

ANNEX

COPFS PIM

AREAS FOR WITNESS STATEMENT

MR ALASDAIR MACLEOD

Please provide your **full name, date of birth, personal or business address.**

Alasdair [REDACTED] MacLeod DOB: [REDACTED]/1969

Business Address: Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA

Please provide as much detail as you can in relation to each of the following questions. Please mark on your statement the number of which paragraph of questions you are answering.

If you refer to any document in preparing your statement, please provide a brief description of the document and which page you have referred to.

The Crown Precognition has not been shared with you and your involvement in the drafting of the Crown Precognition may be requested at a later date.

Role and experience

1. What were your grade and position in COPFS during your involvement in the (Crown directed) PIRC investigation into the death of Sheku Bayoh (“the Investigation”) and subsequent COPFS Precognition process (“the Precognition”)? How long had you been in this position prior to the date you became involved? What were your duties and responsibilities in this position?

When I first became involved in the investigation and throughout the precognition process, I was a Senior Procurator Fiscal Depute (SPFD). I had been in the role of SPFD since 2008. Prior to that I was a Procurator Fiscal Depute (PFD) from 2003. I joined COPFS as a trainee in 2001. I was therefore in the role of SPFD for approximately 8 years prior to my involvement in this case. The role of SPFD no longer exists and we are now known as PFDs.

Prior to commencing work on this case I was based in the Serious and Organised Crime Unit (SOCU) in a precognition role. I have previously been involved in precognosing a number of large and complex cases.

2. When did you first become involved in the Investigation? What were the circumstances in which you became involved?

I was asked to attend a meeting at Crown Office on 16 September 2016 with Deputy Crown Agents. I think it was Lindsey Miller and Stephen McGowan but I can't be sure. Mr Brown Head of CAAPD was present along with a PFD Erin Campbell who was also going to be working on the case. At the meeting I was given information about the circumstances of the case. A couple of days after this meeting I was provided with copies of the PIRC report with which to familiarise myself with.

3. What do you understand to be COPFS' role in the investigation of sudden, suspicious, accidental and unexpected deaths in Scotland as of the date you became involved? What do you understand COPFS' duties and responsibilities to be in this regard?

Having previously spent time in the Deaths Unit (now SFIU) I was aware that death investigations are carried out by COPFS on behalf of the Lord Advocate who has overall responsibility for these deaths. COPFS investigate these deaths for a number of reasons including to exclude criminality, to enable a criminal investigation to take place, public health reasons and to enable FAIs to take place.

4. Prior to the date you became involved, what experience did you have in investigations of deaths in police custody, or deaths during or following police contact? Please provide details and the outcome of the cases. Was race a factor to consider in any of these cases?

Circa 2010 I spent about 6 months working in the Deaths Unit (now SFIU) at Edinburgh PF office. However, prior to my involvement in the present case I had no experience of dealing with deaths in police custody or deaths following police contact.

5. Prior to your involvement, what experience did you have in relation to family liaison in deaths cases? Was race a factor to consider in family liaison in any of these cases? If so, please provide examples.

During my time working in the Deaths Unit in Edinburgh a regular part of my role was chairing Next of Kin (NOK) meetings with bereaved relatives and pathologists. To my knowledge race was not a factor in any of the cases I was involved in.

PIRC

6. What experience did you have in dealing with PIRC prior to the date you became involved in the Investigation and Precognition?

I had no experience of dealing with PIRC prior to my involvement in the present case.

7. What was your understanding of PIRC's role in the Investigation and Precognition?

As detailed at point 2 above I did not start working on this case until September 2016. After that I was aware that PIRC had been instructed by the Lord Advocate to carry out a death investigation and to report their findings to Crown Office.

8. In your understanding, was PIRC being directed to investigate Mr Bayoh's death under Section 33A(b)(i) or (ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006? What are the differences, if any, in COPFS' dealings with PIRC between investigations carried out under part (i) compared to (ii) of this section?

I was not involved in issuing directions to PIRC. This pre-dates my involvement in the case and I would refer Inquiry to COPFS for a response. Our remit was to examine the conduct of officers both during and after the incident and assist Crown Counsel in determining whether any criminal charges should be libelled against any individual officers.

9. Were you aware if any further instruction was given to PIRC in the course of your involvement in the Investigation? If so, why did this occur?

PIRC carried out a number of further enquiries on instructions of the Crown during my involvement in the investigation. Following receipt of Professor Eddleston's report in November 2017 PIRC were instructed to make enquiries regarding the Police Scotland Use of Force SOP in place at the time of Mr Bayoh's death. Professor Eddleston had noted the fact that psychosis from mental health issues and drug induced psychosis were dealt with in different sections of the document despite the principles being the same. The guidance offered to officers dealing with psychosis from mental health issues to show empathy was not given to officers dealing with drug induced psychosis.

I also recall PIRC were instructed to identify timings re Ashley Wyse's Snapchat footage by comparing it with Gallaghers CCTV footage.

10. What is your understanding of COPFS' role in relation to PIRC's investigation? For example, are COPFS supervising PIRC?

I understand that COPFS instructed PIRC to carry out an investigation into Mr Bayoh's death and to report their findings. My understanding is PIRC are an independent body and are not supervised by COPFS.

11. How are decisions and instructions communicated to PIRC? Please explain your involvement in this during the Investigation.

I was not involved in issuing decisions and instructions to PIRC prior to September 2016. As a precognoscer I was in regular contact with PIRC mainly via email and I attended PIRC offices in Hamilton on several occasions throughout the duration of the case.

12. How would you normally go about answering PIRC's questions and providing advice? What, if any, involvement did you have in assisting PIRC with their questions and providing advice?

My involvement in this case started after PIRC submitted their report so I was not involved in providing advice or answering questions during their investigation. I was in regular dialogue with PIRC officers during the precognition process. I don't recall providing any specific advice to PIRC.

