

Statement in Response to Rule 8 Request by Sheku Bayoh Public Inquiry

Witness details

John McSporran,
Born [REDACTED] 1958,
c/o The Police Investigations and Review Commissioner
Hamilton House
Hamilton Business Park
Caird Park
Hamilton
ML3 0QA

Statement dated 21 July 2023

These questions will focus on your role at the Police Investigations and Review Commissioner (PIRC) and your involvement in PIRC's investigation following the death of Mr Bayoh.

Your professional background and experience

1. Please provide a summary of your professional career including the job titles, dates held and a short summary of your duties. Please include details as to any further or higher education you have undertaken.

I joined the Police in 1982, initially undertaking uniform patrol duties in K Division (Renfrewshire Division), then mobile patrol duties. In 1986, I was appointed as a Detective Constable. From 1986 to 1992, I undertook divisional CID roles, latterly being assigned primarily to murder enquiries.

In 1992, I was promoted to Sergeant in the east end of Glasgow and then transferred back into CID as a Detective Sergeant in Glasgow City Centre. During this time, I undertook various investigations including murder, drugs, vice and specialist child abuse investigations e.g. Munchausen Syndrome by Proxy, complex linked child rape investigations.

In 1996, I joined Special Branch (SB) and qualified as a Level 1 surveillance officer. I also qualified as an Authorised Firearms Officer (AFO) and Tactical Firearms Advisor (TFA). I undertook Counter Terrorist (CT) surveillance operations. I also was a VIP Protection officer (bodyguard), undertaking VIP Protection duties in respect of the Royal Family, senior politicians and dignitaries. I then undertook intelligence work in respect of terrorist and paramilitary groups.

In 2000, I was promoted to Detective Inspector to take charge of Scotland's police CT surveillance capability and led various surveillance operations including armed operations against terrorist subjects leading to arrests and the seizure of firearms, etc. I also undertook work for UK agencies. I then transferred to take charge of the Force Intelligence Bureau.

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I undertook a comprehensive review of all police intelligence capabilities across Scotland and, with a senior IT member of staff, designed the Scottish Intelligence Database (SID), the single system for Scottish police intelligence, which then received funding from the Scottish Government to be acquired and implemented across all Scottish police forces. SID is still in operation and is still the primary intelligence system for Police Scotland.

Following the implementation of SID, I gave expert evidence to the Bichard Inquiry (police information and intelligence sharing failures in England in respect of the Soham murders) on how SID improved intelligence and information sharing among Scottish police forces.

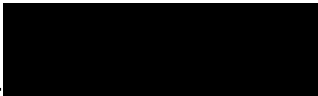
In early 2004 I was promoted to Detective Chief Inspector in charge of Special Branch - Special Operations, which involved covert operations against those involved in terrorism, organised crime and major murder investigations. I was placed in charge of various covert areas of business. On behalf of the UK Home Office, I and others visited the USA and undertook examination various law enforcement agencies evidential interception of communications.

I was approached and volunteered to undertake a secondment to the UK Government to work in Africa and in early 2005 was posted to Sierra Leone, West Africa, to undertake work to support the implementation of sustainable governmental organisations which had collapsed during the 11 year civil war. I also undertook investigation of war crimes. Primarily I worked on anti-corruption matters, one of the principal causes of the civil war and undertook work for the Sierra Leone Anti-Corruption Commission.

On return from Sierra Leone in 2006, I was promoted to Detective Superintendent, initially in charge of CID in Ayrshire Division, a role which also included being Senior Investigating Officer (SIO) for murder investigations. I have completed the Senior Investigating Officer course and the Review of Major Investigations course.

I later transferred to take charge of Covert Special Operations targeting terrorist and organised crime groups and support to murder investigations. I was also the force Authorising Officer for covert activity (Directed Surveillance, Covert Human Intelligence Sources, Communications matters) and led for the Scottish Police on lawful Interception of Communications matters and was in charge of the Scottish Recording Centre (SRC), the Force Intelligence Bureau, Central Authorities Bureau, Confidential Unit, and other covert assets, etc. I was also a Tactical Firearms Commander. I represented the Scottish Police at UK level on various national groups in respect of covert matters and was the policy lead for UK policing on data communications matters. I also undertook sensitive enquiries as directed by COPFS, e.g. allegations of racism and religious abuse by members of football clubs.

In 2009, I transferred to take charge of the newly established Major Investigation Teams as Senior Investigating Officer (SIO), in charge of category A murder enquires and other complex major crimes. I led various murder investigations. My

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last major police investigation was in charge of the Scottish police aspect of the press 'phone hacking' investigation, involving hundreds of victims.

On retiring from the police in 2012, I was recruited along with another to the Police Complaints Commissioner for Scotland (PCCS) which would become the Police Investigations and Review Commissioner (PIRC), which came into being on 1 April 2013. I was recruited to assist to set up PIRC. Initially PIRC had no investigative capability, no policies, procedures, paperwork, in fact anything. I and others had to design and set up PIRC in a very short period of time, a matter of months, including the recruitment of staff to effectively undertake investigations so PIRC could hit the ground running from 1 April 2013.

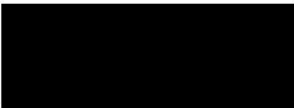
The money allocated by the Scottish Government was enough to recruit an Investigations Team of 20 people, to cover all of Scotland, 24 / 7 / 365. To examine and investigate deaths in custody, deaths following police contact, serious incidents involving the police, firearms incidents, etc. across Scotland. Last year that amounted to over 900 incidents.

Mr Bayoh's death was not the only death investigation or other investigation PIRC were dealing with around that time. Shortly after Mr Bayoh's death, the deaths of John Yuill and Lamara Bell adjacent to the M9 near Stirling occurred and PIRC were tasked with this investigation.

Initially I was a Senior Investigator with PIRC and since 2017 have been their Head of Investigations. In my role within PIRC, I have assessed, directed or overseen over 200 death investigations: deaths in police custody; deaths following police contact and fatal and other police shootings. I have also overseen the investigation of numerous serious incidents involving the police. I oversaw the investigation into the death of Sheku Bayoh, the fatal shooting of an Asylum Seeker in a Glasgow hotel by the police in 2021 and other major PIRC investigations.

I am a trained Post Incident Manager (PIM) and have attended numerous post incident procedures (PIP) following deaths in custody, deaths following police contact, fatal and other police shooting incidents, etc. I have advised on various live exercises where PIP was implemented to test the resilience of Police Scotland and other police agencies operating in Scotland, e.g. Ministry of Defence Police, Civil Nuclear Constabulary, including terrorist exercises at Dounreay and Faslane. I assisted the police in respect of PIM and PIP matters as a member of the PIP Peer Review Group. I lectured to and trained police Senior Investigating Officers (SIOs) and PIMs in respect of their actions and PIRC expectations when death in custody or serious incidents occur or PIP is implemented.

During my time in PIRC, I was asked to undertake a review of the Independent Police Complaints Commission for England and Wales (now the IOPC), investigation of the Hillsborough Inquiry (the deaths of 97 Liverpool football fans), producing a report and recommendations for consideration to assist the investigation.

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I have also worked in the USA and other countries, undertaking research and producing reports in respect of intelligence matters and police use of force responses, working with the FBI, DEA, NYPD, Baltimore and Washington PDs, etc.

- 2. Please expand on any professional experience you consider relevant to your role within PIRC. This could include previous employment or training.

See above

- 3. Prior to 3 May 2015, did you have any contact with or knowledge of the following Police Scotland officers: Craig Walker, Alan Paton, Nicole Short, Ashley Tomlinson, Alan Smith, Kayleigh Good, Daniel Gibson, James McDonough and Scott Maxwell?

No

- 4. Prior to 3 May 2015, did you have any contact with or knowledge of the Police Scotland officers you encountered in the course of the PIRC investigation? Please include detail as to how and when you met them, and your relationship at as May 2015.

I knew Pat Campbell, he was a Detective Sergeant in CID Operations at police HQ, when I was a Detective Superintendent in CID Intelligence. I had no relationship with him in May 2015.

I knew Kenny Dewar, I was his line manager when he was a Detective Sergeant working on the SID project and was later his line manager in various roles. I had no relationship with him in May 2015.

I knew Elaine Simpson, she was a Detective Sergeant and Detective Inspector in CID Intelligence when I was a Detective Superintendent in CID Intelligence. I had no relationship with her in May 2015.

I knew Ruaraidh Nicolson, he was Detective Chief Superintendent in CID Operations, when I was a Detective Superintendent in CID Intelligence. He was also my line manager when I was a Detective Superintendent in Ayrshire Division. I had no relationship with him in May 2015.

I think that I should point out that there is clear separation within the police, between Operational CID and the Intelligence arena in respect of secret and sensitive matters, (the gathering of sensitive intelligence), CHIS, etc. due to the legal restrictions on such matters crossing into the evidential arena, thereby compromising tactics or placing peoples lives at risk and there are processes and procedures as to how this information and intelligence passes through the 'firewalls'. Consequently, a strict separation was maintained between the operational and intelligence environments. This was and is subject to annual inspection by the Interception of Communications Commissioner and Regulation of Investigatory Powers Commissioners, now the Investigatory Powers Commissioner.

- 5. As at 3 May 2015, was there any process within PIRC for formally recording that a PIRC staff member was acquainted with a Police Scotland officer?

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No. I think I need to clarify the term 'acquainted'. While I was acquainted with a large number of police officers due to the nature of the various roles I had performed, this did not mean I had worked closely with them at any point in my career or was friendly with them on or off duty, merely that I knew, had met or was aware of them.

To outline every police officer I knew would be a huge ask. Due to my various roles in the Police I was 'acquainted' with numerous police officers.

6. As at 3 May 2015, was there any PIRC policy or guidance for PIRC staff who were acquainted with a Police Scotland officer that they encountered in their PIRC role?

In 2015, PIRC had a Code of Conduct for its employees. Within this code, was the following:

Identifying and Declaring a Conflict of Interest - it is important to promote public confidence in the PIRC as this could be undermined if it appeared that any member of staff was able to be influenced inappropriately in the way in which they carried out their duties.

Commissioner and Directors

The Commissioner and Directors must declare their interests (with the exception of trade union membership and membership of a political party) and the information will be available for public inspection. In addition their posts are politically restricted.

Other Employees

Other staff will also be required to declare personal or business interest which may, or may be *perceived* (by a reasonable member of the public) to, influence their judgement.

The Police Investigations and Review Commissioner

7. What was your position at PIRC on 3 May 2015? What were your duties and responsibilities in this position?

I was a Senior Investigator. From my then job description:

ROLE DESCRIPTION

As Senior Investigator you will lead an investigative team with responsibility for carrying out independent investigations into the most significant incidents concerning the delivery of policing in Scotland as prescribed in the Police and Fire Reform (Scotland) Act 2012 and associated Regulations for Investigation.

PRINCIPAL ACCOUNTABILITIES

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1. To head a team of Deputy Senior Investigators and Investigators, which may include seconded police personnel, under the direction of the Director and Head of Investigations.
2. To lead investigations in respect of matters prescribed in the Police and Fire Reform (Scotland) Act 2012 and associated Regulations for Investigation as instructed by the Director or Head of Investigations.
3. To conduct and supervise, as appropriate, investigations in accordance with legislative requirements, agreed operating procedures, protocols and guidelines.
4. To assist in the development and implementation of investigative strategy and policy.
5. To ensure the efficient and effective management of resources allocated to investigations.
6. To take witness statements, conduct interviews and prepare reports for the Commissioner and for the Crown Office and Procurator Fiscal Service as required.
7. To attend court, misconduct or other hearings for the purpose of giving evidence.
8. To provide advice and guidance to investigation team members.
9. To assess the accuracy, completeness and quality of work submitted by investigative team members.
10. To visit incident scenes and supervise scene management, ensuring that all necessary action is taken to preserve and recover evidence where appropriate.
11. To ensure that the quality, consistency and timeliness of investigations are of the highest standards.
12. To contribute to the provision of a 24-hour on-call facility and be prepared to work unsocial and extended hours.
13. To maintain accurate records of enquiries and investigations for audit purposes.
14. To identify opportunities for improving performance or processes.
15. To liaise with other agencies and personnel as required.
16. To ensure that all correspondence, including enquiries and/or other processes, are allocated effectively and thereafter concluded within set time frames, having attained the highest possible standard.
17. To form part of the PIRC Investigations senior management team and actively engage in strategic planning and policy implementation.
18. To prepare reports as directed, on any matter concerning PIRC investigations and its activities.
19. To participate in the PIRC career development and Performance Review Process; to appraise, assess and counsel staff as required; to make recommendation to senior management in respect of this activity, including highlighting specific training and career development needs and opportunities.

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20. To ensure staff conform to the requirements of the PIRC Code of Ethical Behaviour and to take appropriate action where breaches occur.
21. To actively pursue meaningful and harmonious working relations with colleagues and other agencies' personnel ensuring a positive team spirit.

8. What training did you have for this position? Please include details as to any training undertaken at the beginning of your employment with PIRC, at the beginning of your then-role (if different) and any training undertaken during this role?

Immediately prior to joining PIRC I was a Detective Superintendent in the police and in this regard had extensive training on all aspects of investigations, personnel management, firearms, intelligence, diversity, etc. I no longer have a record of all the training I undertook in the police, although it was extensive. I do remember having attended various Detective Training courses, including being trained as a Senior Investigating Officer.

Within PIRC, there is regular training on such matters as data protection, GDPR, FOISA, Diversity and Inclusivity, Unconscious Bias, etc. In 2014 I trained as a Post Incident Manager (PIM).

9. Did you feel adequately trained and experienced to carry out this role?

Yes

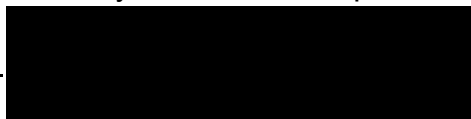
10. Did you line manage or supervise any employees? If so, please provide their names and roles. Please provide details as to how you supervised these employees – i.e., did you have periodic one-to-one conversations, if so, were notes taken? Did you conduct yearly reviews?

