated.

6.46. Information from witnesses shows that a short time after the attack on Simon, the group responsible were directly referring to him as a 'Chinky'. It is crucial to highlight that the group are talking directly about their attack on Simon and the references are made in the presence of independent witnesses.

6.47. The four accused were very quickly identified and all were subsequently traced, interviewed and arrested. An interview strategy was prepared and applied during the interview of each accused. This strategy had a number of questions relating to Robbery, but none regarding any racist element or language.

6.48. There are a large number of references to the term 'Chinky' being used by the group, several relating to one accused. During his interview he was asked about witness evidence claiming he had used this word. He denied that he would use this word and stated that he knows it to be racist. This is significant and the link between this, and the language used by him and others, does not appear to have been made.

6.49. Following the interview and arrest of the accused, the investigation team continued to interview witnesses and all statements and resultant inquiries were submitted to the Crown Office and Procurator Fiscal Service. This included the statements of the significant witnesses who had heard language used where Simon was referred to as a 'Chinky'.

6.50. It is evident that the investigation team placed little emphasis on the language used by the accused and this additional information did not feature in the Management Policy File. No one in the senior investigation team made any reference to this language in their statement submitted to Operation Waymark.

6.51. This lack of emphasis could be interpreted in several ways. As a lack of understanding:

- of the importance of language used by the accused immediately after the crime; or
- of the racist nature of the language used; or
- that a single strand of evidence is sufficient to libel a racist aggravation.

6.52. Whatever the reason, it is clear that this inaction had an impact on the direction of the inquiry and fundamentally led to a critical failure to meet the needs of the family.

6.53. Perception of the Family

6.54. Key members of the investigation team did not hear what the San family was telling them i.e. that they believed the attack on Simon was racially motivated. Individuals placed no value on the perception of the family and instead continually stated that there was no evidence to back up this assertion. There was a lack of understanding within the investigation team of the difference between perception and evidence, and the importance to the victim and their family of this element of the investigation.

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- 6.55. It is usual that during any murder inquiry, the antecedent history of the deceased is explored and probed with family members to identify anything in the deceased's background that could highlight a possible motive. It is apparent that officers were not specifically tasked with identifying the perception of the family as to why Simon was attacked. At the initial FLO briefing racist motive was not discussed.
- 6.56. In a policy file, there is an entry dated 16 August 2010 stating that **Mr San's sister** has indicated to officers that the crime 'could' have been racially motivated. It is clear that the San family asked on at least four occasions what the motive was that led to Simon being attacked.
- 6.57. There are two entries in a policy file recording the family's concerns that the crime was racially motivated. The first is dated 16 August 2010 after the family asked if the attack could have been racially motivated. On this occasion, following a meeting with the family, they were informed that there was no evidence to support this and the policy file was endorsed "*Not recorded as a racial incident at this stage as there is 'no' evidence to support this.*"
- 6.58. The second entry was on 30 August 2010, the day of the handover from the police to Victim Information and Advice (VIA) and after the investigation team had been made aware that the family were in the process of making a complaint. On this occasion the policy file was endorsed "*Incident now being recorded as a racial incident due to **Mr San's sister** stating she felt Simon San was 'targeted' as he was Chinese. ... repeated there was no evidence to support this but acknowledge her position/belief and ultimate change of opinion.*"
- 6.59. There is no other documented evidence that the investigation team gave consideration to a racist element to the crime. This further compounds the conclusion that more should have been done. Insufficient emphasis has been placed on the continued concerns raised by the family.
- 6.60. In conclusion, the Force should have recognised, or at least contemplated more fully, that the attack on Simon was racially motivated. This was denied as a motive at an early stage of the investigation and the investigation team did not take into consideration many issues, which may have influenced or changed their rationale regarding this. The subsequent impact is that the Force has failed to meet one of the most fundamental needs of the San family and in doing so has increased the significant distress they already felt at losing a family member.

7. Media Release and Interviews

- 7.1. The Operation Millennium team failed to communicate with the San family prior to a media release being distributed and media interviews being broadcast. This breakdown in communication was further compounded by insensitive and inappropriate comments made during interviews. In addition, the Force failed to correctly identify the ethnicity of Simon in the media release.
- 7.2. During the initial stages of 'Operation Millennium' it is apparent that no member of the San family was informed of releases being made to the media. Open dialogue with the family was achievable at this time as there was no suspicion whatsoever that they were in any way involved in the attack on Simon. It is also notable that the first press releases were given several hours before the FLOs had their initial meeting with the family.
- 7.3. The investigation team should have ensured that the family was aware of any impending press or media releases.