13. In your view, were PIRC's instructions sufficient for them to investigate and report on all relevant matters to COPFS? If not, what could have been done differently and why?

I was not involved in issuing instructions to PIRC during the investigation. I am not aware of any suggestion that instructions provided to PIRC were insufficient.

Family liaison

14. What is your understanding of COPFS' role in liaison with the deceased's family in deaths cases? How does COPFS' role interact with the role of Police Scotland and PIRC in family liaison?

In a deaths case the police or a doctor will identify the deceased's family in their report and thereafter COPFS will provide NOK with information and updates. The family will be advised of decisions e.g., need for and timing of a post mortem. In cases where COPFS have instructed further investigations COPFS will keep the family updated as to the progress of the investigation. In some investigations Police Scotland may have appointed a Family Liaison Officer who provide updates to NOK. At a suitable time family liaison will be transferred to COPFS. My understanding is that during a PIRC investigation they carry out a similar family liaison role to Police Scotland.

15. What, if any, duties or responsibilities do COPFS have to the deceased's family during the course of a PIRC investigation? What duties or responsibilities do COPFS have to the deceased's family during the Precognition process? How were these duties or responsibilities fulfilled? Was

there a handover of family liaison from PIRC to COPFS? Please include an explanation of the notes at pages 104 and 105 of your notebook.¹

This was the first case involving PIRC I have been involved in. I am unsure of what duties COPFS have with the deceased's family during a PIRC investigation and would refer the Inquiry to COPFS. During the precognition process COPFS will keep in touch with bereaved families and keep them updated on decision making and progress of the death investigation. I understand the Lord Advocate met Mr Bayoh's family shortly after his death and continued to meet them regularly throughout the process. I am not aware whether there was a handover of family liaison from PIRC to COPFS as this predates my involvement in the case. The notes referred to in my notebook 05244 were notes I appear to have taken whilst preparing a note for Mr Justin Farrell dated 28 February 2020 who had recently been appointed Head of CAAPD. The notes make reference to the fact that Mr Bayoh's family had been critical of the investigation which had been carried out and to illustrate what further work had been carried out by the Crown.

In relation to my notebooks generally, these are A4 pads which I used day to day. They were for my own use only. They were not for specific use on this case. I used them to e.g., take notes whilst reading materials, phone calls, meetings etc. I also used them to take notes on personal matters.

16. What involvement, if any, did you have in family liaison in the Investigation?

[REDACTED]

My involvement in family liaison in this case was restricted to attending a number of meetings at Crown Office in which Mr Bayoh's family met with the Lord Advocate.

[REDACTED]

17.

[REDACTED]

¹ COPFS-05244

² [REDACTED]

³ [REDACTED]

[REDACTED]

18.

[REDACTED]

[REDACTED]

19. Insofar as not covered above, did you have any dealings with the Lord Advocate during the course of your involvement in the Investigation and Precognition? Did you have any involvement in meetings between the Lord Advocate and Mr Bayoh's family? If so, what was the outcome of these meetings and what was your understanding of what the Lord Advocate, and COPFS, had undertaken to do?

Along with Mr Brown I attended a number of meetings chaired by the Lord Advocate with Mr Bayoh's family and legal representatives. I don't recall the detail of discussions at these meetings. I do recall the meeting on 3 October 2018 where the Lord Advocate intimated the decision to Mr Bayoh's family. I also recall on one occasion attending a meeting with Mr Brown at Crown Office with the Lord Advocate and senior officials. I would invite the Inquiry to revert to COPFS to confirm dates and minutes of said meetings.

20. What is your understanding of the role of COPFS' Victim Information and Advice service ("VIA") in family liaison in a death investigation? Are you aware if VIA was used in the Investigation? Insofar as you are aware, what was the basis for VIA involvement or non-involvement in the Investigation and Precognition?

The role of VIA in a death investigation is to seek the views of NOK

on any significant decisions and to update them on the progress of an investigation. I don't recall being party to any discussion regarding the involvement of VIA. From memory I don't recall VIA being involved in this investigation. I understand that the Lord Advocate Mr Mulholland met with Mr Bayoh's family shortly after his death and his successor Mr Wolfe also met regularly with the family. My recollection is Mr Bayoh's legal representatives were also regularly updated by Mr Brown on the progress of the case.

Ingathering of evidence and analysis

21. Prior to when you were involved in the Investigation and Precognition, were you aware of Mr Bayoh's death from the media or word of mouth? If so, what was your understanding of the circumstances in which Mr Bayoh died?

I knew very little about Mr Bayoh's death prior to my involvement in this case. I do recall wondering why I had not been more aware at the time and on checking dates I realised I had been out of the country when Mr Bayoh died.

22. After you first became involved in the Investigation and Precognition, what description of the events leading up to and including Mr Bayoh's death was explained to you? When and how was this information provided to you?

As detailed at point 2, I first became aware of the circumstances of the case at a meeting at Crown Office on 16 September 2016. This was by way of a verbal briefing.

23. Over the course of your involvement in the Investigation and Precognition, in what ways, if any, did your understanding of the circumstances of Mr Bayoh's death change from the information initially provided to you?

Obviously as I started to work on the case my knowledge of events grew. I don't recall any material change in the circumstances that had been previously provided to me.

24. What, if any, consideration did you give to there being a Fatal Accident Inquiry ("FAI") at the conclusion of the Investigation and Precognition? Did you consider that any FAI would have been mandatory in terms of s1(1)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976? Please explain your reasoning. If you did not consider the criteria for a mandatory FAI were met, what consideration was given to a discretionary FAI in terms of s1(1)(b)? Was anything done in the Investigation and Precognition to prepare for an FAI? Who took the decision not to hold a FAI? Please explain the entry "*Collette FAI*" on page 10 of your notebook.⁵

⁵ COPFS-05247

As a death in custody, I was aware that at the very least a mandatory FAI would be required. The investigation and precognition covered areas which may have been aired at any FAI. Decisions on any further proceedings were always matter for Crown Counsel.