In May 2015, I had supervisory responsibility for the following persons. In the initial stages of the Bayoh investigation most Investigative staff were moved to work on the Bayoh investigation. I had line management for the following staff:

William Little, Deputy Senior Investigator
Brian Dodd, Deputy Senior Investigator
Margaret Ann Headrick, Deputy Senior Investigator
Laura White, Investigator
Victoria Karran, Trainee Investigator
John Ferguson (deceased), Investigator
John McAuley, Investigator
Ross Stewart, Investigator
Garry Sinclair, Investigator
Maurice Rhodes, Investigator
Willian Davidson, Investigator
Stuart Taylor, Trainee Investigator

There was daily dialogue between all staff. No notes would have been taken. During briefings, if there was a requirement, notes may be taken to keep a record of what was

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discussed. I believe PIRC has provided such material, i.e. the minutes of the daily briefings, in respect of the investigation into the death of Mr Bayoh.

I undertook appraisal of staff as part of the annual appraisal cycle.

11. Who was your line manager or supervisor? Please provide details as to how you were supervised by them.

Irene Scullion, then Head of Investigations. Her role was primarily strategic oversight of investigations, balancing resources across multiple investigations, liaison with police and other bodies. Senior Investigators were expected to undertake and lead their own major investigations.

In respect of the investigation into the death of Mr Bayoh, there was significant involvement by all senior staff in PIRC due to the high profile nature of the investigation, then Commissioner, Kate Frame, then Director of Operations, John Mitchell, then Head of Investigations, Irene Scullion, William Little, Keith Harrower, media staff and myself.

12. With specific reference to 3-5 May 2015, did you feel PIRC had sufficient resources to carry out the investigation as instructed by the Crown Office and Procurator Fiscal Service (COPFS)? If not, please provide detail as to what resources were lacking and any impact of this.

I consider that PIRC undertook a comprehensive and thorough investigation into the death of Mr Bayoh.


However, the investigation was on occasion hampered and delayed by a lack of resources, meaning that it proceeded more slowly than would have been achieved had more resources been available. As I outlined earlier, the money initially allocated to PIRC by the Scottish Government was enough to recruit 20 investigative staff to cover all of Scotland, 24 / 7 / 365.

In a normal week, PIRC Investigators worked Monday to Friday from 8am to 4pm. Outwith these hours PIRC placed three investigators in an on-call team, to be called out to incidents which occurred outside office hours. This was to provide an initial response to determine the nature of the incident and what additional resources would thereafter be required to undertake lines of enquiry.

On 3 May 2015, the PIRC on-call team would have been three persons, however six persons were called out. Being on-call places severe restrictions on PIRC investigator's private lives. They have to be available to be called out at short notice, they cannot travel far from home, they have restrictions placed on their social lives, etc.

On 4 May 2015, more staff were called to the office to work on the Bayoh investigation.

Resourcing issues were compounded on 12 July 2015, when the deaths of John Yuill and Lamara Bell in a car crash on the M9 occurred and resources had to be split

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across multiple investigations. In addition, before and after the death of Mr Bayoh, PIRC were also investigating other serious incidents.

13. Between May 2015 - August 2016, do you feel that there was adequate resourcing for PIRC to comply with its statutory obligations in terms of:

- 1.13.1. Funding;
- 1.13.2. Staffing numbers;
- 1.13.3. Training opportunities; and
- 1.13.4. Expertise of staff.

Funding – I do not consider that the Scottish Government adequately funded PIRC, which led to resourcing issues (see previous). In the years following the Bayoh and M9 investigations the Scottish Government did increase the funding for PIRC which allowed the recruitment of additional investigative staff..

Staffing numbers – See previous.

Training – as this was early in the establishment of PIRC, we relied on the previous training and experience of the staff we recruited as investigators.

In respect of staff expertise, many of the staff were former police officers, primarily detectives. Others had investigative experience gained through the Army Special Investigations Branch, Fire Service, Borders and Immigration, etc. In this regard, I consider the staff to have had sufficient expertise to conduct investigations. The challenge was not the experience of staff, the challenge was that lack of staff slowed the investigation.

14. Do you feel that your former role as a police officer had any advantages or disadvantages for your work at PIRC? If so, please provide full details.

I consider my role as a former police officer was a considerable advantage in undertaking my role in PIRC. For example, I had previously led the investigation of death in custody, murder and other major investigations. I also knew in-depth how the police operated, consequently I knew what to ask for and where to look when undertaking investigations, how things should work and be able to determine when they didn't.

15. In 2015-2016 PIRC had various staff members who had previously held roles within the police. Do you feel that PIRC as an organisation was impacted positively or negatively by staff having held roles within the police? Please provide details as to how.

I consider my answer to the previous question also addresses some of this question. I would say there is a misconception in some circles that you can simply recruit anyone and they immediately become a competent investigator. PIRC staff who were former police officers had vast experience of investigations and a wide variety of skills that are required when undertaking death or other major investigations, e.g. crime/incident scene managers, Family Liaison Officers, interview advisors, firearms experience, intelligence, road crash investigation, general CID work, etc. In addition they had

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knowledge of the law and had experience of police practice and procedure and investigative interviewing.

16. Prior to 3 May 2015, what experience, if any, did you have in PIRC investigations of deaths in police custody, or deaths during or following police contact?

Between 1 April 2013 and 31 March 2015, I was involved in the assessment of 52 deaths in custody or deaths following police contact and the investigation of 22 deaths in custody or death following police contact.

Overall since 1 April 2013 to date, I have assessed or examined 271 deaths in custody or following police contact and been involved in, led, directed or overseen 192 such investigations.

Incapacitant spray discharge at Victoria Hospital on 18 October 2014

17. Did you have any involvement in the PIRC investigation into the discharge of incapacitant spray in the A&E of Victoria Hospital, Kirkcaldy on 18 October 2014? If yes, please provide full details of your role.

Yes. I quality assured the PIRC report.

18. PIRC issued a Report of Investigation on 23 March 2015. Did you have involvement in drafting or issuing this report? If yes, please provide details.

See above

19. If you were not involved in this investigation or report, were you aware of either as at 3 May 2015? If you were not aware of the investigation and/or the report as at 3 May 2015, did you become so aware at any point across the investigation into the death of Sheku Bayoh? If so, when and how?

See above

20. PIRC made a finding that Kirkcaldy Police Office was not following guidance on the control, storage and recording of usage of CS Spray. Were you aware of this finding as at 3 May 2015?

Yes.

21. PIRC recommended that Police Scotland provide fuller guidance to officers in the Fife Division in relation to the issue, use and storage of CS Spray and standardise those procedures throughout Scotland. Was there a timescale given by PIRC for this recommendation to be implemented by Police Scotland?

Police Scotland are asked to report to PIRC within three months of receiving PIRC reports containing recommendations, on what steps they have taken to implement the recommendations. However, PIRC has no statutory powers to ensure the police implement the recommendations or report what action they have taken within the three

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month timescale. However, it is normally the case that the police do report within the three month timescale.

I can see from PIRC records that on 10 November 2015, after the death of Mr Bayoh, that Police Scotland wrote to PIRC describing how they implemented the recommendations. I believe the Inquiry have that correspondence.

Section 15 of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill recently introduced by the Scottish Parliament proposes to amend Section 41 of the 2006 Act to strengthen the powers of the PIRC in respect of recommendations.

22. Was there intended to be any follow up from PIRC to discover if this finding had been implemented?

See above. The only way to discover if the recommendations had been implemented, quite apart from Police Scotland notifying PIRC that they had implemented them, would be to re-visit Fife division and inspect them. PIRC did not and does not currently have the legislative authority to do so (see Section 41C of the 2006 Act).

23. Was this standard practice for PIRC in March 2015?

See above

Your involvement with the PIRC investigation

Sunday 3 May 2015

24. Do you recall when you learned about the events at Hayfield Road on 3 May? Who notified you and when? Do you remember what they said?

I learned about the incident on starting work about 0800 hours on 5 May 2015.


25. Do you recall when you were told that the person involved with the police was Black?

About 0800 hours on 5 May 2015.

26. What function would a Senior Investigator generally perform in an investigatory team? Was that the function you performed in this investigation?

See my role description at Q.7

In summary, take charge and oversee the investigation, allocate roles and responsibilities, formulate policy and strategy in accordance with the terms of reference set by COPFS, determine investigative priorities, brief staff, agree lines of inquiry with other staff including the Commissioner and senior management, liaise with staff in Police Scotland to obtain documents, records or other material, formulate media strategies along with PIRC media staff. Liaise with COPFS throughout the course of the investigation. Examine statements and other material obtained during the course of an investigation on an ongoing basis, develop policy and strategy as the investigation progresses and new information is forthcoming. Liaise with SPA

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forensics, other agencies, e.g. Drugs Advisory services, to gain an understanding of Alpha-PVP, which had been little heard of in Scotland prior to the death of Mr Bayoh.

These were the functions I performed in the Bayoh investigation. I also undertook research by visiting the USA to find experts with experience of deaths involving persons who had consumed Alpha-PVP and then come into contact with police officers and subsequently died. There had been a significant number of Alpha-PVP (referred to as Flakka) deaths in Broward County, Florida, I offered details of persons with expert knowledge to COPFS.

27. How many times had you carried out this role prior to 3 May 2015?

I cannot provide a precise number, but I had been involved in or in charge of 22 death investigations by PIRC prior to May 2015.

28. Did it involve supervising the work of any PIRC staff members? If so, who and how did you carry out that supervision?

Yes, most PIRC Investigations staff worked on the Bayoh investigation during its early stages.

- William Little, Deputy Senior Investigator
- Keith Harrower, Deputy Senior Investigator
- Brian Dodd, Deputy Senior Investigator
- Margaret Ann Headrick, Deputy Senior Investigator
- Ian MacIntyre, Deputy Senior Investigator
- Edward Miles Deputy Senior Investigator
- Alistair Lewis, Investigator
- Kareen Pattenden, Investigator
- Laura White, Investigator
- Victoria Karran, Trainee Investigator
- John Ferguson (deceased), Investigator
- John Clerkin, Investigator
- John McAuley, Investigator
- Stuart Taylor, Trainee Investigator
- Jim Bonner, Investigator
- Ross Stewart, Investigator
- Kevin Rooney, Investigator
- Garry Sinclair, Investigator
- Maurice Rhodes, Investigator
- Willian Davidson, Investigator
- Alex McGuire, Investigator

Staff were allocated actions to undertake, which is standard in any major investigation. They would then complete that action, with the results, e.g. statements taken, productions seized, loaded into PIRC systems. I would check material gathered and if I identified anomalies, e.g. if a witness contradicted another witness, potentially ask that they be revisited and a further statement taken to address the anomaly.

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I had daily contact with staff who would brief myself and William Little on how their enquiries and actions were progressing, equally we would brief them on the overall progress of the investigation.

29. On 3 May 2015, were you aware of any media coverage surrounding the incident? Were you aware of any details of the incident on social media?

No. See answer to Q.24

30. What is PIRC's involvement, if any, in the securing and searching of property in an investigation into a death in police custody?

Does the Inquiry mean securing and searching a person's house (property)? If this is the case, then PIRC has no role in initially securing and searching a person's house. PIRC does not investigate the actions of a member of the public, it investigates the actions of police officers and police staff.

Where a person dies following police contact in a property, the police will normally take possession of the property (secure it) to allow crime/incident scene examination, recovery of productions, etc. The investigation may then pass to PIRC, but the police will have already secured and potentially searched the property. PIRC scene managers may then also search the property for anything PIRC considers relevant to the investigation. On some occasions there may be a joint search by police and PIRC, e.g. the police may be investigating crimes committed within the property prior to the death and PIRC investigating the death.

31. Were you aware of Police Scotland's search and securing of scenes at Arran Crescent, Zahid Saeed's family's home address and Martyn Dick and Kirsty Macleod's home address on or following 3 May 2015? What involvement did you, and other PIRC staff, have in this process, if any? If you were aware of the search and securing of the aforementioned scenes, what was your understanding of the legal basis for those searches?

I became aware after the events that Police Scotland had secured and searched the above persons homes. PIRC staff had no role to play in this regard.

My understanding of the law, which is trained to all police officers, is that the police can only enter a house without a warrant in certain specific circumstances, i.e. while in close pursuit of a person who shortly before has committed a serious crime, if they hear cries for help coming from within, or to quell an ongoing disturbance. The police also have a general power afforded to them under Section 20 of the Police and Fire Reform (Scotland) Act 2012, to take steps to protect life, which may include entering a house without warrant to ensure the safety of persons within.

In addition, Article 2 of the European Convention on Human Rights (ECHR) is the Right to Life. Article 2(1) places an obligation on the state, in many instances – the police, to take appropriate steps to safeguard the lives of those within its jurisdiction.

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In broad terms, a positive obligation to take preventative operational measures to save life.

32. Were you aware of any of Police Scotland’s officers consulting PIRC in respect of any seized property? If so, what was discussed and what was the outcome?

I later discovered and it is included in my reports, which the Inquiry has been provided copies of, that:

‘About 1545 hours on Monday 4 May 2015, Ch Supt McEwan again visited the family of the deceased. He states that the family were dissatisfied with the management of the incident and in particular why PIRC still had control of the home of the deceased and witness Collette Bell. He states that the family members claimed they had been prevented by the PIRC from entering the house of the deceased and Collette Bell at Collette Bell’s address at Arran Crescent, the previous day. In this regard, it appears that Chief Supt McEwan was unaware that Police Scotland had seized and continued to secure the property. On being informed of the family’s concerns, PIRC Family Liaison Officers (FLOs) were successful in facilitating the release of the house from Police Scotland later that day to witness Bell.’

33. At this stage, what was your understanding of the legislative basis upon which PIRC were instructed to investigate the incident by COPFS? Was your understanding that the investigation was instructed under section 33A(b)(i) or section 33A(b)(ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006?

I consider it is clear from Keith Harrower’s PIRC statement that on 3 May 2015, Mr Green of COPFS instructed PIRC to “to carry out an independent investigation into the circumstances surrounding the death of the man (Sheku Bayoh)”.