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- 7.4. The Force Media Relations Office prepared an initial press release and plan of anticipated media questions. The content of this release was open in respect of motive and did not discount any racist element. It stated that if asked, the Force would respond stating all possibilities regarding motive were still being considered.
- 7.5. Senior officers discussed the media strategy and who should carry out the media interviews. An individual who had already completed a demanding period of time on duty ultimately gave them. This raises a question over the rationale for this appointment.
- 7.6. In broadcast television interviews, the incident involving Simon was described as a “*random attack*”, “*a random and fairly minor assault, although the consequences were obviously quite severe*” and “*unprovoked.*” The phrase “*in the wrong place at the wrong time*” was used in a newspaper article.
- 7.7. The ‘wrong place, wrong time’ phrase caused great distress to the family who interpreted it literally. Mr San believes that by using this language the police are saying that his son deserved to die.
- 7.8. The perception of the family was that the incident was racially motivated and the language used in press releases, has compounded their view that the police were not considering it as such.
- 7.9. Simon, although born in Vietnam, considered himself to be of Chinese origin. Indeed, all members of his family born there also consider themselves Chinese. This cultural distinction is important to them in their heritage and in the way they live their lives.
- 7.10. The press release composed on 12 August 2010, refers to Simon as of ‘Vietnamese origin’ with this information being taken from a recently completed form. Simon’s family were offended by the police identifying him as Vietnamese.
- 7.11. Although the actual media releases prepared by the press office demonstrate an open-minded approach and were appropriate, the interviews given to the media have not wholly reflected this. The family was unaware of the media releases and deemed some of the terminology used to be inappropriate and insensitive. The Force failed to correctly identify the ethnicity of Simon at the outset of the investigation and although there was no intention to do so, this has caused offence.
- 7.12. It is clear that the failure of the investigation team to ensure appropriate intimation to, and involvement of, the family in media releases has been compounded by the insensitive comments made therein. This has caused unnecessary distress and offence to the San family.

8. The Use of Interpreters

- 8.1. The family complained that on several occasions during the investigation into Simon’s death, they had not been offered the use of an interpreter. Whilst this was found to be the case, the complaint inquiry concluded that this was not at odds with Force policy.
- 8.2. Advice for officers with regard to the use of interpreters is contained in General Order 04/08. It stipulates that:

“All staff should be aware that it is good professional practice to ensure that all communications with members of the public are carried out in the language most easily understood by the individual concerned.”

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In addition, there are a number of legislative requirements on the Force to provide appropriate services, not only to people whose most easily understood language is not English, but also to people who are affected by any other communication difficulties. When staff are faced with these circumstances, they must always consider using an interpreter. The use of relatives and friends as interpreters should only be considered in less formal situations, or to ascertain brief details as to what might have happened."

- 8.3. The use, and understanding, of the English language differs between San family members. Simon's parents speak little English, whilst many of his siblings can converse well in it. Officers based their decision-making on the requirement for an interpreter both on this and the urgency and/or formality of the situation.
- 8.4. The circumstances in which interpreters were not used differ. On one occasion it was important that as much information as possible was gathered immediately to assist in the inquiry. On another, officers viewed the situation as an intimate and personal experience for the family and one where officers deemed it insensitive to introduce an interpreter.
- 8.5. Currently, the police can consider the use of an interpreter without any consultation with the victim or witness and decide themselves when one is required. The San family was not aware initially that they could have the use of an interpreter. They believe that it would have been more appropriate for this service to be offered to them thereby involving them in the decision making process and ensuring that their needs were met. The complaint inquiry also came to this conclusion.

9. Lack of Support to the Family

- 9.1. As already identified, in some key elements of the inquiry, the needs of the San family were not met. There were also other occasions when the police could have provided more support to them.
- 9.2. The family complaint included allegations relating to:
 - A lack of police representation at Simon's funeral.
 - A lack of contact with a representative support organisation.
 - A lack of police contact at Mr San's sister's takeaway shop.
 - A lack of support when they were apprehensive that the accused would be bailed.
 - A lack of support in dealing with the media following the sentencing of John Reid.
- 9.3. Whilst most of these complaints were not substantiated (and one is clearly the role of Victim Information and Advice), contact with the family over a period of time has identified that at the heart of these complaints was a feeling that throughout the judicial process, they were not provided with enough support.

10. Overarching Complaint

- 10.1. The family solicitor alleged on behalf of the family *"that there was a systemic failure by Lothian and Borders Police with regard to the investigation of previous reported incidents to them and the subsequent investigation of the murder of Simon San."*
- 10.2. The complaint inquiry found that whilst there had been significant failings in one particular element of the investigation, there had not been systemic failure by Lothian and Borders Police.
- 10.3. As has been highlighted within this report, there were failings with regard to the investigation of some previously reported incidents to the Force by the San family. It is

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acknowledged that in some cases, more thorough inquiry could have been made, but not on every occasion.