I note the entry 'Collette FAI' on page 10 of my notebook but the reason for noting is not obvious to me.

25. Please explain your involvement, if any, in ingathering and analysing evidence in relation to the response officers' accounts, including reference to any contradictions you identified between the accounts and the officers' credibility and reliability. Please explain the notes you have made at pages 2 and 3 of your notebook⁶ with the heading: "*Paton + Walker. Thoughts of officers en route*". Please explain the notes at page 43 of your notebook⁷ relating to the accounts of the officers and civilian witnesses relating to the restraint. What is the significance of these accounts of Mr Bayoh's body position during the restraint?

At the outset I reviewed all the statements including those of the response officers which been submitted by PIRC. I prepared a detailed summary of each witness statement for Crown Counsel. The notes at pages 2 and 3 of my notebook 05247 appear to have been prepared when examining the statements of PCs Paton and Walker. I have noted that PC Walker said the deceased was in possession of a sword and may have been under the influence of a substance. From memory there was no mention of the deceased being in possession of a sword or being under the influence of substance in any of the communications. The notes at page 43 of my notebook 05246 appear to be a note from the statements of the response officers and civilian witnesses regarding Mr Bayoh's body position during the restraint. Mr Bayoh's body position during the restraint was an important factor in the investigation.

26. Please explain your involvement, if any, in ingathering and analysing evidence in relation to Mr Kevin Nelson's account, including your understanding of his explanation that he did not see the engagement between Mr Bayoh and the officers. Please include reference to your preparation, strategy and lines of questioning in the interview of Mr Nelson that took place on 6 October 2016.⁸ Was Mr Nelson asked to comment on the specifics of the details of the incident from the officers' statements in relation to a stamp by Mr Bayoh on PC Nicole Short?

As there had been some criticism by Mr Bayoh's legal representatives as to the way civilian evidence had been obtained by PIRC, the investigative strategy required all eye witnesses to the restraint process to be precognosed. It was also decided that all witnesses would be precognosed

⁶ COPFS-05247

⁷ COPFS-05246

⁸ See Mr Nelson's precognition statement (COPFS-00055).

by two members of the team. It was agreed that witnesses would be allowed to describe events in their own words which were noted verbatim. Open and non-leading questions were used for clarification. Prior to commencing precognitions I reviewed the statements Mr Nelson had provided to PIRC together with the statements of the other civilian eye witnesses and the response officers. Mr Nelson was precognosed by myself and my colleague Erin Campbell. My understanding from Mr Nelson's precognition is that he left his window after witnessing Mr Bayoh assault PC Short to go outside at which time Mr Bayoh was being restrained on the ground. I don't recall if Mr Nelson was specifically asked about stamping but if he had been I would expect it to have been mentioned in the precognition.

27. Please explain your involvement, if any, in ingathering and analysing evidence in relation to the accounts of APS Scott Maxwell, PC Ashley Tomlinson and PC Craig Walker regarding the purported stamp on PC Nicole Short by Mr Bayoh, including any the extent to which relevant Airwave transmissions were considered.

I considered the witness statements from all 3 officers. I recall PC Walker and PC Tomlinson both spoke to PC Short being stamped on full force by Mr Bayoh and there was an airwave message which stated that PC Short had been stamped on. The purported stamp on PC Short was considered at length in the report to Crown Counsel.

28. Please explain your involvement, if any, in ingathering and analysing evidence in relation to Ms Wyse' account and related information, including her mobile telephone data and in particular her text messages. Please include reference to your preparation, strategy and lines of questioning in the interview of Ms Wyse that took place on 4 October 2016.⁹

I considered the statements provided by Ashley Wyse and precognosed her with my colleague Erin Campbell on 4 October 2016. Ms Wyse was precognosed in the same way as Mr Nelson detailed at 26 above. With regard to her telephone, I cannot recall what if anything was recovered in relation to her text messages. A number of Snapchat images were recovered which PIRC were later able to time by comparing the images to the Gallaghers CCTV footage.

29. Please explain your involvement, if any, in ingathering and analysing evidence in relation to PC Short's vest, including the dark marks on it.

I had no involvement in the above as this occurred prior to my involvement in the case. Evidence regarding PC Short's vest was considered within the report to Crown Counsel.

⁹ See Ms Wyse' precognition statement (COPFS-00047).

30. Please explain your involvement, if any, in ingathering and analysing evidence in relation to biological samples taken from Mr Bayoh's body, including toxicologist expert opinion.

I had no involvement in the above as this occurred prior to my involvement in the case. Toxicology results and expert opinion were considered within the report to Crown Counsel.

31. Please explain your involvement, if any, in ingathering and analysing evidence in relation to any belongings seized from Ms Collette Bell, Mr Zahid Saeed, Mr Martyn Dick and Ms Kirsty MacLeod, including the legal basis for their retention.

I did not analyse evidence relating to these events.

32. Please explain your involvement, if any, in considering if any of the actions of officers and civilian staff relating to searches of Mr Bayoh and Mr Aamer Anwar in police databases. What was your understanding of any benefit to the police investigation and the legality of carrying out a police database search in respect of a legal representative of a deceased person's family and, separately, the justification in recording intelligence relating to Mr Anwar under a counterterrorism category. How did COPFS take these matters forward, if at all?

Prior to my involvement in the case PIRC were asked by the Crown to investigate the circumstances above. I am not aware of what benefit there was to the police investigation of carrying out these database searches. PIRC's findings were considered and detailed in the report to Crown Counsel. My recollection is that there was no basis for further action.