Section 33A(b)(ii) – i.e. where directed to do so by the appropriate prosecutor, to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

Note: the 2016 Act was substituted into the legislation in June 2017 replacing the previous reference to the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

PIRC were not instructed by COPFS to undertake a criminal investigation, under Section 33A(b)(i) of the 2006 Act, into the actions of the officers at Hayfield Road, Kirkcaldy.

Later instructions were received from COPFS to investigate allegations of collusion, breaches of the Data Protection Act, criminal allegation of assault made by Zahid Saeed, re-investigation of allegations made against PC Alan Paton. However, these

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were distinct and separate matters and reported in Volumes 2 and 3 of my reports to COPFS.

Monday 4 May 2015

34. Did you attend a PIRC briefing on the morning of 4 May 2015 at the PIRC office in Hamilton? Who delivered this briefing? Do you remember what was said? If so, please provide details. Are you aware of there being any minutes of this briefing beyond those contained in PIRC-04156?

No. See response to Q.24

35. Do you recall if it was at this briefing that Deputy Senior Investigator William Little was allocated the investigation with you as Senior Investigator having oversight? If not at this briefing, do you know when was this formally confirmed? Why were you and William Little placed in these roles at this point?

I was placed in charge on Tuesday 5 May 2013. On Sunday 3 May the PIRC on-call team led by Deputy Senior Investigator (DSI) Keith Harrower responded to the incident. I believe that Monday 4 May 2013 was a public holiday and I was off that day. It was decided on 5 May 2013 that I would lead and oversee the investigation with DSI William Little as my deputy. I presume we were allocated these roles due to our experience in conducting investigations.

36. Deputy Senior Investigator Keith Harrower was in charge of PIRC's investigation on 3 May 2015. What impact, if any, did his handover of responsibility for the investigation to DSI Little and yourself have on the investigation? What was done to mitigate any impact?

There was no impact.

37. Do you recall what handover you received from PIRC staff who had been present on 3 May 2015, including DSI Harrower? If so, please provide details.

I received a comprehensive briefing from all staff who had been involved up to that point. I also read all paperwork available at that stage. DSI Keith Harrower had also prepared a briefing document for management (see PIRC-03694).

38. How did you balance having oversight of the investigation alongside the investigatory, practical steps you undertook? Do you feel there is any difficulty presented by a person acting as both the overseer and a participant in the investigatory team?

I minimised any practical investigatory actions by myself, restricting these primarily to liaison functions, e.g. contact with the Bayoh family and their lawyer, contact with Police Scotland senior management, the Scottish Police Federation and their lawyer, Professional Standards Department. It is standard practice for a Senior Investigating Officer to have these contacts.

Much later in the investigation, William Little and I undertook the examination of data protection concerns.

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39. Did the lack of written instruction from COPFS at this point impair PIRC's investigation? Was it normal practice for PIRC to commence an investigation directed by COPFS without formal written instruction?

It is normal for PIRC to receive a verbal instruction from COPFS to investigate death in custody or death following police contact, so as not to delay the investigation by awaiting a formal letter of instruction which may take a few days to arrive.

I liaise with COPFS in respect of deaths on a regular basis, primarily Fiscals in the Scottish Fatalities Investigation Unit.

40. The post-mortem took place on Monday 4 May. What is PIRC's role, if any, in dealing with the body of a deceased person, including the post-mortem examination? What is your understanding of the involvement of Police Scotland in this process?

The body of a deceased person in a case where COPFS has instructed an investigation is a Crown production and can only be released to relatives once COPFS gives permission.

The body in such cases is normally escorted to a mortuary by either police officers or PIRC staff, or a combination of both, to ensure continuity of evidence, i.e. to ensure that at no point can any person deliberately or unintentionally interfere with the body prior to it being secured in the mortuary.

On occasion resources and geography will dictate who will fulfil this function. It would not be normal to delay transport of a body to a mortuary simply to await the arrival of PIRC staff. PIRC are solely based in Hamilton and cover all of Scotland and it can take a number of hours for staff to get to any incident scene, particularly outwith office hours.

41. What was PIRC's involvement in the post-mortem examination on 4 May 2015? Was this normal practice for PIRC?

I consider this question is better addressed by those who were involved, see statements of William Little and Investigator John Ferguson (now deceased).

42. What is the involvement of PIRC, if any, in identification of a deceased person? Were you aware at the time that the family did not wish the post-mortem to take place on 4 May? Who did you understand was ultimately responsible for the decision that the post-mortem would go ahead on 4 May?

To answer these questions in reverse order.

Mr David Green of COPFS instructed on 3 May 2015 that the post mortem would take place on 4 May 2015.

I became aware after it had occurred that the family of Mr Bayoh did not want the post mortem to take place on 4 May 2015. I cannot remember when I learned this, but I can see I have included this in my reports.

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Prior to any post mortem it is standard practice to take all steps to identify the deceased, primarily and essentially this is to allow notification of the death to the deceased's next of kin as soon as possible, and to provide this information to pathologists.

PIRC need to know the identity of the deceased for investigative purposes. Identification is always undertaken by Police Scotland.

43. Whose responsibility was it to obtain relevant medical records for the pathologists undertaking the post-mortem? Were you aware of PIRC taking any action in relation to this issue?

The lead investigative agency, in this instance PIRC, normally obtains hospital records, if this has not already been done by the police, and provides them to the pathologists before the post mortem. This is to allow the pathologists to determine which injuries were caused by medical intervention and which were caused during the incident itself.

I can see from the statement of John Ferguson, one of my Investigators who has subsequently died [REDACTED], that in his statement which has been submitted to the Inquiry he stated *"The medical records were not found at The Victoria hospital until 11.5.15 as they had been mislaid by staff there."*

44. At 12.35 on 4 May 2015 William Little was contacted by Assistant Chief Constable Nicolson by telephone, who expressed concerns regarding the handover of the investigation from Police Scotland to PIRC. Were you aware of this call at the time, or subsequent to the call taking place? If so, please provide full details of when you became aware of the terms of this telephone conversation, who informed you, what you were told had been said by both parties and if this call prompted you to take any action.

I was not aware at the time. However, during later discussion with William Little I became aware that ACC Nicolson's concerns were that PIRC were examining one aspect of the death and Police Scotland were examining the events in the lead up to the death. ACC Nicolson considered that PIRC should take over all aspects of the investigation as the pre-cursor events might have a bearing on the actions of Mr Bayoh leading to his confrontation with police officers at Hayfield Road.

45. Were you aware on 4 May of any concerns expressed by Chief Superintendent Garry McEwan about PIRC's conduct in the investigation? If so, how were you made aware, and what did you understand his concerns to be? Did you share knowledge of these concerns with others at PIRC? What did you do, if anything, to address those concerns?

I became aware from 5 May 2015 onwards that Ch Supt McEwan had raised concerns. However I considered these concerns were not valid. I have outlined these in my reports, which the Inquiry has copies of. The following are the relevant extracts:

On their return to Kirkcaldy police office DC's Parker and Mitchell state that they advised Chief Superintendent McEwan of the outcome and of Adeymi Johnson's

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request to see him. Chief Supt McEwan in his statement to PIRC provides, "The underlining suggestion that I perceived at this point was the real potential for heightened community tension, anger, upset and dissatisfaction by the family and ultimately escalation beyond that should I not speak with the family direct. At this point I confirmed that the PIRC had no Family Liaison Officers in place and that they would not be available until the following day. This in my mind was not acceptable and I felt it was important to speak with the family and give them the details surrounding Sheku's death as I knew them at that time. I spoke with the ACC who agreed with my thoughts" (see procedure below).

It should be noted that when Chief Supt McEwan spoke with DS Dursley earlier he stated that the decision regarding what the family should be told was a matter for the SIO, D/Supt Campbell. He did not suggest to DS Dursley that passing the death message was a matter for PIRC FLOs. Agreed procedures between Police Scotland and the PIRC for the deployment of FLOs are set out in a protectively marked document regarding Family Liaison Officers, which states,

Respective roles of Police Scotland and the PIRC.

As it is of the utmost importance that the delivery of the death message to the next of kin is not delayed, Police Scotland will always assume responsibility for delivering this message.

Thereafter, Police Scotland would normally deploy a FLO to the family should the death have occurred following police contact. However, immediately it is known that the PIRC will be carrying out an independent investigation, Police Scotland will liaise with the PIRC and arrange a handover of FLO responsibilities.

The handover from Police Scotland's FLO (where one is already deployed) to the PIRC FLO should involve a face to face meeting between the FLOs. There may be occasions when a hand over has to be carried out over the telephone but these should be very rare occasions and only take place with very good reason when all other alternatives have been exhausted.

From Ch Supt McEwan's statement it appears that he was unaware:

- i. that responsibility for passing the death message rested with Police Scotland and in particular the SIO, D/Supt Campbell;*
- ii. that responsibility for family liaison lay, at that stage, with Police Scotland; and*
- iii. that D/Supt Campbell had been unable to obtain the services of a FLO.*

Chief Inspector Shepherd states that, "C/Supt and I both explained that the examination of all scenes would be directed by PIRC. It was apparent at that time that there were signs of a minor disturbance within, hence the requirement to examine it. C/Supt McEwan informed them that he would contact PIRC staff to assist in retrieving any items from the home address."

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It should be noted that Chief Superintendent McEwan and Chief Inspector Shepherd appeared unaware that responsibility for the examination of the home of witness Collette Bell and the other witnesses' homes rested with Police Scotland.

At that time, the PIRC were only investigating the incident in Hayfield Road, Kirkcaldy.

46. On 4 May PIRC contacted the Sierra Leone High Commission (the High Commission). This is referenced in your Operation Quoich Policy Log (PIRC-04153). Did PIRC have a legal obligation to contact the High Commission? If so, please provide details. Having contacted the High Commission, were you satisfied that the PIRC had discharged its legal obligation? If not, please provide details as to what would have satisfied PIRC's legal obligations insofar as they relate to the High Commission.

This was done by Irene Scullion, then Head of Investigations, I would direct the Inquiry to her.

47. What was PIRC's standard operating procedure (SOP) or guidance that governed this process? Did PIRC adhere to this SOP or guidance in their contact with the High Commission and the Foreign & Commonwealth Office?

There is no PIRC SOP governing this matter.

From research, I can see within the Police Scotland SOP about the investigation of death, which PIRC hold a copy, that in the event of a suspicious death where the victim is a foreign national, the relevant consulate should be contacted and advised of the fact of death and that a police investigation into those circumstances is ongoing. High Commissions of Commonwealth member countries do not require to be informed of the death if the deceased is also a United Kingdom citizen through dual nationality. At the time of his death Mr Bayoh was a citizen of Sierra Leone.

Did PIRC inform members of Sheku Bayoh's family that they were contacting the High Commission?

I am not aware of this matter.

48. Do you recall if you undertook any further work related to this investigation on Monday 4 May? If yes, please provide details.

No.

Tuesday 5 May 2015

49. On this date, COPFS wrote to PIRC providing instructions to PIRC to carry out an investigation into the circumstances leading up to the incident on 3 May and the incident on 3 May in which police became involved with Sheku Bayoh. How did you become aware of these instructions? How did these instructions alter PIRC's investigation?

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Letter of instruction from COPFS. This considerably expanded the investigation. Initially PIRC were verbally instructed to investigate the incident at Hayfield Road, Kirkcaldy where Mr Bayoh came into contact with the police, while Police Scotland were investigating incidents in the lead up to that event. This meant that PIRC had to take over those investigative aspects from Police Scotland, e.g. House to House enquiries, tracing and identifying additional witnesses, etc.

50. On this date, Kate Frame contacted Deputy Chief Constable Neil Richardson and requested that Police Scotland submit various documents to PIRC including certified copies of the CS/PAVA spray records for the officers involved in the incident. Was it normal for the Commissioner herself to make these requests? Was there a SOP that governed how PIRC made requests of Police Scotland for evidence?

There are no rules governing who in PIRC can make such requests. Normally it is the lead investigator or a member of the investigations team who makes such requests. It may have been the case that Kate Frame was merely attempting to assist the investigation. I am unsighted on the specifics.

The Provision of Information to the PIRC is governed by Section 44 of the 2006 Act:

(1) The Authority and the chief constable must, at such times, in such circumstances and in accordance with such requirements as may be set out in regulations made by the Scottish Ministers, provide the Commissioner with all such information and documents as may be specified or described in regulations so made.

(2) The Authority and the chief constable must—

(a) provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner to the Authority or, as the case may be, the chief constable; and

(b) produce to the Commissioner all such evidence and other things so specified or described,

as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.

51. On this date, PIRC made a number of requests via Police Scotland management for operational statements from the officers who attended the incident on 3 May. Was there a SOP that governed how PIRC made such requests of Police Scotland for operational statements? Who was responsible for securing operational statements from the officers?

The was no SOP, the legislation above governed such matters.

The standard method of operation, which is still in place, is for PIRC to direct requests for operational statements (or any other material) to an officer within Police Scotland identified by them as a single point of contact (SPoC). For significant investigations that officer is usually of the rank of Inspector or above. The SPoC would then request

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an officer to submit an operational statement about their involvement in the matter under investigation. The SPOC will then collate all statements and forward to PIRC.

My understanding is that on 3 May 2015, this request was made by Keith Harrower to Detective Superintendent Pat Campbell and other senior officers at the Gold Group meeting that afternoon.

By 5 May 2015, DCI Keith Hardie of the Police Scotland Major Investigation Teams had been appointed as SPoC with his deputy being DI Stuart Wilson, and requests for statements were then directed to them.

52. Would you have expected operational statements to have been provided by the officers who attended the incident by 5 May? If yes, what was your understanding then of the cause of the delay? Did you take any action in response to this?

Yes I would have expected statement to have been provided.

I was advised that Constable Amanda Givan of the Scottish Police Federation had provided advice to the principal officers shortly after 0900 on 3 May 2015 that they should not provide statements. This was before the PIP had been implemented about 1100 hours that day by then Chief Inspector Conrad Trickett.

The delay in obtaining statements from the principal officers considerably hampered the PIRC investigation as we were unsighted on many aspects of exactly what had occurred at the incident scene at Hayfield Road. Consequently on 6 May 2015, I visited DCI Keith Hardie along with William Little and asked him to individually approach each of the principal officers, inform them I considered their status to be that of witnesses to the events and request that they provide statements. I later backed up this request in an email.