- 10.4. Similarly, there is criticism regarding the management of the investigation into the death of Simon. This is not just directed towards officers in the investigation team, but also those who had a more strategic role to play.
- 10.5. The Force had a number of opportunities to recover the situation and listen to the concerns of the family regarding the motive for the attack on Simon, but did not do so. In addition to those already identified, an opportunity presented itself when early intimation of the family complaint was made to a senior officer. This opening was not recognised.
- 10.6. The criticism referred to, however, has to be balanced against the many successful elements of process and policy put in place that ultimately led to the quick arrest of the four accused.
- 10.7. Due to the severity of the incident, the attack on Simon was treated as a Major Incident and investigated as such. All of the necessary specialist roles were identified and officers were recruited from across the Force to take on these responsibilities.
- 10.8. The written media release and question and answer document were open minded and appropriate.
- 10.9. Dedicated FLOs were tasked with maintaining regular contact with the family and advised them on procedural matters, provided support and kept them updated with the progress of the investigation.
- 10.10. The good work conducted by the inquiry team in tracing witnesses to the incident led to the early identification of those responsible for the attack.
- 10.11. The impact on the local community was assessed from the outset of the investigation and uniformed officers took on the responsibility of monitoring any change and providing appropriate resources to the area. An incident caravan was located at the locus of the attack and officers worked from this to give a police presence in the area and provide reassurance to residents.
- 10.12. The four accused were pursued and within a matter of days, they had all been arrested for the crime.
- 10.13. In conclusion, having considered all aspects relating to this allegation, the complaint inquiry found that whilst there had been failings, there had not been systemic failure by the Force.

11. Current Position

- 11.1. The complaint inquiry concluded that there had been significant failings in the police inquiry into incidents previously reported by **Mr San's sister** and the investigation into the death of Simon San. His family had not been listened to and some of their specific needs were not met.
- 11.2. On Tuesday 10 May 2011, Deputy Chief Constable Allen apologised to the family of Simon San for these failings.
- 11.3. Areas for improvement (see appendix 1) have been identified by the complaint inquiry and will be progressed in tandem with the debriefing of all staff involved in Operation Millennium. Deputy Chief Constable Allen will provide oversight and leadership of the implementation of this organisational learning.

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Appendix 1

Areas for Improvement

It is important to emphasise that although the areas for improvement in this section refer to 'Hate Crimes', and in some cases specifically 'Race', it is considered that many are relevant to all other protected characteristics and any type of major investigation.

1. This inquiry has highlighted the apparent misconception amongst many officers with regards to the difference between 'evidence' to prove motivation and the significance of the 'perception' by anyone of such motivation. It has also provided evidence regarding a lack of understanding of the need of minority communities for such perception to be identified. The Force should take steps to address this misunderstanding as a priority, with a view to ensuring officers are aware of, and respond appropriately to, this important difference.

In addition, the learning points in the Chhokar Report, published in 2001, relating to motive and perception should be re-emphasised to all officers in the Force, particularly with regard to the questioning of victims and witnesses in respect of perception.

2. The contents of the Lord Advocate's Guidelines regarding the 'Investigation and Reporting of Racist Crime' and the 'ACPOS Hate Crime Guidance Manual 2010', should be re-iterated to all officers.

3. Consideration should be given to a review of the Lord Advocate's Guidelines with regard to the questioning of victims and witnesses of minority groups, to establish whether they believe a crime has been motivated by malice or ill will towards them. Presently, asking a direct question in this regard is seen as leading and not recommended. In some circumstances, however, it is considered that the option of asking a leading question could be more beneficial in understanding the perception of individuals.

If such questioning regarding motive had been asked in this case, the investigation team may have been more readily able to acknowledge or clarify the perception of the family, that they believed the attack on Simon to be racially motivated.

Any change would require to be reflected in the ACPOS Hate Crime Guidance Manual 2010, Section 6, which makes reference to the Lord Advocate's Guidelines on leading questions.

4. General Order 26/2005 defines the responsibilities of the Force on the recording and investigation of 'Hate Crime' including the requirement for letters to be sent to victims. The contents of this order will be incorporated into a new Standard Operating Procedure (SOP) to be published in the near future.

It was established that when Simon's nephew was the victim of a 'Hate Crime', he did not receive a final letter from the Force as per the recommended procedure. Inquiries in this regard raised concern with the current process as to whether it achieves its intended aim. The process of dispatching letters to victims of 'Hate Crime' should be reviewed to ensure it is fit for purpose.

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5. The use of interpreters, or in some cases their lack of deployment, has caused some concern to the San family. General Order 04/08 – Method For Interpreters, gives guidance in their use and recommends that in certain circumstances, the use of an interpreter should always be 'considered'. It is recommended that this be changed to read, 'When staff are faced with these circumstances, they must always offer the use of an interpreter'.

Any response to the offer of an interpreter should be recorded.