33. Please explain your involvement, if any, in preparing and commissioning the multimedia presentation.

I attended a number of meetings with PIRC at the Scottish Police Authority SPA at Gartcosh regarding preparation of the multi media presentation. The disc was commissioned to assist Crown Counsel's decision making. The disc contained a timeline, maps, links to CCTV, audio footage and snapchat. A clock was inserted which allowed the exact period of restraint to be established. The disc was produced in December 2017.

34. Please explain your involvement, if any, in ingathering and analysing statistical data relevant to the issues in the Investigation and Precognition.

I do not recall having any involvement in in gathering and analysing statistical data.

35. Please explain your involvement, if any, in ingathering and analysing evidence in relation to training of the officers, including the relevance of this information to investigating any potential offences by Police Scotland.

I recall ingathering and analysing evidence in relation to training of officers whilst considering any potential breaches of the Health and Safety at Work Act 1974 by Police Scotland. From memory we asked PIRC to carry out further enquiries on the provenance of the Use of Force SOP and we looked at the content of police training as at 3 May 2015 and how it was delivered.

36. Please explain your involvement, if any, in ingathering and analysing evidence in relation to the extent to which race was a factor in the actions of the police officers engaging Mr Bayoh, including your comment on the relevancy of this issue to the Investigation and Precognition. Was race considered in relation to which offences to investigate? Was race considered as an aggravating factor in the offence?

I approached this case in the same manner as approached any other case. The precognition was carried out adhering to the values contained in the COPFS prosecution code. At the outset it was not clear if any crimes had been committed and no pre-judgements were made. I was aware from the PIRC investigation that race was an issue. We looked at all criminality and considered race throughout the investigation. In the absence of criminality there was no evidence of race being an aggravating factor.

37. Did you convey the analysis of all these areas to Crown Counsel? What was the response? Did you receive any advice or guidance from Crown Counsel and take further action accordingly?

The analysis was reported to Crown Counsel. I recall Crown Counsel was grateful for all our hard work. I don't recall any further advice or guidance from Crown Counsel but any such advice will be on the case file.

38. To what extent was race a factor in your analysis of the actions of the police officers? In your view, was this sufficient to inform Crown Counsel of the impact, if any, that Mr Bayoh's race had on the actions of the police officers who engaged him?

In my view it was a detailed considered legal analysis that considered all relevant potential offences which allowed Crown Counsel to make an informed decision.

39. Do you recall instances when the family and their legal representatives had proposed or suggested lines of investigation or witnesses to the Investigation and Precognition? Do you recall those being taken forward?

I am aware that at the outset the Crown instructed a number of expert witnesses some of whom had been recommended by the family and their legal representatives. I am also aware that the Crown directed PIRC to carry out enquiries such as in relation to data protection, misinformation, inappropriate conferring and race which were suggested by the family's legal representatives.

40. Please explain the notes at page 101 of your notebook¹⁰ with the heading “*Trickett*” and referring to the PIM Log. Please explain the notes at page 2 of your notebook¹¹ with the heading “*CI Conrad Trickett*”. Please explain the notes at pages 2 and 5 of your notebook¹² which includes “*Anything in Trickett’s PIM Log... Why he did not obtain basic facts.*” What is the relevancy of these issues to the Investigation and Precognition?

The notes at page 101 of my notepad (05246) appear as far as I recall to relate to actions of CI Conrad Trickett and appear to be notes I’ve taken whilst reading his statement. The notes at page 2 of my notepad (05248) also appear to be from information contained in a statement obtained from CI Trickett. The notes at pages 2 and 5 of notepad (05251) again relate to actions of CI Trickett. CI Trickett had been appointed PIM manager and as I recall the PIM process should have involved obtaining basic facts from officers. From memory the PIM log also contained factually incorrect information which suggested the deceased had struck an officer with a machete. Examination of PIM process was important to ascertain if there had been any deliberate attempt to mislead senior officers.

41. Please explain the notes at pages 57 and 58 of your notebook¹³ which includes the form of words of the death message given to Mr Bayoh’s family. What is the relevancy of this to the Investigation and Precognition?

These are notes I have probably taken when examining Police interaction with Mr Bayoh’s family. I suspect it is a lift from the PIRC report or a witness statement. It was important to establish what information had been provided to the family and when.

42. Please explain the notes at pages 69 and 70 of your notebook¹⁴ relating to Police Scotland’s Use of Force SOP. Did your analysis of the officers’ actions take account of this SOP and all the points you set out in your notes? With reference to your email¹⁵ request to Mr William Little of PIRC to obtain a statement from someone on the Police Scotland OST course to understand if the Use of Force SOP was incorporated into the training, was this matter ever resolved?

The notes at pages 69 and 70 of my notebook appear to be lifts from the SOP. The SOP was considered when analysing the actions of the officers. With reference to my email to Mr Little I understand a statement was submitted and that this matter was resolved and addressed in report to Crown Counsel.

¹⁰ COPFS-05246

¹¹ COPFS-05248

¹² COPFS-05251

¹³ COPFS-05247

¹⁴ COPFS-05247

¹⁵ PIRC-01914

Learning from other investigations

43. Prior to and during your involvement in the Investigation and Precognition, what awareness did you have of investigations by the police and/or the CPS into race in England and Wales? What learning did you derive from these investigations? Did anything you learn from these investigations result in any change in approach to your involvement in the Investigation and Precognition compared with your involvement in prior investigations?

Prior to and during my involvement I was not aware of investigations by the police and the CPS into race in England and Wales. I do recall reading a number of articles on deaths in custody which had occurred in England. I don't recall any change in approach as a result and this was my first involvement in this type of investigation.

44.