On 7 May 2015 and days thereafter, DCI Hardie and DI Stuart Wilson emailed me and informed me that each of the principal officers had been approached to give statements and all had declined on the advice of their Solicitor

53. As at May 2015, could police officers be compelled to provide an operational statement? If so, under what circumstances and authority?

The legislation is complex and not easily understood.

The functions of the PIRC under Section 33A of the 2006 Act are, inter alia,

(b) where directed to do so by the appropriate prosecutor—

(i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;

(ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is

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required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016;

(c) where requested to do so by the Authority or the chief constable, to investigate and report on certain serious incidents involving the police (see section 41B);

(d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C)

Section 41A of the 2006 Act provides:

Investigations under supervision of Lord Advocate or procurator fiscal

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A, must comply with—

(a) any lawful instruction given by the appropriate prosecutor who issued the direction; and

(b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.

Section 41B of the 2006 Act - Serious incidents involving the police

(1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is—

(a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—

(i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person's duties; and

(ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;

(b) any other circumstance in or in consequence of which—

(i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or

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(ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or

(c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.

(2) But a matter is not a “serious incident involving the police” if it is—

(a) a matter—

(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or

(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or

(b) a matter which is being, or has been, investigated—

(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or

(ii) by any other person under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

As a consequence of the foregoing, the Scottish Government enacted secondary legislation, **The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013**.

Regulation 5 of the 2013 Regs provides for co-operation and assistance:

(1) A relevant person **must**, where required to do so by the Commissioner for the purposes of an investigation under **section 33A(c) or (d) of the 2006 Act** (police referred serious incidents or public interest investigations)

(a) produce, in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require;

(b) permit the Commissioner or a member of the investigation staff to

(i) enter any premises which are used by the Authority or the Police Service;

(ii) inspect those premises and anything on those premises which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and

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(iii) remove from those premises anything which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and

(c) provide such other assistance as the Commissioner may reasonably require.

(2) In this regulation—

(a) “relevant person” means—

- (i) the Authority;
- (ii) any member of the Authority’s staff;
- (iii) any constable; and
- (iv) any member of the police staff; and

“Member of the investigation staff” means a member of the staff of the Commissioner designated under paragraph 7B(1) of schedule 4 to the 2006 Act.

To unpick the above: Reg 5(1)(a) - produce, in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require. Can be taken to read, that a constable can be required to produce information within their knowledge in the form of a statement, i.e. produce in a form acceptable to the Commissioner any information the Commissioner may require.

However the anomalous aspect of the legislation is that the 2013 PIRC Regs only refers to serious incidents involving the police, which the police have referred to PIRC under Section 41B of the 2006 Act, not COPFS instructed investigations under Section 41A of the 2006 Act. Effectively PIRC has less powers in a COPFS instructed death investigation, than in a police referred death or serious incident investigation.

Lady Elish Angiolini made recommendations in this regard, which have been placed into the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill recently introduced by the Scottish Parliament, which provides for a Duty of Candour:

“Constables act with candour and are open and truthful in their dealings, without favour to their own interests or the interests of the Police Service. Constables attend interviews and assist and participate in proceedings (including investigations against constables) openly, promptly and professionally, in line with the expectations of a police constable.”

54. What is the importance of PIRC being in receipt of operational statements of police officers involved in the death of a person in police custody? Specifically, what was the importance to this investigation?

As with any investigation, PIRC needed an understanding of what had occurred in order to progress aspects of the investigation. In the absence of initial accounts or detailed statement from the officers, PIRC were left trying to piece together what had

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occurred from the accounts provided by members of the public, many of whom had only partially seen events and were unclear on exactly what happened. In addition, PIRC were left trying to piece together events from other information which we gathered, e.g. 999 and 101 telephone calls, CCTV, other witness statements, etc. all of which takes a considerable period of time and does not fill in the gaps as to what the officers observed, why the officers acted as they did, what were those actions, what was their mindset, their considerations regarding the necessity to use force, etc.

This is the only investigation PIRC has conducted since 1 April 2013, where officers refused to provide statements.

As I outlined at Q.1, I have attended numerous incidents where death or serious injury has occurred and PIP has been implemented. On every occasion, apart from the death of Mr Bayoh, officers have provided initial and detailed accounts, allowing the PIRC investigation to proceed with a good understanding of what occurred.

55. What is the role of PIRC in obtaining operational statements from officers involved in an incident whereby a person has died in police custody? Who ultimately at PIRC held that responsibility for obtaining the statements?

As above, PIRC directs requests for statements to the SPoC, who then transmits that request to the officers. The officers can then either undertake their own statements or choose for PIRC to take their statements. Where an officer undertakes their own statement it is on the understanding that, if there are any anomalies, gaps or matters which they have not covered, then PIRC will take supplementary statements from the officers.

PIRC does not have access to Police Scotland systems, consequently PIRC does not know what shift an officer is undertaking on any day, whether an officer is on a day off, on sick leave or is on holiday, what their contact details are, etc.. Hence why requests are directed through the SPoC. PIRC do not directly approach officers, where we wish to interview an officer as a witness, we direct such a request to the SPoC and also outline the status of the officer, i.e. witness or suspect.

In the case of the death of Mr Bayoh, when the officers eventually agreed to provide statements, PIRC decided to take the statements and not give them the option of providing their own statements. By that time PIRC had a reasonable understanding of what occurred and could ensure the statements comprehensively covered the officer's actions. In addition, since the officers were asked to attend the Scottish Police College (SPC) to have their statements taken, we could ensure that we could compare and contrast what the officers account of events were, to determine whether there were any anomalies, gaps, etc. which we could immediately ask the officers to provide further details.

Ultimately the Commissioner is responsible for all actions by the PIRC. However, the Commissioner can delegate (designate) any member of the Commissioner's staff to take charge of an investigation on behalf of the Commissioner, and other members of

signature of witness 

the Commissioner's staff to assist the member designated to take charge (See Schedule 4, paragraph 7B (1)(a) & (b) of the 2006 Act).

I was present at the SPC in a co-ordination role when PIRC Investigators obtained the officers statements. Prior to interviewing the officers and obtaining their statements an interview plan was prepared for PIRC Investigators.

See: PIRC-04182 (submitted to the Inquiry)

56. What decisions or actions did you take to obtain operational statements from the officers and why?

I met with DCI Keith Hardie and DI Stuart Wilson and corresponded by email with them on this subject. I also spoke to the PIRC Director of Operations John Mitchell who was engaging on behalf of the investigation with the officers' solicitor Professor Peter Watson on this matter.

57. What are the circumstances in which a person is treated as a suspect by PIRC? Do you consider that it is PIRC's responsibility to decide whether to categorise a person as a witness or a suspect in the course of an investigation? What is the significance of treating a person as a suspect?

In any investigation, whether it is led by the police or PIRC, the evidence will decide whether a person is a witness or a suspect. For a person to be considered a suspect, their must be some evidence that would give rise to a suspicion of criminal wrongdoing.

In respect of the Bayoh investigation, it was PIRC's responsibility to decide whether to categorise a person as a witness or suspect.

Where a person is considered to be a suspect, they have all the rights and privileges afforded by law, which includes the right to silence and the right not to incriminate themselves. The person must be cautioned and informed of their rights prior to being interviewed and can decline to answer any questions. The person also has the right to consult a solicitor.

58. Did you have any role in deciding if any of the officers involved in the incident were considered suspects or witnesses?

I am aware that on 3 May 2015, Keith Harrower of PIRC had decided the officers were to be treated as witnesses as at that stage there was no information available which would have placed them into the category of a criminal suspect. Mr Harrower notified Mr David Green of COPFS of this position.

This decision had been taken before my involvement and the status of the principal officers, i.e. that of witnesses, did not change during the investigation. I did not consider during the course of the investigation that there was a sufficiency of evidence to place the officers into the category of a criminal suspect.

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Ultimately, following consideration of all the evidence, the then Lord Advocate James Wolfe determined that there would be no prosecution of the officers in regard to the death of Mr Bayoh.

59. Had you dealt with a similar situation prior to May 2015 in which officers did not provide statements for several weeks after an incident? What was the outcome? Have you dealt with such a situation since May 2015? What was the outcome?

With the exception of the incident involving the death of Mr Bayoh, there have been no occasions since 1 April 2013 until present, where police officers have refused to provide statements.

Wednesday 6 May 2015

60. What was your priority on this day as Senior Investigator? On this day, did you have a view as to what evidence PIRC awaited would be of most use to your investigation?

My priorities for that day included:

- Implementing a forensic strategy to identify and recover all relevant evidence or material pertinent to the investigation.
- Continue to examine all documents, statements, etc. gathered to date to gain an understanding of what occurred and determine lines of enquiry to be followed by PIRC staff.
- Meet with DCI Keith Hardie to request he approach officers for their statements.
- PIRC urgently needed the accounts of the principal officers as this would be most useful to the investigation.

61. At this point, in advance of receiving any toxicological analysis, how were PIRC approaching their investigation? Did you, or the wider PIRC team, have a working view as to Sheku Bayoh's cause of death?

PIRC would gather all available evidence.

The initial post mortem results provided that the cause of death, was 'unascertained - pending investigations'. Consequently, PIRC did not know what caused the death and, in the absence of such information, I would not speculate but keep an open mind as to the cause of death.

62. On this day, do you recall meeting with members of the family of Sheku Bayoh and their legal representative, alongside other PIRC staff? Do you recall who attended this meeting from PIRC and what the purpose of this meeting was?

I attended a meeting with the Bayoh family at the offices of Aamer Anwar, Solicitors, in Carlton Place, Glasgow. I was accompanied by William Little and Alistair Lewis, who was one of the PIRC Family Liaison Officers (FLOs). The purpose was to engage with the family and provide a short update on the status of the investigation.

signature of witness 

63. What do you remember of this meeting? Did you take any notes of this meeting? Did any member of PIRC staff who attended? If not, why not? Is it standard PIRC practice to take minutes of meetings of this nature, and more generally?

I did not take notes of the meeting. I do not know if William Little or Alistair Lewis took notes. Normally in respect of Family Liaison, the FLO will take notes. I don't have a good recollection of the meeting, however I do recall that the family were unhappy with Police Scotland actions and information provided to them by the police.

64. Did you, or any other PIRC staff member, prepare any notes or briefing documents in advance of the meeting to inform the updates the family were given during the meeting?

I did not prepare any notes. My purpose on meeting the family was so that I could introduce myself as the person leading the investigation and provide a short update on its progress.

65. Were records kept of updates and information passed to the family about the PIRC investigation? Do you recall if you, or any PIRC staff member, described Sheku Bayoh's physical appearance or body during the meeting? If yes, what was said?

I would direct the Inquiry to the Family Liaison Officers (FLOs) Logs which detail contact with the family and information exchanged. Also, William Little took notes during some such meetings.

66. Were comments ever made to the family of Sheku Bayoh unofficially or "off the record" by PIRC staff?

Not that I recall. I do recall telling the family and Mr Anwar that PIRC had no powers to compel the officers to give statements, which is and was a factual position. I have some recollection of Mr Anwar asking if the officers had been suspended and telling him that that was a matter for Police Scotland not PIRC. I do not consider these to be 'off the record' matters.

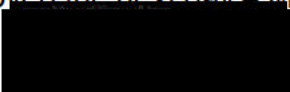
67. Were comments ever made unofficially or "off the record" by PIRC staff to other parties involved in the investigation such as Police Scotland or the Scottish Police Federation (SPF)?

Not that I recall.

68. As at 3 May 2015, what guidance or SOP did PIRC have in place in relation to liaison and contact with a family? Who has the responsibility of liaising with a family across a PIRC investigation; PIRC, COPFS or Police Scotland? What happened in this case?

PIRC had a Family Liaison SOP in place from 16 April 2013, this was updated in June 2015 and provided to the Inquiry as PIRC-03885. Responsibility for liaising with the family lies with PIRC FLOs. However, in the very early stages of an investigation, Police Scotland may deploy FLOs, then hand over such responsibility to PIRC FLOs.

In this case, it was the intention of Police Scotland to deploy FLOs on 3 May 2015, but this did not occur. PIRC FLOs deployed the next day 4 May 2015. The current position

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remains that in majority of cases a Police Scotland FLO would be deployed initially. Then, a PIRC FLO would in a relatively short timescale be introduced and take over the role.

69. What is role of a PIRC Family Liaison Officer (FLO)? How is the role explained to families? Do you have any comments to make as to how family liaison functioned in this case?

The role of the Family Liaison Officer (FLO) involves the day-to-day management of the partnership with the family of the deceased and close liaison with the lead investigators to ensure families are treated appropriately, professionally and with respect to their needs. Normally the Family are given a PIRC FLO leaflet explaining the role of PIRC and the role of the FLO.

The Family of Mr Bayoh and their solicitor Mr Anwar instructed that all contact with the family be made through Mr Anwar. It became increasingly obvious that there was a lack of engagement with the PIRC FLOs. Alistair Lewis may be better placed to answer this.

70. Do you know how many staff at PIRC were trained as FLO as at 3 May 2015? How are FLOs assigned by PIRC – is it based on who is available on the day? Is there any consideration given to sensitivities such as religion or gender?

I cannot recall exactly how many FLOs PIRC had in 2015, I think it was about six or seven. Dependent on the complexity or sensitivity of the matter under investigation, PIRC FLOs are normally selected for their experience. If a family raise any issues about religion or gender they are taken cognisance of. The FLO Coordinator considers all relevant issues, including the staff themselves, and directs who takes on the FLO role. I would direct the Inquiry to Alistair Lewis who was PIRC FLO Co-ordinator for a number of years.

71. What are the differences between family liaison services provided by Police Scotland and family liaison services provided by PIRC of which you are aware?

There is no difference. PIRC FLOs receive the same training as Police Scotland FLOs, which is nationally agreed on a UK wide basis.

72. Your Operation Quoich Policy Log (PIRC-04153) at decision 37 records that a decision was taken by PIRC on 27 May 2015 that PIRC would not correspond with the family via text or email. Is this accurate? If so, why was this decision made?