At the moment, the police can consider the use of an interpreter without any such consultation and decide upon when one is required. This change should ensure that consultation about the requirement for an interpreter will be made with the victim or witness on every occasion and the decision regarding the need for one, or not, will be informed by them.

6. Communication with the media plays an important part in major investigations and any contact requires to be dealt with professionally and at times, with sensitivity. The needs of the victim's family must be taken into consideration. In all major investigations and other inquiries likely to have a significant impact on the family, the Force Media Relations Department should ensure, in consultation with the SIO, that no press releases are made without prior notification to the family.

7. The lack of recorded notes at 'Operation Millennium' briefings has become apparent during this investigation. The importance of documenting policy and decisions taken cannot be over-emphasised. Clear guidance should be given to SIOs with regard to their accountability for ensuring that comprehensive notes are made of briefings and the delegation of this responsibility when a manual card system is implemented.

In the case of investigations on the Home Office Large Major Enquiry System (HOLMES), the responsibility lies within the HOLMES team and this shall be clarified and recorded on the system by the SIO.

8. Work is ongoing with the Force Diversity Unit and the Edinburgh & Lothians Regional Equality Council (ELREC) to implement a Service Level Agreement (SLA) to ensure better partnership working. It is anticipated that this will be in place during the financial year 2011-2012.

Any future agreed SLA between Lothian and Borders Police and ELREC should include a process whereby both agencies engage in an exchange of information when a member of a minority ethnic community is a victim of serious crime or sustained anti-social behaviour that, if not checked, could lead to serious consequences for victim(s) or communities.

With the expansion of the role of ELREC, the Force should include all diversity strands and protected characteristics in this agreement.

9. The Force failed to make a distinction between the ethnicity of Simon and his place of birth, which caused offence to his family.

The National Witness Statement pro forma should include a section for ethnicity and not just place of birth.

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Some work is already being progressed to include a section for ethnicity in the 'Family Liaison Risk Assessment, Form 1' (xd29). This should continue via the Force Family Liaison Coordinator.

All other Force forms should also be reviewed to include a section for ethnicity where applicable.

It is anticipated that some training and guidance will be required for officers to explain the differences between an individual's place of birth and their ethnic origin or ethnicity.

10. With regard to the current 'Policy Files', used by Senior Investigating Officers (SIO) and FLOs, it is recommended that the Force makes representation to ACPOS with a view to implementing a change whereby these files are replaced by 'Decision Logs'. These logs will record every important consideration made, with the rationale clearly laid out for accountability and review. This replicates the change made by the Metropolitan Police following the investigation into the death of Stephen Lawrence.

11. The Force needs to be better at recognising when an incident requires to be given the classification of 'Critical'. Following the complaint from the San family, the Force implemented a 'Critical Incident Management Working Group' (CIMWG). This group will ensure that learning and processes are promulgated so that the implications of any future incidents are considered fully to determine when a 'Critical Incident' should be declared.

12. Presently, murder investigations are categorised as 'A', 'B' or 'C' and the classification of each category is given in the 'Murder Manual – Categorisation of Homicides'. The CIMWG should give consideration to these classifications with a view to determining if this categorisation is still appropriate and effective.

13. This inquiry identified that during this major investigation, there was a lack of clarity around command roles. The existing command protocols for managing an incident of this type should be revisited to ensure that they give clear direction on incident management and investigation roles.

14. The appointment of an individual to a key investigation position must be based on them having the appropriate skills and knowledge. Officers who have not successfully completed essential training should not be appointed other than in exceptional circumstances. This will ensure that the individual and the organisation are not put at risk.

15. A programme of structured and suitable, role specific 'refresher' training should be undertaken by the Criminal Investigation Department for SIOs, FLOs, Interview Advisors and Crime Scene Managers to highlight current best practice. This training should include input from Corporate Communications.

16. It is proposed that the role and rank of the Force Family Liaison Coordinator should be reviewed with the recommendation that this becomes a dedicated position of Detective Inspector (as it was pre 2009). This will afford a level of inspection and intrusive management of FLOs.

17. In future cases where a victim has received injuries from which they are unlikely to survive, consideration should be given to FLOs being deployed at an early stage and if possible, prior to death.

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18. In any 'Critical' or 'Major' incident where the victim is of a minority group, the Force Diversity Unit should be given the responsibility of having a more active role alongside the investigation team, even where it is concluded there is no racist or discriminatory element to the crime. Although primarily anticipated to be in a more advisory capacity, this engagement should allow the unit to be more intrusive in respect of the investigation, ensuring motive and perception is explored fully.

19. Force 'Lay Advisors' should be empowered to be more proactive with regard to the questioning of SIOs in any 'Critical Incident' or 'Major Investigation'.

20. It is important that the Force ensures that strong and sustainable links are maintained with the Chinese community and any ongoing work to achieve this continues, using the learning from the Simon San case as a benchmark for progress.