[REDACTED]

[REDACTED]

45. Insofar as not covered above, during your involvement in the Investigation and Precognition, to what extent did you consider the investigation into the death of Mr Sean Rigg in assessing the actions of the police officers? During the course of the Investigation and Precognition or prior, did you read the report of the Independent Review of the IPCC investigation into the death of Mr Rigg?¹⁷ If so, at the time you read it, what did you understand to be the issues and learning for the IPCC and CPS resulting from this Review? What did you understand to be the importance of race in issues raised? How did you apply any of these considerations and learning to your involvement in the Investigation and Precognition?

I have a recollection of the Sean Rigg report and I am confident I will have read it, however I don't now recollect the issues it raised. I can't therefore recall if I applied any considerations and learning to this case.

46. Insofar as not covered above, to what extent did you consider the approach of the CPS cases of deaths in custody or during or following contact with the

¹⁶ [REDACTED]

¹⁷ COPFS-02526(a)

police in which restraint was used? What were you interested in understanding or learning from the approach of CPS?

I was aware that Mr Brown and dedicated Crown Counsel consulted with CPS personnel who had experience in investigating deaths involving restraint. From memory we were interested in how they approached these cases and what factors they considered in deciding whether or not to initiate a prosecution and timescales involved.

47. During the course of your involvement in the Investigation and Precognition did you read the Report of the Independent Review of Deaths and Serious Incidents in Police Custody dated January 2017, chaired by Dame Elish Angiolini? If so, what lessons did you learn from the findings of this report? Please include reference to your notes at page 27 of your notebook¹⁸ and how these points were addressed in the Investigation and Precognition.

I read Dame Elish's report and my notes in my notebook appear to have been taken whilst reading the report and relate to de-escalation and dangers of restraint. There were a number of observations in the report that were relevant to the investigation and considered in the report to Crown Counsel. The main points I recall from the report relate to comments about the lack of independence of the IPCC due to employing former police officers, opportunities for conferring by officers before the arrival of the IPCC, the dangers of restraint and the need for officers to be trained in de-escalation, particular danger of restraint on those suffering from drug induced psychosis and Acute Behavioural Disturbance and the need for officers to provide statements at the earliest opportunity unless they were suspects.

Forensic examination

48. What is your understanding of the role of COPFS in relation to SPA Forensics' involvement in the Investigation and Precognition? What is normal practice in involving PIRC in the instruction and findings of SPA Forensics?

These pre-dates my involvement in the case. I am unable to comment on normal practice as this was the first time I had been involved in a PIRC case.

49. Did you provide any instructions to SPA Forensics in relation to the incident in which Mr Bayoh died? Please provide full details and the rationale for these instructions. Did you seek any input from PIRC for these instructions? Did you notify PIRC of the terms of these instructions? Did you share SPA Forensics' findings with PIRC? Please confirm the basis for any departures from normal practice.

No as these pre-dates my involvement in the case

¹⁸ COPFS-05246

50. Were you involved in the direction of SPA Forensics relating to the forensic analysis of PC Short's vest? Were you aware of the reason for the fingerprint testing being carried out?

No as this pre-dates my involvement in the case.

51. The Inquiry instructed a tread mark expert, Mr Paul Ryder. Mr Ryder in his report relating to the vest of PC Short explained:

28. ... There was black staining to the plastic-coated aspects of the reflective strips and to the police badge on the rear of the vest. I understand that this staining was a result of treating these parts of the vest with a black powder suspension with a view to developing any fingerprints that might be present. As a consequence of this treatment being applied as a liquid and then having to be removed by a washing process, parts of the yellow fluorescent fabric adjacent to the treated areas have been stained black. This includes the part of the vest on which the dark deposits had been observed.

29. From reference to the production PIRC-01176 provided to me it was observed that this staining from the fingerprint treatment had obscured parts of the dark staining that had originally been present on this vest.¹⁹

Were you aware that the fingerprint testing by SPA Forensics may hinder further forensic analysis being carried out on the vest? Was this a concern for you or, as far as you were aware, any of your colleagues?

No this pre-dates my involvement in the case.

Expert witnesses

52. What involvement, if any, did you have in the instruction of expert witnesses? Please include your involvement in the instruction of experts by both PIRC and COPFS separately. Please include your involvement in the following aspects of the instruction:

- (i) the choice of experts,
- (ii) preparation of the letters of instruction, and
- (iii) the information and documentation provided to experts to assist in framing their opinion.

I had no involvement in experts instructed by PIRC as I started working on the case after the submission of their report. Whilst I did not identify expert witnesses I was involved in making initial contact by email with a number of them. At that stage I provided very general details about the case and asked them if they would be willing to provide a report. I would also ask for a CV and indication of fees. Once agreed I drafted a draft letter of

¹⁹ SBPI-00171 at page 9. Please note this report has not been shared with you.

instruction which would be checked by Mr Brown. I think Crown Counsel also had sight of letters of instruction which was an advantage of having dedicated Crown Counsel. Once a final version was agreed I collated information and documentation to be provided to expert which was sent to them on an encrypted disc via courier. I don't now recall which letters of instruction I drafted and which were drafted by my colleagues but hopefully this can be confirmed via examination of emails.

53. What involvement did you have, if any, in consulting with expert witnesses? What was the purpose and outcome of each of these consultations?²⁰ Pages 2 to 11 of your notebook²¹ appear to be a note of a consultation with Mr Graves on 21 March 2018, is this correct? Please explain the notes that you have taken, the lines of questions that were asked and the outcomes of the consultation.