On 27 May 2015, Mr Ade Johnson, brother-in-law of Sheku Bayoh, sent a text message to Alistair Lewis, one of the PIRC FLOs, posing a detailed series of questions and requesting answers about the investigation.

I considered that it would not be appropriate to provide this detailed information. It is not normal practice for a family to be provided with full details of an ongoing investigation. I was also aware a number of stories had appeared in newspapers about the investigation and I did not know the source(s) of that information. Consequently, I determined that PIRC would follow standard FLO processes, which is that the Family

signature of witness .. 

would be provided information through either direct meetings with the FLOs or through telephone contact.

Additionally, as the investigation was live, stories placed in the public domain risked undermining the investigation by potentially influencing witnesses memories prior to them providing statements.

I also recorded in the same policy log that *"PIRC understands family's frustration regarding progress in light of 9 officers refusal to provide statements and will seek a meeting with Mr Anwar and family and DSI/SI to provide our position"*.

In addition, Section 46(6) of the 2006 Act provides: Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A (unless the appropriate prosecutor consents to such disclosure). Consequently PIRC FLOs require to be careful about what information they impart to a family.

73. On this day, did you make a request to Police Scotland that the officers that attended the incident provide operational statements? If so, to whom did you make that request and in what form? If you did not request the provision of operational statements on this date, are you aware of any member of PIRC staff that did and to whom at Police Scotland they made that request?


On 6 May 2015, William Little and I met with DCI Keith Hardie and DI Stuart Wilson at Kirkcaldy police station, confirmed the status of the officers to be that of witnesses, informed them of such and requested they obtain operational statements from the principal officers.

Thursday 7 May 2015

74. At approximately 12.20, you emailed Keith Hardie of Police Scotland confirming that PIRC wished to confirm the individual position of each of the officers in relation to PIRC's request for statements (PIRC-02671). This correspondence confirmed the status of the officers as witnesses to the event. Prior to this email, had the officers been asked to provide statements and informed of their status as witnesses (i.e. was this email you reiterating the request and their status, or relaying it for the first time)? Were you aware of any responses received to any existing requests?

Keith Harrower had notified Police Scotland senior management on 3 May 2015 at the Gold Group meeting, that he considered the officers to be witnesses and requested that statements be obtained from them.

This position was repeated by William Little on 4 May 2015 at a meeting he had with Det Supt Pat Campbell, DCI Keith Hardie and DI Stuart Wilson. William Little informed me on 5 May 2015 that he came away from the meeting thinking that PIRC would receive the officers statements that day.

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On 6 May 2015, William Little and I visited DCI Keith Hardie and DI Stuart Wilson at Kirkcaldy police station and again verbally requested witness statements from the officers. I backed this up with an email to them on 7 May 2015, reiterating the position of the officers and requesting they individually approach the officers, confirm their status as a witness to events and request witness statements.

75. In this email you ask for the identity of the officers who attended the initial incident and those who provided Sheku Bayoh with “aftercare”. Did you know the identities of the officers at this point? Did any PIRC staff member know their identities?

PIRC were aware of the officers’ names on 3 May 2015.

76. Why was this request for statements sent to Police Scotland, rather than the officers’ legal representative? Was PIRC relying on Police Scotland to liaise with the officers’ legal representative across this time?

Firstly, the process as set out in legislation is for PIRC to notify the Chief Constable or his representative of a request for the officers to provide statements. As part of that process PIRC direct such requests to the Police Scotland SPoC, in this instance, DCI Keith Hardie or his deputy DI Stuart Wilson.

Secondly, the officers were witnesses, consequently we would not direct a request to their legal representative, unless they were considered suspects.

I do not consider that there was a need for Police Scotland to engage with the officers’ legal representative, as the officers were witnesses to events and were under the command of Police Scotland. Police officers are professional witnesses and submit statements on a regular basis as part of their standard duties. Police witnesses do not normally require the support of a legal representative when writing statements, nor does one sit in on a witness interview. Were the officer to say anything incriminating while providing their witness statement, PIRC would have immediately stopped the interview, administered a caution and advised the officer of their right to silence and to then seek legal advice and/or await the attendance of the legal advisor before the interview proceeded.

77. On this day, Stuart Wilson emailed you and confirmed that each of the officers had been contacted, their status clarified and that they had been asked if they were willing to provide a statement. In response, each officer advised that they did not wish to provide a statement at that time, following legal advice, with the exception of Nicole Short, Alan Paton, Scott Maxwell, all of whom still required to be seen as they were either on sick leave or otherwise off work. What were your thoughts in relation to of the contents of this email? What steps, if any, did you take as a result?

I was quite surprised by this position given that PIRC had re-iterated a few times since 3 May 2015 onwards that the officers were witnesses. I was also surprised at the stance taken by the officers and their legal representative. I consider police officers must be accountable for their actions, particularly where they use force and failing to provide such accounts undermines confidence in policing.

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To put additional context surrounding my view on this matter, on 4 June 2015, when the officers eventually gave statements, some of the officers stated that on 3 May 2015 they were advised not to give statements by PC Amanda Givan of the Scottish Police Federation (SPF). PC Givan in her first statement remains silent on this matter. As a consequence of which, on 22 June 2015, I obtained a second statement from PC Givan. Within this statement, she states,

I have been asked about advice I gave to officers regarding whether they should provide statements and I have been informed that the officers recollection is that I advised them some time before the arrival of CI Conrad Trickett but my recollection is that it was sometime after the Det Supt had been to see the officers.

I told the officers that they may or may not be asked for a statement that day and that they should establish their status, either a suspect or a witness if they are a suspect they cannot be compelled to give a statement and that I would arrange to get legal advice.

78. What was your understanding of the law or policy guidance on the issue of officers failing to provide operational statements when requested, from PIRC, Police Scotland or the SPF? Did PIRC have any powers to obtain statements, where the officers were categorised as witnesses and were not willing to provide a statement voluntarily?

PIRC has no powers to compel officers to provide statements in a COPFS instructed investigation (see earlier).

However, Police Scotland could instruct (order) the officers, as witnesses, to provide a statement. It is within their standards of professional behaviour, i.e. Constables give and carry out only lawful orders and instructions. Failure to obey a lawful order may constitute misconduct under The Police Service of Scotland (Conduct) Regulations 2014. I consider this is a matter for Police Scotland to further answer.

79. Do you recall learning that Professor Peter Watson had been told that Keith Hardie or another connected person had said officers were compelled to provide statements? If so, please provide full details.

I do not recall.

80. At the PIRC morning briefing on this day, William Little outlined the day's priorities as PIRC FLO to meet with the family, liaison with Police Scotland Major Incident Room and obtaining medical records. Did you agree with these items as the priorities for the PIRC investigation? If you had disagreed with the priorities identified by William Little at any point in the investigation, what would you have done? Did you disagree with the investigation's priorities identified by William Little at any point?

I set the policy and strategy for the investigation. William Little would then 'translate' that into a series of actions for staff to undertake, e.g. obtain statements, obtain productions, obtain documents, etc. We would work seamlessly, discuss and agree priorities.

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The availability of resources, witnesses and numerous other factors may impact on what can be achieved in any one day, consequently an investigation may have to flex dependent on these variables.

I can see from my policy files that on 7 May 2015 that I determined various strategies to be undertaken:

- CCTV and Digital Evidence Strategy
- Major Incident Room
- Family Liaison
- Productions
- Post Mortem Examination update
- House of House Enquiries & Strategy
- Review of Police Scotland House to House Strategy
- Media Strategy
- Update narrative

Some of these would translate into actions to be undertaken by staff, e.g. House to House enquiries, CCTV and Digital Evidence recovery, which may take place over a number of days, some are generic to any major investigation. This does not mean that I am disagreeing with William Little, more setting overarching policy and strategy for the investigation.

Friday 8 May 2015

81. On this day, there was a meeting between the family’s legal representative and PIRC. You and William Little attended. Do you recall attending this meeting? If so, please provide your recollection as to what was discussed and how the relationship with the family was at this time. Were minutes taken of this meeting? What were your actions arising from the meeting?

Mr Anwar was updated on the progress of the investigation, specifically that a witness had stated that Mr Bayoh had used controlled drugs hence his erratic behaviour and that on the day of the incident he had been walking along a road carrying a knife. William Little recorded this in his notebook. I think this this information was already in the public domain. The family very obviously remained upset over the death of Mr Bayoh.

Monday 11 May 2015

82. On this day, PIRC provided a Situation Report (SitRep) to COPFS providing an update on their investigation (PIRC-04053 [REDACTED]). An internal COPFS email in response to the SitRep described the “deep unease” as to how PIRC were dealing with the issue of officers’ statements (COPFS-03635). Did anyone from COPFS make contact with PIRC to suggest PIRC make direct contact with the officers? Did COPFS, at any time, communicate their “deep unease” with PIRC’s approach to this matter and provide instructions as to how else they wanted the PIRC to investigate? Were you aware that COPFS were uneasy with any aspect of PIRC’s handling of the investigation? If yes, please explain how you became so aware and any actions the PIRC took to deal with that criticism.

signature of witness [REDACTED]

I was not aware of these comments. I am not aware whether this persons concerns were ever transmitted to PIRC.

From reading the document I am not sure that this person understood at that time the complexities of the legislation, which I have set out previously, and the process to be followed. The person appears unaware that PIRC did not have access to personal details about the officers, e.g. contact details, home addresses, shift patterns, etc.

I understand the frustrations expressed, which I shared, i.e. the refusal of the officers to provide statements.

83. In 2015, how much ongoing contact did PIRC typically have with COPFS across the course of an investigation that had been instructed by COPFS? Was it normal for COPFS to respond to SitReps with further instructions or queries?

It depended on the nature of the investigation. In high profile investigations, e.g. the death of Mr Bayoh there was significant contact with COPFS throughout the course of the investigation.

Wednesday 13 May 2015

84. On this day, you received a telephone call from the family’s legal representative informing you of the family’s intention to hold a press conference the next day (PIRC-02592(a)). Do you remember this conversation?

I do not remember receiving such a call. However, I accept that the call did take place as I see that I created a record of what was discussed (PIRC-02592).

85. If so, how was the information you relayed received? Did the family’s legal representative express any concerns as to PIRC’s handling of the investigation on this call?

I would direct the Inquiry to PIRC-02592.

86. The family’s legal representative asked if the officers had provided statements. You informed him that “on the advice or their solicitor, they had declined to give statement until clarity could be given on their final position – as witnesses or suspects”. Was this your understanding at the time? You had confirmed their position as witnesses in your email to Keith Hardie on 7 May. How did you reconcile the officers’ positions as to the provision of their statements given your email of 7 May?

I remember that was the position articulated by the officers’ solicitor. However, it was clear to me that their status was that of witnesses and had been since 3 May 2015.

Thursday 14 May 2015

87. On this day, the SPF released a public statement. Do you have any recollection of this?

Yes

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88. This statement contained details of what some officers alleged had occurred on 3 May. This was prior to the officers providing any information, or statements, to PIRC. Do you remember any discussions within PIRC about the content of SPF’s statement, or the decision to release it?

I now have very little recollection of the detail of this matter. But I was surprised that the SPF were placing information into the public domain given the refusal of the officers to provide statements.

89. Did you, or any staff member of PIRC, feel any action was necessary in response to this statement? If yes, please provide full details.

I do not recall.

90. Was there any PIRC SOP or guidance that covered media activity in ongoing investigations? Whose responsibility at PIRC was it to consider any action PIRC may have needed to take in relation to liaison with the media during the course of the investigation? Did you liaise with the media during the course of the investigation? If so, in what way?

I cannot tell if PIRC had a SOP in respect of media engagement in 2015 as any media policies before 2020 have been weeded from PIRC systems. I do recall that I gave TV appeals for witnesses to the incident. Any other media engagement would be undertaken by the PIRC media team. I would direct the Inquiry to Michael Tait, who I believe was at that time the Head of Media for PIRC.

Sunday 17 May 2015

91. Decision 34 in your Policy Log (PIRC-04153) on this day states it “is clear that COPFS are providing information to Mr Anwar the family solicitor, regarding the investigation, post mortem and other findings. PIRC are unsighted on some of these matters and this can undermine and compromise our dealings with the deceased family”. In what ways did you consider that the actions of COPFS would undermine the work and compromise dealings with the family? Was it usual for COPFS to pass information directly to the family’s legal representative without PIRC’s knowledge?

There was the potential for PIRC FLOs and COPFS to be providing different information to the family and their solicitor, which would undermine confidence in the PIRC FLOs and the overall investigation. In my experience, it was highly unusual for COPFS to provide such information direct to the family and their solicitor during a live investigation, particularly during its early stages.

92. Also within decision 34, you note that the “Director of Investigations has discussed this matter with Les Brown, COPFS and requested that he ensure PIRC are apprised of all such communications to ensure our investigation and relationship with family does not suffer detrimental impact.” Was John Mitchell the PIRC staff member who discussed this matter with Les Brown? What was said? How did you learn of this conversation? Did you feel that COPFS understood PIRC’s concerns? Did this discussion render a change in the actions of COPFS?

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It is clear from my policy log that it was John Mitchell who discussed the matter with Les Brown. As I was not party to the conversation I could not say what exactly was discussed. Mr Mitchell would have updated me about this matter, hence why I recorded it in my log.

I do not think it changed the actions of COPFS. For example, COPFS informed Mr Anwar of the results of the final post mortem report, before informing PIRC and then supplying the report.

Monday 18 May 2015

93. On this day PIRC noted they were requesting the police notebooks of the officers that attended Hayfield Road (PIRC-04156). What was the relevant PIRC SOP or guidance concerning seizure of notebooks, daybooks, Use of Force forms or Use of Spray forms? Did PIRC's actions adhere with PIRC SOP or guidance as to seizure of evidence? Were they requested by PIRC any earlier than 18 May? If not, why not?

Notebooks, daybooks, other documents would be taken as productions to inform the investigation. This seizing of any production would be in accordance with the PIRC Productions SOP.

On 4 May 2015, PIRC sent a letter to Deputy Chief Constable Neil Richardson requesting a number of documents and other material. Within that letter, PIRC requested details of CS/PAVA records. In addition, although not specifically mentioned it does state:

Police Scotland may consider or be aware of other documents or records, etc. which are connected to this incident and which have not been initially specified above. In this respect, I will be obliged if you can identify any such documents and provide certified copies thereof.