The notes contained in COPFS-02332 appear to refer to a consultation between Mr Graves and Mr Prentice [REDACTED]. Mrs Carnan and I were both in attendance to provide any assistance if necessary. I don't recall Mrs Carnan or I having an active part in this consultation. On 21 March 2018 Mrs Carnan and I held a telephone consultation with Mr Graves. COPFS 05202 are my written notes from that consultation. I think Mr Graves had indicated there was going to be a delay to his report and we were keen to establish what his initial thoughts were to help draft our report. From reading the notes we have asked his views on the actions of the officers at the scene, the length and types of restraint, discrepancies in officers' accounts re body positions and PC Tomlinson's use of his baton. It also appears we have asked Mr Graves about the actions of PCs Walker and Tomlinson when they first encountered Mr Bayoh and alternative strategies. We have asked about the PIM process and fact officers did not provide statements. We asked his views on Excited Delirium and whether enough signs for officers to recognise it. We discussed in some detail actions of PC Tomlinson and reasons for use of his baton.

54. Insofar as not covered above, please explain the notes at pages 3 to 9 of your notebook.²² Please include an explanation of what was discussed regarding Dr Karch's opinion.

These notes are from a consultation with Pathologist Kerryanne Shearer I attended with Crown Counsel at Edinburgh Royal Infirmary on 4/6/18. From the notes it appears Dr Shearer was being asked to comment on Dr Karch's position that the deceased had a pre-existing heart condition.

55. What, if any, analysis did you conduct in respect of the expert witness evidence? What was the outcome of this analysis? Was anything done in light of your analysis?

²⁰ See COPFS-02332.

²¹ COPFS-05202

²² COPFS-05245

The medical evidence from the medical experts instructed by PIRC and the Crown was set out in detail in the narrative. An overview from Dr Lawler on each of the expert reports was also within the narrative. The medical evidence within the narrative was considered during the analysis of the case. Crown Counsel and Mr Brown consulted with the medical experts instructed by the Crown.

56. At the point the case was reported to Crown Counsel, were you satisfied with the expert evidence? Did you have concerns regarding any of the expert evidence? Did you make Crown Counsel aware of your views?

I was satisfied with the expert evidence. I had no concerns about any of the expert evidence which was obtained throughout the investigation and detailed in the report to Crown Counsel. As stated above Mr Brown and Crown Counsel also consulted with the expert witnesses.

- 57.

[REDACTED]

[REDACTED]

The Health and Safety Executive ("HSE")

58. Prior to your involvement in the Investigation and Precognition, what experience did you have in investigations involving HSE?

I worked in Health and Safety Division at Crown Office from 2012 to 2015. I would invite the Inquiry to contact COPFS for exact dates. I worked on a number of large scale health and safety investigations reported by Police Scotland, HSE and local authorities.

59. In what circumstances would COPFS normally invite the involvement of HSE?

During my time in HSD, I have progressed reports submitted by HSE and joint reports submitted by Police Scotland and HSE. I have never been involved in inviting HSE involvement which would be done by senior colleagues so I am unaware of the process.

60. What involvement, if any, did you have in liaison with HSE? Why did COPFS request their involvement? What benefit would HSE have provided to the Investigation and Precognition?

I had no involvement in liaison with HSE as this occurred prior to my involvement in the case.

61. What was the outcome of COPFS' liaison with HSE in the Investigation and Precognition and why? How did this impact the Investigation and Precognition?

As per response above I was not involved with HSE liaison. I understand HSE declined to investigate.

62. Did the outcome of liaison with HSE affect the quality of the reporting of the case to Crown Counsel? Was this raised with Crown Counsel and, if so, what advice was given and what further actions taken?

No as the relevant statutory provisions were considered with input from COPFS Health and Safety Division and thereafter reported to Crown Counsel.

63. Insofar as not already covered above, please explain your notes relating to the "*H+S investigation*" on page 84 of your notebook.²⁴

I'm afraid I'm unable to explain or add context to those notes other than to say as previously stated these are most likely scribbles taken whilst reading the materials.

European Convention on Human Rights ("ECHR")

64. During the Investigation and Precognition, were you involved in discussions in any form relating to COPFS' obligations under Articles 2 and 14 of the ECHR in respect of Mr Bayoh and his family? If so, what was your understanding of these obligations and how, if at all, did this affect your involvement in the Investigation?

I don't recall any specific discussions about Article 2. However, in terms of any investigation I am always cognisant of the duty of Article 2 to affect proper investigation. It is a fundamental key part of the investigation and I try to ensure our investigations are Article 2 compliant.

65. To what extent was Article 2 of the ECHR considered in respect of the duties of Police Scotland and PIRC? Please explain the notes at page 73 of your notebook²⁵ including the following excerpt: "*Article 2 – Question of investigation into investigation.*" Please explain the reference to Article 2 on page 10 of your notebook.²⁶

²⁴ COPFS-05246

²⁵ COPFS-05246

²⁶ COPFS-05247

I don't recall if Article 2 was considered in respect of the duties of Police Scotland and PIRC. I'm afraid I can't add any context to the notes referred to in both notebooks.

Media engagement

66. Were you following the media reporting of the matter? To what extent, if any, was your involvement in the Investigation and Precognition influenced by what was reported in the media? Were you aware if any of your colleagues or the Investigation and Precognition generally were influenced by what was reported in the media?

I never followed the media reporting of the case between 3 May 2015 and when I first became involved in September 2016. I was aware of various media reports during my time working on the case but my work was not influenced by what was being reported. I am not aware of colleagues having been influenced by what was being reported in the media.

67. What involvement did you have, if any, in COPFS' media engagement? This may include discussing media lines with colleagues, liaison with the COPFS media department, direct contact with the media or providing information to colleagues dealing with the media.

To my recollection I had no involvement in media engagement during my time working on the case.

68. To what extent, if any, did you rely upon Dr Karch's opinion in order to form conclusions of Mr Bayoh's cause of death. Please read the comments attributed to Dr Karch reported in the Sun newspaper on 1 November 2015.²⁷ Were you aware of these comments during the course of your involvement in the Investigation and Precognition? What impact did these comments have on Dr Karch's status in the Investigation and Precognition? Were Crown Counsel made aware of these comments and any concerns you or your colleagues may have had?

Dr Karch's opinion was considered and reported to Crown Counsel along with all other expert medical evidence. I do not recall seeing the Sun newspaper article which was published prior to my involvement in the case. From the PIRC report I was aware Dr Karch had suggested Mr Bayoh had pre-existing heart disease.

69. Were you aware of the Mail on Sunday newspaper article reporting the decision of COPFS being not to prosecute any of the officers, prior to Mr Bayoh's family being informed? Were you aware of, and/or did you have any involvement in, any internal investigation within COPFS into the source of the Mail on Sunday's article?

²⁷ See a copy of the Sun article under reference SBPI-00216.

I was aware of the article and being appalled by it. I don't recall being advised about an internal investigation by COPFS and wasn't involved in any such investigation.

70. Please explain your notes at pages 63 to 65 of your notebook²⁸ headed "*Nothing to see here*". At page 65, what is meant by the following note: "*No culture of the officers – no negligence on part of officer.*"

These are notes made by me in my notepad which I have most likely taken whilst reading the materials. I note above the phrase 'Nothing to see here' I have written 'Lawler' Given the passage of time I'm afraid I can't add further context.

Parallel investigation

71. Were you aware of an investigation into Mr Bayoh's death being carried out on behalf of the SPF by Mr John Sallens? Did you have any concerns about this? If so, what decisions and actions did you take to resolve the issue?

These pre-dates my involvement in the case.

72. Please confirm if you aware of business cards being left by an investigator, Mr John Sallens, at witnesses' houses in the weeks following the incident, with the following details written in pen on the reverse of the card:

*Scottish Police Federation
PBW Law (Peter Watson)
Fatal Accident Enq
into death of Sheku Bayoh²⁹*

Did any aspect of this approach by the investigators concern you?

These pre- dates my involvement in the case

73. Were you aware of witness accounts that investigators provided them with information from other sources and made them feel uncomfortable?³⁰ If so, was anything done to address this?

These pre-dates my involvement in the case. I don't recall being made aware of this during precognitions.

²⁸ COPFS-05246

²⁹ BBC-00070. Please note the photograph of the card has not been shared with you.

³⁰ For example, in Mr Mark Daly's statement to the Inquiry (SBPI-00119 at para 65) he recalls Mr Nelson telling him that investigators saying they were from the Police Federation entered his home and "*they start dripping poison in his ear about Bayoh*".

74. Were you aware of a report of findings of the SPF's investigation being sent to PIRC? To what extent, if any, did this report affect the approach of COPFS in the Investigation and Precognition?

To my knowledge I was not aware of the above.

75. Please explain your notes in your notebook³¹ at page 77: "*(4) Before using force – arguably – did not consider the physical, mental, and [...] condition of the assailant. Not under attack. No weapons visible (albeit could not rule out a concealed weapon.)*"

These appear to be notes I have taken when reading materials. I'm afraid I can't add further context.

76. At the time of your involvement in the Investigation and Precognition, were you aware of any racial tropes being used in PC Short's account given in the above summary? Are you now aware of any racial tropes being used by any of the response officers in their statements? Are you aware of any racial tropes now? Would the use of these tropes be relevant to your analysis in any way? Would these racial tropes factor into the perceived threat to the officers from Mr Bayoh?

I'm unable to recall which officers used particular racial tropes. I recall that there was mention in a number of response officer statements that the deceased was of large build and there was reference from one officer that he was the biggest man that they had ever seen. There were also thoughts of an officer on route this might have been a terrorist attack and there was also reference to the death of Lee Rigby. All these points were considered in the report to Crown Counsel.

Race

77. Do you have any experience of racism being a factor to investigate in an investigation relating to:
- (i) a death in custody or death during or following police contact; or
 - (ii) the actions of on-duty police officers.

If so, please provide details of the year(s) you were involved, how race was a factor, how you investigated the race aspect and the outcome.

I did not have previous experience of working on such cases.

78. Insofar as not already covered, to what extent, if any, was Mr Bayoh's race a factor in any of your decisions and actions in the Investigation and Precognition?

³¹ COPFS-05247

I approached this precognition like any other high profile complex case and in accordance with guidance set out in the precognoscers handbook. I was of course aware race was a factor in this case but it did not alter the way I approached this case or any of my decisions and actions taken during the precognition.

79. Prior to your involvement in the Investigation and Precognition, in your experience, did COPFS routinely consider race when dealing with a death in custody or death during or following police contact? Has that position changed between the time you were involved in the Investigation and Precognition and now?

As this was the first and only time I had been involved in such an investigation I do not think I am in a position to answer this question and would refer the Inquiry to COPFS.

Training

80. At the time of your involvement in the Investigation and Precognition, what training had you completed that was relevant for your role in the Investigation and Precognition? Please provide details of the type of training and explain what you can recall from the session.

After joining COPFS I completed a number of core courses one of which would have been a precognition course. I don't recall the content of the course. I would refer the Inquiry to COPFS Learning and Development who will have a record of my training and detail on content of courses I attended.

81. Insofar as not already covered, what training had you completed at the time of your involvement in the Investigation and Precognition in relation to the below areas? Please provide details of the type of training and explain what you can recall.

- (i) liaison and instruction of SPA Forensics;
- (ii) instruction of and consulting with expert witnesses;
- (iii) taking precognitions of witnesses;
- (iv) reporting the case to Crown Counsel, including liaison with Crown Counsel and drafting the Crown Precognition.

As stated above I would have attended a precognition course after I joined COPFS and most likely when I started carrying out solemn work. Given the passage of time I don't recall the content of the course but I would expect it to have covered most if not all the areas listed. I would refer the Inquiry to COPFS Learning and Development for details on content of the course. In relation to areas listed experience is built up over the years through learning from senior colleagues and from utilising available reference material.