94. Do Police Scotland have any powers to compel officers to complete paperwork after an incident including, but not limited to, notebooks, use of force forms or CS/PAVA spray forms?

I consider this is a question for Police Scotland to answer.

95. What involvement, if any, do PIRC have in ensuring that police officers complete any mandatory paperwork? Do PIRC have any powers to compel officers to complete paperwork after an incident including, but not limited to, notebooks, use of force forms or CS/PAVA spray forms? How soon after a death in police custody would PIRC expect to receive notebooks, use of force forms or CS/PAVA spray forms from Police Scotland?

PIRC has no involvement in ensuring officers complete 'mandatory' paperwork, however Police Scotland must refer all use of CS/PAVA by its officers to PIRC (Sections 33A(c) and Section 41B(b)(ii) of the 2006 Act, since CS/PAVA falls within the definition of a firearm (prohibited weapon) under Section 5 of the Firearms Act 1968).

signature of witness 

PIRC would expect to receive CS/PAVA forms within a few days of the incident. Other material would be received after it was collected and collated by the SPoC and sent to PIRC.

If the incident had been a police referred serious incident, PIRC would have powers to require officers to provide information in a form decided by the Commissioner, e.g. on a CS/PAVA form. However, since this was a COPFS instructed investigation, PIRC did not have such a power.

Friday 29 May 2015

96. On this day, there was a meeting between the family, their legal representative and PIRC. Do you recall attending this meeting? If so, please provide your recollection as to what was discussed and how the relationship with the family was at this time.

I attended this meeting with William Little and Alistair Lewis. We provided a short update on the progress of the investigation. The family expressed areas of concern, which William Little noted in his notebook.

97. You were assisting with the investigation by preparing interview packs for the interviews of various officers. What went into an interview pack? Was this a usual job undertaken by the investigator overseeing the investigation?

The interview plans were prepared by Investigator Garry Sinclair, who is a trained and experienced interview advisor. I would check the plans to see if there were any additional matters I considered should be covered during the interviews.

98. Was it usual for officers to be re-interviewed by PIRC after they had provided an operational statement, or after they had already been interviewed by PIRC? Were you satisfied with the thoroughness and sufficiency of the interviews undertaken by PIRC as part of their investigation? Did you consider it necessary at any point to re-interview witnesses where inconsistencies were identified between the accounts within witnesses' own statements, or between different witnesses' accounts?

See response to Question 55.

2 June 2015

99. On this day, a statement was obtained by PIRC from Kadi Johnson in the presence of Ade Johnson, a family member who was also a witness (PIRC-00679). Was it usual practice to take statements from witnesses in the presence of other witnesses? If not, do you know why it occurred here? To your knowledge, did this practice occur in interviews of other witnesses?

I can see from the FLO log that this occurred. It is not usual practice. However, it may have occurred to allow Ade Johnson to provide support to his wife, who was obviously very upset at the loss of her brother. I would direct the Inquiry towards the PIRC FLO Investigator Alistair Lewis who took the statement.

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100. On this day the SPF released a public statement which read: "The officers involved have never refused to provide statements. It was agreed at the outset with PIRC that they would revert to us when they wanted statements and when they were clear on the basis that statements were to be given. PIRC emailed me this morning at 10:46am asking for our assistance to organise interviews and we answered at 11:29am confirming we would be pleased to assist. Those are the facts." Did this strike you as inaccurate at the time?

Absolutely. The officers refused on day one (3 May 2015) to provide statements. They continued to refuse (declined on legal advice) after they were approached by DCI Keith Hardie and DI Stuart Wilson at the instance of PIRC. I do not consider there was any such agreement. As I have outlined earlier, the position of the officers as witnesses had been made clear repeatedly from 3 May 2015 onwards. I consider the statement to be disingenuous.

101. Do you remember any discussions within PIRC about the content of the statement, or the decision to release it?

I have a vague recollection that PIRC would then make arrangements to obtain the officers statements.

102. Did you take any action, internally within PIRC or otherwise, in relation to this statement?

Arrangements were made to obtain the officer's statements at the Scottish Police College on 4 June 2015.

103. The officers subsequently provided statements to PIRC. What was your role, if any, in ultimately obtaining operational statements from the officers that attended the incident?

See response to Question 55.

10 June 2015

104. On this day, PC Buttercase, the officer responsible for the auditing process for the CS and PAVA canisters used on 3 May 2015, was interviewed. PC Buttercase could not produce up-to-date records for CS and PAVA canisters. The officers had not completed the standard forms following discharge of incapacitant spray. Were you aware of this? Did PIRC have any powers to compel the officers to complete the forms?

PIRC has no powers to compel officers to complete forms in a COPFS instructed investigation. This is a matter for Police Scotland. I was aware that the officers had not completed the forms as PIRC had requested they be provided to us and Police Scotland had notified PIRC that the officers had not completed the forms.

105. Did PIRC take any action in relation to this? Did you have additional concerns as to this, given the issues identified by the PIRC investigation following the discharge of incapacitant spray at Victoria Hospital on 18 October 2014?

See my response to Question 21.

22 June 2015

signature of witness . 

106. The family's legal representative sought the heights and weights of the officers from COPFS as he stated that PIRC could not disclose this without authority from COPFS. However, COPFS informed the family's legal representative that they could seek physical descriptions of the attending officers from PIRC. Was this correct? Was PIRC able to disclose this information? Did PIRC hold this information at this point in the investigation?

PIRC held this information at this point in the investigation. Before disclosing specific information PIRC must first receive COPFS approval to do so. I believe COPFS gave this permission and the information was then provided.

107. Did COPFS decide what information would be relayed to the family by PIRC? What level of detail would COPFS have in decisions about what could be relayed? What PIRC SOP or guidance governed the decisions about what information would be relayed to the family?

Family Liaison SOP outlines the functions and processes to be followed by FLOs, which includes engagement with the family. If COPFS wanted specific information provided to the family they could instruct PIRC to do so.

24 June 2015

108. On this day, you spoke to the family's legal representative and learned that he had been provided with information by COPFS, which had subsequently been made public (PIRC-04156). This was further to the discussion between PIRC and COPFS around 17 May about COPFS providing information to the family of which PIRC was unaware. Had this issue continued with COPFS? Did this issue continue across PIRC's investigation? Was this detrimental to PIRC's investigation? Was it detrimental to PIRC's relationship with the family?

I consider this has been addressed in my response to earlier questions.

29 June 2015

109. On this day, PIRC contacted COPFS in relation to an email received from the family's legal representative (PIRC-02758). The family's legal representative expressed concern about Professor Flanagan's experience in relation to positional asphyxiation and restraint techniques. Were you content with the identities and level of expertise of the experts identified by COPFS?

PIRC approached the National Crime Agency and the College of Policing who maintain the UK list of subject matter experts, including medical experts. PIRC was provided with a list of medical experts and we submitted their details to COPFS, who then instructed PIRC which medical experts to approach to obtain expert opinion.

I am unsighted on whether COPFS liaised with Mr Anwar on this matter but it appears that this may have occurred as PIRC were not instructed to approach Professor Flanagan by COPFS.

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110. As at 2015, what was the usual process followed by PIRC for identifying, selecting and instructing experts? Is it commonly a process that allows for the input of a family connected to PIRC's investigation?

See response to last question. It is not normal for a family to provide input as to which expert witnesses should be selected. The family and their legal representative can, of course, instruct their own expert witnesses.

111. PIRC noted that they were in the process of preparing a paper for COPFS with their proposals in relation to expert witnesses, suggesting who should be contacted for an opinion. Were PIRC's views on experts sought by COPFS and taken into consideration?

PIRC sought to identify medical experts in relation to cause of death and also use of force and restraint. All such experts details were provided to COPFS who then selected which experts should be approached.

2 July 2015

112. The PIRC report identifies that, on this day, the PIRC was further directed by COPFS to investigate the allegation of criminal conduct made by Zahid Saeed, issues of race and conduct, allegations of potential contraventions of The Data Protection Act 1998 and investigate miscellaneous other matters. Was PIRC instructed by COPFS on 2 July 2015 to investigate all of these matters, or was PIRC instructed to investigate some of these issues at a later date? When the investigation was expanded to include race, what steps did you or others at PIRC take to address this instruction? What was the thought process behind the approach ultimately adopted? At the point PIRC's terms of reference were expanded, did you consider it necessary to take further statements from any witnesses to address the issues covered within the updated instructions from COPFS?

On 2 July 2015, PIRC were instructed in an email from Les Brown of COPFS to investigate the allegations of assault made by Mr Saeed.

On 24 August 2015, PIRC were instructed to investigate additional allegations, the nature of which I noted in my policy file:

1. Race – examine whether race/racism/institutional racism within the Fife area of Police Scotland and in the approach of individual officers played any part in or impacted on how officers dealt with Sheku Bayoh.
2. In pursuance of the last, examine the PSD records of officers involved in incident for racist or discriminating behaviour and report accordingly.
3. Examine the PSD history of PC Alan Paton and historic incidents/allegations of assault.
4. Undertake an audit of Police Scotland IT systems operational in Fife – CHS, PNC, SID, Crimefile – to determine if the 9 officers or any officers unlawfully accessed the data of the persons named in the letter.

signature of witness ... 

I am aware of the provisions of the Equality Act in respect of discrimination, however I considered it applied to civil and employment law, unless it was an identified aggravator to a criminal offence.

I am aware of various instances in England in respect of deaths following police contact or in custody of persons from ethnic minority backgrounds.

116. Did COPFS ever provide support, detailed direction or feedback on the race aspect of the PIRC investigation?

No. The instruction from COPFS was to examine issues of race. Following submission of my reports, no additional instruction was received from COPFS in regard to issues of race.

117. On this day, in an internal PIRC email you stated “I consider that we need to get Keith’s paper to COPFS as soon as possible and not have our enquiry dictated by the family solicitor” (PIRC-01873). What did you mean by this? Did you consider the correspondence from the legal representative for the family inappropriate? If so, in what way? Did you take issue with the direction from COPFS on this day? What was “Keith’s paper”? Was it the Minute identified below? Was this sent on 2 July as a reaction to the correspondence from the legal representative for the family?

I cannot remember my exact train of thought at that time. However, on examining the email it appears to me that I was concerned that Mr Anwar was attempting to direct aspects of the PIRC investigation and that was not his role. It is the role of COPFS to instruct and direct a PIRC investigation, this is clearly outlined in legislation (see Section 41A of the 2006 Act).

Keith Harrower’s paper was provided to the Inquiry as PIRC-03453. It was a memo to the Commissioner Kate Frame about expert witnesses and the expert witness pack which had been prepared for COPFS consideration..

118. On this day, PIRC submitted a Minute to the Lord Advocate, identifying Dr Jason Payne-James, Professor Robert Flanagan, Dr Steven Karch and Robert Volguardson as potential expert witnesses (COPFS-06005). The Minute also included an expert witness package to be sent to experts who were instructed. Did you have any role in preparing the Minute? Did you have any role in identifying the recommended experts? Did you have any role in compiling the expert witness package? Who at PIRC was responsible for the creation of the expert witness package?

The expert witness pack was prepared by Keith Harrower, William Little and myself for consideration by the Commissioner Kate Frame. Kate then prepared the minute sent to COPFS.

Both William Little, Keith Harrower and myself contacted the NCA and College of Policing to identify subject matter experts who may have been able to assist.

3 July 2015

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119. Is it correct that this date was the final Operation Quoch PIRC briefing (PIRC-04156)? Please explain what the purpose of these meetings was and why it was felt they were no longer required at this stage? Who made the decision to stop the briefings? These meetings were initially chaired by William Little, with the role seemingly moving to you from Monday 29 June onward, is this correct? Is this indicative of a change of approach within the PIRC investigatory team?

The purpose of the meetings was to allow all PIRC staff working on the investigation to be aware of its progress and what the priorities were. It allowed staff to update the investigation with what work they had undertaken.

I made the decision to stop the briefing as the following week, the death of John Yuill occurred on 8 July 2015 and Lamara Bell on 12 July 2015, in a car crash adjacent to the M9 motorway. This was a second significant investigation for PIRC and necessitated the deployment of resources across multiple investigations. Consequently, records of briefings halted after this as it was not practical to brief staff across multiple investigations, however individual briefings and actions were given to staff in respect of the requirements of the Bayoh investigation.

7 July 2015

120. On this day, PIRC emailed COPFS seeking clarification of COPFS' instructions of 2 July 2015 (PIRC-01874). Was this usual that PIRC would need to seek clarification from COPFS? Did you feel adequately instructed by COPFS across PIRC's investigation?

No it was not usual. The rationale why is quite clearly documented in the Commissioner's email of 7 July 2015 (PIRC-01874).

Both William Little and myself were in regular dialogue with COPFS throughout the investigation. I am also aware that the Commissioner was in regular contact with senior officials in COPFS.

121. Also on this day, you emailed the family's legal representative (PIRC-02494). At points (2) and (4) in your email you answered, on behalf of COPFS, queries raised by the family's legal representative relating to Mr Saeed's complaint and the instruction of experts. Was it usual practice for PIRC to liaise with a legal representative in this way on behalf of COPFS? Was it also usual practice for COPFS to also have direct contact with the family or their legal representative? What was your view of how PIRC and COPFS communicated with the family's legal representative across the investigation? What dictated if PIRC would relay information, or COPFS would contact the family's legal representative directly?

In this instance, Mr Anwar had sent a series of questions to me and I forwarded them to Mr Les Brown at COPFS to take any COPFS instruction in this regard. Mr Brown emailed in response saying that he will advise Mr Anwar that he has responded directly to me. Consequently I answered his questions.

It is not normal for PIRC to have direct contact with the family or their legal representative on behalf of COPFS except in regard to FLO matters.

signature of witness 

As I have previously outlined I had concerns that PIRC were sometimes unsighted on what information COPFS was providing to Mr Anwar and I had concerns that contradictory or different information may be transmitted thereby undermining confidence in the investigation.