82. Insofar as not already covered, what training had you completed by or during the time you were involved in the Investigation and Precognition in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?

I have received training on equality and diversity awareness. All aspects were applicable to my role. I would refer the Inquiry to COPFS Learning and Development re dates and content of training.

83. What guidance or reference materials in relation to race were you aware of being available to you in the time you were involved in the Investigation and Precognition? Over the course of your involvement in the Investigation and Precognition, did you make use of any of these materials?

I was aware of a range of guidance on the COPFS Intranet on race including guidance on e.g. racially motivated offences, racially aggravated offences and investigation and reporting of racist crime. I don't recall specific occasions when I made use of these materials during the precognition but would have done so as and when necessary.

84. What, if any, training do you consider would have assisted you in your involvement in the Investigation and Precognition? This may be training you have carried out since the Investigation and Precognition, training you are aware of but have not completed or training that is not, as far as you're aware, provided by COPFS.

To date I'm not aware of any additional training that would have assisted me carrying out my duties on this case.

85. On page 88 of your notebook³² the following is written:

Due
Unconscious Bias 24/3/16
Disability Awareness 23/3/16
Equality + Diversity Essentials 26/3/15
Being a [...] Friend 15/4/15
Mental Health Awareness 14/4/15

What is written before "*Friend*"? Are these records of training? If so, whose training is recorded? Why have you listed these training records? Why is there a cross next to one entry and a tick next to two other entries?

It is 'Dementia friend' These are records of my training. These are online courses and I suspect I have been checking when I last completed them. I'm not sure of the significance of the ticks and crosses. I would refer the Inquiry to COPFS who will be able to access my training records.

Records

³² COPFS-05246

86. Is there a requirement for you to take contemporaneous notes or any other record of your involvement in an investigation? Is there a requirement to retain them? Are there any forms that you must complete in the course of the Investigation and Precognition for internal record-keeping?

I'm not aware of a requirement to keep notes I made whilst working on a case or to record my involvement in an investigation. COPFS has a retention policy in relation to case related documentation held by the organisation. I am also not aware of any forms to be completed with regard to internal record keeping.

87. What records did you keep in relation to the Investigation and Precognition? Were these retained and archived? To what extent was your record-keeping consistent with normal practice? Please confirm the basis for any departures from normal practice.

I retained all emails from this case along with various documents on my pc which I understand have been made available to the Inquiry. My record keeping was consistent with normal practice.

Miscellaneous

88. In your experience, was this investigation lengthy? Was it unduly lengthy? What is the reason for the length of time required for the case to be reported to Crown Counsel? Could anything have been done differently to reduce the length of time required from Mr Bayoh's death to reporting to Crown Counsel?

In my experience this was a lengthy investigation and precognition process. I do not however think it was unduly lengthy. In my view the reason for the time taken to report to Crown Counsel was due to the complexity of the case and the amount of material to be considered. A significant amount of time was spent at the start of the precognition on establishing a precise factual background of the incident which involved careful and detailed examination of all the available evidence. A number of lines of inquiry suggested by Mr Bayoh's family were also undertaken. A significant number of expert witnesses were instructed who were also given appropriate time to submit their reports. In my view the time taken in this case was necessary to ensure a properly informed decision was taken on any criminal proceedings. I am not sure what could have been done differently to reduce the time taken to report to Crown Counsel.

89. At what stage in the Investigation and Precognition, if at all, were you aware of the possibility that a public inquiry would be commissioned to examine Sheku Bayoh's death and the Investigation and Precognition? Was anything

done or not done in light of this? Please explain the notes at page 73 of your notebook³³ beginning with: "7/6/18 H+S FAI – Public Inquiry Questions."

There is an entry in my calendar on 7/6/18 regarding a meeting at Crown Office titled Sheku Bayoh Meeting FAI and Follow Up. The notes in my notepad referred to above appear to be bullet points from the meeting. I would refer the Inquiry to COPFS for details and minutes of this meeting. I don't recall when I became aware of the possibility of a public inquiry being commissioned. On my part nothing was done or not done in light of the possibility of a public inquiry.

90. Insofar as not already covered, to what extent was your involvement, decisions and actions in the Investigation and Precognition consistent with normal practice? If there were any deviations from normal practice, please explain your reasoning. In your view was race a factor in any departures from normal practice you have identified?

My involvement, decisions and actions in this case were consistent with normal practice. I don't recall any deviations from normal practice.

91. Insofar as not already covered, what significant difficulties or challenges did you encounter during your involvement in the Investigation and Precognition? Would any changes to practice or procedure would have assisted you in overcoming these difficulties or challenges? To what extent were these difficulties or challenges normal or expected in your role? To what extent was race a factor in these difficulties or challenges?

There are always difficulties and challenges working on high profile complex cases. I don't recall specific difficulties however I always sought advice as and when necessary. I worked under supervision and any difficulties and challenges were discussed with Mr Brown and the rest of the team. Race was not a factor.

92. What is your role, and more broadly COPFS' role, in sharing the findings of the Investigation and Precognition or PIRC's investigation with Police Scotland? Do you consider any of your findings in the course of the Investigation and Precognition, or the findings of PIRC, would be of assistance to Police Scotland if they were shared? Did you or, insofar as you're aware, any colleague share these findings with Police Scotland? Did anyone from Police Scotland or SPA request your findings for the purposes of disciplinary action?

As a PFD in COPFS it would be beyond my remit to share findings with Police Scotland. I would invite the Inquiry to contact COPFS to ascertain their position on sharing findings with Police Scotland. I never shared any findings with Police Scotland, and I am not aware of any colleagues doing so either. I can confirm Police Scotland or SPA did not request any findings from me.

³³ COPFS-05246

93. Please state the following 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.

94. Please sign and date your statement.

A solid black rectangular box used to redact the signature of the witness.

21 September 2023