31 July 2015

122. On this day, the family's legal representative wrote to PIRC outlining 53 issues of concern for the family (COPFS-04726 (a)). Please provide your own views on the contents of this letter and whether you recall how the PIRC dealt with the letter. Did you consider the concerns raised to be legitimate? Did the PIRC deal with all 53 issues of concern? If not, why not.

This matter was dealt with by the Commissioner Kate Frame and she wrote to Mr Anwar addressing his points (see PIRC-01831). From examining the Commissioner's letter, I consider she addressed the points raised. Since many of the points raised additional matters that Mr Anwar wished investigated, PIRC referred them to COPFS to take instruction.

August 2015

123. Kate Frame responded to the family's legal representative's letter of 31 July 2015 on 7 August. Did you have any role assisting the Commissioner with her response (PIRC-02420(a))?

I and others would have provided specifics to Kate Frame to allow her to draft aspects of her response. I think you may mean PIRC-01831, PIRC-02420 is a duplicate of this.

124. On 26 August, you emailed Les Brown at COPFS seeking clarification of COPFS' instructions dated 24 August. You point out that the letter from the family's legal representative dated 31 July raised issues which will not be determined by investigation and which would require clarification from Police Scotland. You requested that COPFS confirm that PIRC are instructed to investigate: (1) allegations of criminal actions by PC Alan Paton (pre-dating the 3 May incident) and the police investigation of such incidents and (2) allegations of potential breaches of the Data Protection Act 1998 by the police officers involved in the incident on 3 May. Was it usual for PIRC to have to clarify COPFS instructions in this manner?

Yes this is normal. PIRC do on occasion receive instructions and terms of reference from COPFS in respect of the investigation of deaths and, on occasion, we have to seek clarity on what exactly they wish us to investigate. The process has developed considerably since 2015 and there is now regular dialogue between Fiscals in SFIU at COPFS and PIRC investigators as to what specifically PIRC should investigate in respect of deaths.

In this instance, it is apparent that COPFS simply placed a covering letter on Mr Anwar's correspondence to the Chief Constable, which was clearly intended to be addressed by Police Scotland and sent it to PIRC, instructing PIRC to investigate these matters. This is why I sought clarification from Mr Brown as this was highly unusual.

signature of witness . . . 

September 2015

125. Did PIRC staff meet with the family of Sheku Bayoh on 3 September? If so, did you attend this meeting? If so, please provide details of what was discussed and how the relationship with the family was at this meeting. Were the family satisfied with the investigation being carried out by the PIRC? Were any minutes taken of this meeting?

I did not attend this meeting and am unable to answer these questions.

126. Is it correct that on or around 8 September, Dr Karch contacted PIRC investigators to notify them he had been approached by journalists following publication of a Scottish Sunday Mail article on 30 August. Were you aware of this at the time? Are you aware of who at PIRC Dr Karch spoke to about this? Is it correct that investigators reminded him the matter was confidential and should make no comment? Was this advice reiterated in writing?

This matter was dealt with by William Little. I was apprised of the matter by him.

127. On learning of the media contacting an instructed expert, did PIRC take any action?

This matter was dealt with by William Little.

October 2015

128. On 5 October COPFS directed the PIRC to enquire into the circumstances of the despatch of an ambulance to attend the incident, whether there was an error by the Police Scotland Area Control Room (ACR) in communicating the correct location and, if so, the effect this had on the arrival time of the ambulance and whether this could have had any effect on the survival chances (COPFS-02556). On 7 October you replied stating that the wrong location made little difference to the timing of attendance by the ambulance (PIRC-02030). Why did you reply to COPFS on this point directly, rather than wait and incorporate this into the Report? What enabled you to reply to COPFS so quickly with this conclusion?

The Scottish Ambulance Service (SAS) depot was at the town of Glenrothes and the ambulance was despatched from that location to Kirkcaldy.

At 0724 hours, the Police Scotland Area Control Room (ACR) contacted the Scottish Ambulance Service (SAS) control room requesting the ambulances and gave the location as Victoria Road then, in the same call, changed the location to Seafield Road, all Kirkcaldy. The Police Scotland ACR member of staff had misheard Hayfield Road as Seafield Road as they were managing multiple radio and telephone traffic at that time.

The ACR member of staff on realising the location should be Hayfield Road immediately contacted the SAS control room and gave the correct location of Hayfield Road.

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PIRC already had this information as we had obtained the call recordings from the SAS on 13 May 2015 and obtained statements from the paramedics on 19 May 2015 and 26 May 2015 and both stated that the change of location did not affect their arrival time at Hayfield Road. Consequently I could quickly inform COPFS of this information, which was later included in my reports.

129. On 19 October there was a further press release by the SPF. On 20 October the Commissioner wrote to Professor Watson in connection with the actions of his investigator, John Sallens. Were you aware of the actions of Professor Watson and John Sallens at the time? Did you have any view on their actions? Did PIRC do anything in response? Did you agree with the contents of the Commissioner's letter to Professor Watson?

PIRC were contacted by witnesses to say they had been approached by John Sallens acting on behalf of the officers. I believe the witnesses expressed concerns about these approaches, consequently Kate Frame wrote to Professor Watson outlining her concerns. I agreed with the Commissioner.

I was and am aware of a considerable volume of correspondence between the Commissioner and Professor Watson, including that he offered the results of enquiries undertaken by Mr Sallens,

[REDACTED]

November 2015

130. On 1 November, the Scottish Sun on Sunday quoted Dr Karch in an article about the death of Sheku Bayoh. How did you become aware of this? What discussions do you remember taking place internally at PIRC at the time in this regard? Was any formal action considered? Were you satisfied with how this was dealt with internally by the PIRC? Did you consider proactively contacting the family's legal representative about this article?

This matter was dealt with by William Little, however I was aware of it and I was also aware that COPFS had expressed concerns. I now have little recollection of the specifics.

131. On 6 November the family's legal representative wrote to PIRC concerning Dr Karch's actions (PIRC-01858). The letter also queried PIRC's apparent reliance on comments made by Dr Cary to a PIRC investigator apparently endorsing Dr Karch as an expert. The letter sought the identity of the PIRC investigator to whom Dr Cary had spoken. The letter also queried why the PIRC investigator had left Dr Cary with the slides. Do you remember receiving this letter at the time? Please provide your recollection of what happened and how you felt the PIRC handled this issue. Why did PIRC not identify the investigator who had attended [REDACTED]?

signature of witness .. [REDACTED] ..

I do not recall seeing this letter before being provided it by the Inquiry. From research, this matter was dealt with by the Commissioner Kate Frame who responded to Mr Anwar by letter. See PIRC-01859. From examining the letter, PIRC did identify the Investigator who dealt with Dr. Cary.

132. On 17 November, PIRC wrote to COPFS seeking clarification of COPFS’s instructions in relation to the investigation into PC Paton including pointing out that instructions had not been sent “in the normal format of a letter of instruction but rather the allegations were contained in letters from Mr Anwar referred to in your correspondence” (PIRC-01738). Can you explain why PIRC sent that letter? Was PIRC’s investigation impacted by the format of instructions received from COPFS? Do you recall having received a response from COPFS? If so, can you recall what that response said?

Les Brown from COPFS responded to the PIRC letter. This would fall to be disclosed to the Inquiry by COPFS. I can assist by saying the letter from COPFS was dated 17 November 2015, COPFS ref: LAB/CM/CA15000454.

It was highly unusual for COPFS to simply attach a letter from Mr Anwar and instruct PIRC to investigate the matters raised. This would be why we wrote to COPFS to confirm what they were instructing we investigate. In all other investigations instructed by COPFS, they provide detail on what PIRC is to investigate and not simply ‘front sheet’ a letter and instruct PIRC to investigate.

January 2016

133. On 28 January you and William Little met with then-Detective Chief Superintendent Cuzen, Detective Sergeant Dewar and Superintendent McLeod. This concerned the data protection aspect of PIRC’s investigation. Do you recall attending this meeting? What was your recollection of what was discussed at this meeting? What were your views at this time as to the actions of Police Scotland towards this aspect of your investigation? Were you satisfied with the assistance they were providing?

I recall attending the meeting. Present were William Little and myself, DCS Clark Cuzen, Detective Superintendent Kenneth Dewar, Head of the National Intelligence Bureau of Police Scotland, Superintendent Audrey McLeod of the Professional Standards Department and Duncan Campbell, Head of Legal Services for Police Scotland.

The meeting was to discuss the COPFS instruction to investigate allegations of breaches of the Data Protection Act, particularly material which was retained in the Scottish Intelligence Database in relation to Mr Anwar.

134. Is it correct that at this meeting Detective Sergeant Dewar agreed to PIRC’s request to provide overarching statement justifying Police Scotland gathering and processing of intelligence on the family’s legal representative? Was this statement provided? Did you feel Police Scotland were appropriately and promptly assisting PIRC with their investigation?

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Det Supt Dewar was identified at the meeting as the person who would provide a statement in respect of this matter. He did not do so as he retired in early February 2016.

Overall, I got the impression, which you may gather from examination of my Volume 3 report, that some officers were trying to avoid providing statements in respect of the reasons for gathering and storing of intelligence on Mr Anwar.

February 2016

135. In early February 2016 Detective Sergeant Dewar retired prior to providing the agreed statement. Had this been discussed at the meeting on 28 January? Did his retirement have any impact on PIRC’s investigation?

See answer to Q.134. I did not consider it significantly impacted on the investigation

136. On 17 February you and William Little met with then-Detective Chief Superintendent Simpson. What was discussed at this meeting? Were minutes taken? Did you feel Police Scotland were appropriately and promptly assisting PIRC with their investigation?

William Little and myself met with Detective Superintendent Elaine Simpson, who had taken over from Det Supt Dewar on his retirement. This was to repeat the request for a statement about this particular matter. It was not necessary to take notes.

Also, see my answer to Q.134

March 2016

137. On 1 March, Superintendent McLeod wrote to PIRC and refused to approach Police Scotland officers for further statements concerning the searches carried out against Sheku Bayoh, his family members, and witnesses’ names on police systems. Did you feel Police Scotland were appropriately assisting PIRC with their investigation?

I consider Volume 3 of my reports addresses this issue in detail.

138. On 17 March, PIRC received a statement from PS Bassano who provided an overview of Police Scotland procedures in respect of the handling of intelligence. Was this sufficient for PIRC’s investigation?

The overview statement from PS Bassano was useful in describing procedures but did not address the specific matter of gathering and storing intelligence on Mr Anwar.

139. Was a meeting held at this point in the investigation between PIRC and Police Scotland senior management at which it was intimated a senior officer would provide a statement as to Police Scotland’s reasons for gathering and storing intelligence on the family’s legal representative? If so, when was this meeting, who attended, and were minutes taken? Do you recall what was discussed?

There were several emails between PIRC and Chief Superintendent Carole Auld, then Head of PSD, as to which officer would provide a statement outlining the specific

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details in respect of the intelligence held on SID about Mr Anwar. These matters are outlined in Volume 3 of my reports.

July 2016

140. On 25 July, you wrote to the family’s legal representative. In your letter you offered a meeting between PIRC investigators and the family (PIRC-02446(a)). You noted that PIRC had offered a meeting in December and no reply was received. Did you feel the PIRC investigation was impacted by the lack of meetings with the family? If so, how? Did PIRC have sufficient communication with the family directly or via their legal representative? Had attempts been made to arrange meetings with Sheku Bayoh’s family between December 2015 and July 2016? If not, why not?

I do not feel that the lack of meetings with the family by that stage of the investigation was impacted. PIRC had already obtained statements and other information from the family. All contact with the family had to be directed through Mr Anwar.

As the investigation was still ongoing, it would be standard for PIRC FLOs to keep in contact with the family, however that could not occur due to Mr Anwar’s instruction that all contact had to be directed through him. The PIRC FLO Alistair Lewis may be better placed to inform the Inquiry in respect of these matters.

August 2016

141. On 10 August, PIRC submitted their report to COPFS. At the time, did you consider this to be the end of your involvement with the investigation? If not, why not?

I did not consider this to be the end of the PIRC investigation. It is standard for COPFS once they have considered a PIRC report to instruct any additional lines of enquiry they consider necessary to be undertaken.

142. Did you write the entirety of the report? If not, can you recall who at PIRC drafted the various sections? If you wrote the entirety of the report, what role, if any, did other PIRC staff have in its production? Did you retain earlier drafts of the final report? If not, were these stored by PIRC?

I wrote the entirety of reports Volumes 1 to 3. They were quality assured by the Commissioner Kate Frame before being sent to COPFS.

I tasked various PIRC staff to produce the appendices at Volume 4, which I then combined into a single report.

It is my habit to produce a draft of a report and make amendments during the course of its writing. Once the report is finalised, agreed by the Commissioner and sent to COPFS, it is standard to delete the drafts. The reports into the death of Mr Bayoh and the other matters investigated were complex to put together due to the huge volume of information I had to read and examine, then summarise in the reports.

October 2016

signature of witness 

143. On 4 October Les Brown (COPFS) asked PIRC for assurance that all of the statements submitted had been checked for accuracy and that there were no omissions. It was noted that there were discrepancies between the handwritten statement of Ashley Wyse and the typed version. PIRC was asked to provide an assurance that all typed statements have been proofread and have been compared with the original handwritten versions for accuracy. The Commissioner stated that this process had been undertaken. Were you aware of this exchange at the time? Who at PIRC completed the task of checking the statements as requested by COPFS? Did it concern you that COPFS had identified these issues? Did you, or any other staff member at PIRC, undertake any further checks other than those identified by the Commissioner?

An error was identified by COPFS in the statement of Ashley Wyse, primarily because she was a significant witness to the events in Hayfield Road, Kirkcaldy and had recorded some of the interaction between the principal officers and Mr Bayoh on her mobile phone.

This error had been caused by a member of the PIRC Admin Team missing a paragraph in her written statement when typing the statement. Consequently the typed statement did not read correctly. The error was corrected. However, as a consequence it was decided to check all typed statements to ensure they were accurate. Due to the significant volume a number of PIRC Investigators were given the task of checking all statements submitted to ensure accuracy.

How the error occurred was easily identified and rectified. I accept any error is unfortunate and of concern.

144. On 27 October Stephen McGowan (COPFS) wrote to the Commissioner in relation to data protection concerns which had been highlighted in the PIRC report; there remained a concern that that information was being collected and held without proper justification by Police Scotland. Therefore, in terms of s.33A(1)(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, Mr McGowan asked PIRC to investigate and report on the data protection concerns which had been raised. Who was involved in investigating this? What investigatory steps were taken? When was the outcome of this investigation sent to COPFS?

This aspect of the investigation was undertaken by William Little and myself, primarily due to our knowledge of the Scottish Intelligence Database (SID) and other police systems.

This aspect of the investigation was undertaken by requiring Police Scotland, through its Professional Standards Department (PSD) to undertake an audit of the Police Scotland Crimefile system, PNC, CHS and SID to determine who had undertaken checks against the persons listed in volume three of my PIRC reports. We had to get PSD to do these audits on our behalf as PIRC did not have access to Police Scotland IT systems. We would then check the audit records to ensure accuracy and, where any officers of member of Police Scotland staff had undertaken checks against the listed names, require a reason and request a statement from the person undertaking the check.

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On 2 November 2016, the Commissioner Kate Frame met with the Crown Agent and informed him of the initial findings of the PIRC investigation. Subsequently on 18 November 2016, the Crown Agent wrote to the PIRC instructing that we advise the ICO of our findings in order that the ICO could consider how best to progress the matter. (see PIRC-02448)

William Little and I subsequently met with staff of the ICO and passed the material to them.

November 2016

145. On 29 November, Les Brown (COPFS) wrote to PIRC with further instructions as a result of a reference in the Report to a belief held by certain attending officers that there may have been intelligence relating to an intention to cause harm to female police officers and an understanding that in the preceding months checks had been carried out at a number of identified locations in Kirkcaldy due to an increased terrorist risk (COPFS-02565). Were you aware of this further letter of instruction from COPFS? Who was involved in investigating this?

Yes I was aware of this matter. I emailed Supt Audrey McLeod and Ch Insp Liz McLeod of PSD requesting this matter be checked. On 20 December 2016, I received a reply with the information requested. See PIRC-02653, PIRC-02676 and PIRC-02280.

February 2017

146. On 23 February it was noted that the Expert Witness Package prepared by PIRC for earlier experts contained the incomplete version of Ashley Wyse's statement. Were you aware of issue at the time? Did this, and the other subsequent requests made by COPFS after August 2016 cause any concern for you as to the accuracy of the Report or the thoroughness of the PIRC investigation?

I consider I have answered how this error occurred at Q.143. I do not consider it affected the accuracy of the report or the thoroughness of the investigation. Having checked Ashley Wyse's statement, I consider the report accurately reflects what she witnessed.

December 2017

147. Were you aware in or around December 2017, of COPFS considering instructing PIRC to investigate a possible attempt to pervert the course of justice in relation to attempts to mislead the original investigation?

No

2019

148. When did your role as the person overseeing the work of the investigation end?

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Primarily my role as leading the investigation ended when I became Head of Investigations for PIRC in 2017. William Little then took over as lead investigator. However, since we worked together we would regularly discuss all aspects of any ongoing enquiries.

149. On 30 April 2019, a formal update in relation to the CCTV footage from Kirkcaldy Police Office was submitted by PIRC (COPFS-02592). Was this the final investigatory task PIRC completed under instruction from COPFS?

No, from research, PIRC were still responding to COPFS requests for information and to provide additional material up to 27 November 2019. For example, on 11 October 2019, COPFS sent an urgent request to check if the mark on PC Nicole Short's body armour vest was on the front or the back. PIRC responded on 15 October to say the mark was on the back.

Record keeping

150. How did you record your actions during the investigation? What were PIRC's requirements for you to take contemporaneous notes of your actions and decision making during an investigation?

I recorded my decisions in the PIRC policy log. I was not, unlike many in the police and PIRC, in the habit of keeping and retaining a 'day book'. My reason for this is that policy and strategy is best formulated once I have enough information to reach such decisions.

It can give a false impression as to how I reach decisions if early entries are then examined in isolation. I may take notes during the course of a day in a loose leaf A4 notebook, but once I had formulated my policy and strategy, I considered the notes no longer necessary and would shred them.

If I undertook specific actions, e.g. interviewing a witness, then the witness statement would show when and where that occurred. I was also in the habit, if I held a discussion with police officers where I asked them to undertake some enquiry on my behalf, to follow that up with an email or letter so there was an official record.

Whether to keep a day book and what to record in it is very much an individual decision.

151. Did you routinely password protect documents? What was your criteria for deciding if a document should have a password applied or not? Did you have any safeguards for ensuring passwords for documents were not lost?

I do not password protect documents.

152. Is the Operation Quoch Policy Log (PIRC-04153) a full record of your decision making? Was this log completed contemporaneously? Are the dates in the policy log accurate for each decision taken?

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It is a full record of my policy decision making, however there would be ongoing discussion between all staff which would then translate into actions for staff to undertake, these would be recorded in the action files. On occasion an entry may be delayed by a day or two due to other commitments, e.g. if I had to attend meetings away from PIRC offices and did not get a chance to update the log that day, I would do so the next day.

153. This Policy Log does not make reference to PIRC’s SOPs or other policy documents. Did you refer to these when taking decisions?

It would be taken as read that PIRC staff would follow PIRC SOPs when undertaking investigations, so I did not see a need to record such in the policy log.

154. Is the entry for Decision 1 dated 5 May 2015 reflective of your typical use of the log? Why does the entry not have anything recorded in the “Reason” column? The entry for Decision 1 reads “Status of the officers is that of witnesses at this stage!” Was the exclamation mark intentional and, if so, what was meant by this?

Normally at decision 1 in any investigation I would provide a narrative to outline the nature of the investigation in the policy log. I cannot now recall if the exclamation mark was intended to be deliberate.

155. Decision 9 in your Policy Log describes the post-mortem examination undertaken on 4 May 2015. This entry is dated 7 May, would these notes have been created on 7 May? What exactly was the decision you were taking that you sought to record here?

Since I started on the investigation on 5 May 2015, the post mortem had been held the previous day. I was also being briefed and reading all the available documents and gaining an understanding of the investigation. Consequently at this early stage of the investigation I was catching up on matters and retrospectively made this entry on 7 May 2015 to reflect what was known from the initial post mortem examination on 4 May 2015.

156. The entry for Decision 9 reads: “Non engagement by the family at that time who declined to attend the PM.” At that time what was your understanding of the family’s decision not to attend the post-mortem? How did you arrive at your understanding of why the family did not attend the post-mortem? Did you give the decision – including the family’s wishes – any further thought, beyond what is recorded here?

I was aware after being briefed by Keith Harrower, that the family had wanted the post mortem to be delayed until the arrival of relatives from London. However Mr David Green from COPFS had instructed that it proceed on 4 May 2015.

PIRC did give the family consideration. On 4 May 2015, PIRC had deployed FLOs to engage and support the family, the FLOs would communicate any family concerns and record any interactions and information in their FLO logs.

157. Decision 20 in your Policy Log describes PIRC’s role as to “Community, Impact & Tensions” as being that “PIRC will direct any information which may have a bearing on

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community impact or tensions to PS". Did you feel there was any conflict between PIRC acting in their investigatory role and as a conduit passing information to Police Scotland?

Responsibility for community and public safety and the prevention of disorder lay with Police Scotland. It would not be conscionable if PIRC were aware of the potential for disorder, which could impact on community or public safety, to withhold this information from the police.

In general PIRC, like many public bodies, have a duty of care to the public. However, PIRCs role is to investigate the police, PIRC staff are not placed to personally intervene in public safety matters. If we are aware of potential threats or potential harm to individuals or the public in general, this information is always passed to the police to take action.

158. Within the entry for Decision 20, you have entered as the stated reason for the decision: "Minimise community impact, reduce tensions prevent potential for disorder or other actions which may have a harmful effect on the community." What was meant by this as at 9 May 2015? What exactly was the decision taken?

I consider I have explained my reasoning in my answer to the last question.

159. Decision 26 in your Policy Log notes the refusal of the nine officers that attended on 3 May to provide statements. There is no entry under the "Decision" heading. Was there any decision for you to take as at 9 May when you made this entry? Did you consider that there was anything further you could do to obtain statements from the officers?

This entry is more a narrative entry to ensure that the refusal by the officers to give statements is recorded.

160. Decision 30 in your Policy Log notes the requirement to obtain details as to the nine attending officers from Police Scotland including PSD records to determine existing complaints or investigations. Did PSD stand for Professional Standards Department? Did Police Scotland provide these records in a timely manner?

PSD does stand for Professional Standards Department. These records were provided by PSD on 11 June 2015.

161. Within the entry for Decision 30, you have entered "[the officers] will have statements taken from them, at an appropriate stage, should their status remain as that of witnesses." What did you mean by "at an appropriate stage"?

When they agreed to provide statements.

162. Decision 79 in your Policy Log noted on 20 October 2015 states: "PIRC continues to keep track, where possible of all correspondence in respect of the investigation". Were there issues with record keeping within PIRC that prompted this entry?

All correspondence and letters that the investigation was aware of between PIRC and any other party, e.g. Police Scotland, COPFS, etc. was filed in the investigation. From checking, this amounted to over 1500 emails and letters. However, I became aware

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that on occasion the Commissioner may correspond direct with various parties and the investigation was unsighted in this regard. This said if, for example, a letter from COPFS was received direct by the Commissioner with instructions to investigate anything, she would forward it to the investigation to be recorded.

163. In addition to the Policy Log, what, if any, other notes did you take during the investigation?

Please see response to Q.150

164. Is there a requirement to retain these records? Please compile the full terms of any other notes insofar as they relate to your actions within PIRC.

There was no policy on keeping day books. PIRC has disclosed all material to the Inquiry including any letters, emails, etc.

Race

165. Was anything you have stated above done or not done because of Sheku Bayoh's race?

In general no. However, as outlined previously, COPFS did instruct PIRC to examine issues of race.

166. Do you have any experiences of racism (or the race of the victim) being a factor, in any way, in a death in custody or death during or following police contact? If so, please provide details of how racism was a factor, your involvement in dealing with it and the outcome. Was this something PIRC would have recorded?

I do not have experiences of racism (or the race of the victim) being a factor in a death in custody or death during or following police contact. However, I do have experience of race or racism being a factor in murder, terrorist and other enquiries I undertook or was part of when in the police, for example:

- Murder of Kris Donald in Glasgow
- Glasgow Airport terrorist attack
- Lawful interception of communications when in charge of the SRC.
- Abduction (kidnap) investigations.
- Investigation of allegations of racism by members of football clubs
- Criminal investigations by PIRC into allegations that police officers actions were aggravated by racism.

167. On and before 3 May 2015, had PIRC ever considered the issue of race when dealing with a death in custody or death during or following police contact? Has that changed between then and now?

Before 3 May 2015, PIRC had not had an investigation where we had to consider issues of race. Since 3 May 2015, PIRC has investigated the death of minority ethnic

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persons either in police custody or following police contact. In none of these investigations was there a suggestion that police actions were driven or motivated by racism.

168. What training had you completed by 3 May 2015 in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?

I have had various training during my time in the police and PIRC in respect of equality and diversity issues. I also undertook the training course Diversity for Executive Leaders at the police staff college at Bramshill.

I consider all aspects of equality and diversity are and were applicable to my role. I consider that it is crucial for public confidence in the independent investigation and review of complaints that allegations of discrimination made against the police are handled properly. Values based policing which reflects and represents our communities is vital to secure the consent from which policing draws its legitimacy. Unfair or unlawful discrimination fundamentally undermines the ability of policing to operate by consent.

169. Did you have any training during your time at PIRC in relation to investigating an allegation of race being a factor in the conduct of Police Scotland?

I had no specific training on this matter. I consider my role is to thoroughly investigate any matter referred to PIRC, and present all the available evidence to COPFS.

In addition, PIRC has no powers to investigate matters of conduct involving Federated police officers (Constables, Sergeants, Inspectors and Chief Inspectors) or Superintendent ranks.

170. Prior to 3 May 2015, what experience did you have in deaths in custody or deaths during or following police contact in which race was a factor to investigate? Had you ever acted in a PIRC investigation in which the issue of race was within your terms of instruction?

I had never had an instruction from COPFS before 3 May 2015 to investigate where race was a factor.

171. With particular reference to the issue of race, is there anything you have stated above that, knowing what you know now, you would have done differently?

Reflective learning is always positive. It allows me to consider my actions, examine current thinking, knowledge and learning to continuously improve. As I have said above, my role is to investigate thoroughly, gather all available evidence and present it to COPFS for consideration.

Miscellaneous

172. Do you recall if PIRC considered section 3 of the Health and Safety at Work Act 1974 (HSWA) in the course of its investigation? If PIRC did not, can you recall why not?

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I am aware that on 27 January 2016, COPFS wrote to the Health & Safety Executive (HSE) inviting them to carry out an investigation to consider whether a breach of relevant Health and Safety legislation has been established.

173. Were you instructed by COPFS to consider section 3 of the HSWA? If so, what were those instructions and what did you do in response?

PIRC were not instructed by COPFS to consider Section 3 of HSWA, however we were asked by COPFS to pass information to the HSE. I am aware that on 31 March 2016, the HSE wrote to COPFS notifying them that the HSE did not intend to carry out an investigation.

174. Would PIRC, independently of instruction from COPFS, consider looking into such matters?

No. PIRC cannot undertake an investigation into such matters without an instruction from COPFS.

175. Is there anything about your role in the matters relevant to the Inquiry that, knowing what you know now, you would have done differently?

I consider my answer to Q.171 addresses this question

176. The Inquiry's Terms of Reference are contained within Annex B. If there is anything further that is relevant to the Terms of Reference which you are aware of, but you have not included in your answers to the above questions, please provide detail as to this.

Nil

177. Please include the following wording in the final paragraph of your statement:-
"I believe the facts stated in this witness statement are true. I understand that this statement may form part of the evidence before the Inquiry and be published on the Inquiry's website."

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

Date August 16, 2023 | 4:39 PM BST

signature of witness 