

Assistant Solicitor to the Inquiry
[REDACTED]

E: legal@shekubayohinquiry.scot



Mr Stephen McGowan
Crown Office and Procurator Fiscal Service

By email only:
[REDACTED]

11 December 2023

Dear Mr McGowan

RULE 8 REQUEST

I am writing on behalf of the Chair to the Sheku Bayoh Public Inquiry (“the Inquiry”).

The Crown Office and Procurator Fiscal Service (“COPFS”) have written to us to confirm your preference for your statement to be prepared under Rule 8 procedure.

Under Section 21(2)(a) of the Inquiries Act 2005 the Chair may, by notice, require a person to provide evidence in the form of a written statement. Rule 8 of The Inquiries (Scotland) Rules 2007, provides that the Inquiry may send a written request to any person for a written statement of evidence. I hereby request you provide a written statement to the Inquiry by **5pm on 12 January 2024**.

It is a criminal offence to fail to comply with this request without reasonable excuse. I refer you to Section 35(1) of the Inquiries Act 2005.

The Annex to this letter sets out the areas to be covered in your written statement. The documents for you to read referred to in the Annex will be available on our online database “Objective Connect”. A link for you to access this system will be emailed to you separately.

Please provide your written statement by email to legal@shekubayohinquiry.scot.

Section 22(1)(a) of the Inquiries Act 2005 states that a person may not be required, under section 21, to give, produce or provide any evidence or document if you could

not be required to do so if the proceedings of the Inquiry were civil proceedings in a court. If you are of the view that Section 22 applies to your evidence please advise the Inquiry of this and the reasons why you believe Section 22 applies.

Your statement may be disclosed to the Core Participants in the Inquiry and may be published on the Inquiry's website. Any personal information not relevant to your evidence will be redacted prior to disclosure.

The Inquiry may issue a further Rule 8 request or Section 21 notice to you at a later date if further evidence is required.

The written statement will form part of the evidence of the Inquiry. For that reason it is important that it is in your own words. In addition, you may be asked to attend a hearing to give oral evidence to the Inquiry. The Inquiry will contact you in future to confirm.

You may wish to take independent legal advice in relation to this letter and at any stage of the Inquiry's proceedings. I would also draw your attention to the [Protocol for Core Participants](#), which sets out the criteria to apply to be designated as one of the Inquiry's Core Participants.

If you have any questions regarding this letter or the content of your written statement please contact the legal team by email at legal@shekubayohinquiry.scot.

Yours sincerely



Assistant Solicitor to the Inquiry

ANNEX

COPFS POST INCIDENT MANAGEMENT

AREAS FOR WITNESS STATEMENT

MR STEPHEN MCGOWAN

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

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.

Role and experience

1. What was your grade and position in COPFS during your involvement in the post incident management and investigation into the death of Mr Sheku Bayoh (“the Investigation”)? How long had you been in this position prior to the date you became involved? What were your duties and responsibilities in this position? Please include your role as Deputy Crown Agent for Serious Casework and separately for Operational Support.
2. When did you first become involved in the Investigation? What were the circumstances in which you became involved?
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?
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? If so, please provide examples.
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.
6. What is your role in complaints made about COPFS by members of the public? Please read your letter to Mr Alan Paton’s wife dated 17 January

2017.¹ Why were you dealing with this complaint? What procedure did you follow? What investigations did you carry out? What was the basis for your findings?

The Police Investigations and Review Commissioner (“PIRC”)

7. What experience did you have in dealing with PIRC prior to the date you became involved?
8. What is your understanding of COPFS’ role in the instruction of PIRC? What is COPFS role in liaison with PIRC during an investigation under COPFS’ instruction?
9. What is your understanding of the relationship between COPFS and PIRC in the Investigation? What is the interaction between COPFS and PIRC, for example do PIRC require to follow COPFS’ direction? To what extent is this interaction the same as that of COPFS and Police Scotland in a criminal investigation?
10. What involvement did you have with PIRC in relation of the Investigation?
11. What instruction was given to PIRC in the course of your involvement in their investigation? If so, when and why did this occur?² To what extent do you agree with the summary of PIRC’s instructions on pages 1 and 2 of the Briefing Note to Mr Justin Farrell dated 28 February 2020?³
12. What was your involvement, if any, in relation to whether anyone from COPFS should attend Kirkcaldy in person on 3 May 2015? Did you consider whether a colleague should attend to assist PIRC in the initial stages of their investigation and to attend meetings with PIRC and Police Scotland in person? What benefit could have been gained by PIRC and Police Scotland if someone from COPFS had attended? Why was Mr Bernard Ablett requested to attend the post mortem examination but no-one from COPFS attended any other aspects of post incident management, for example Police Scotland Gold Group meetings? To what extent was it consistent with normal practice for no-one from COPFS to attend Kirkcaldy in person on 3 May 2015? Insofar as you were involved, please explain the basis for any departures from normal practice.
13. Were you aware that Mr Green was personally attending a scene following a light aircraft crash reported in the late afternoon/evening of 3 May 2015? Were you involved in deciding that he should attend for the day on 4 May 2015? If so, what was the basis for this decision and why was Mr Green attending this scene but no-one from COPFS had attended Kirkcaldy following Mr Bayoh’s death on 3 May 2015?

¹ COPFS-00292

² Please refer to the list of instructions to PIRC at the bottom of this Annex.

³ COPFS-02126 (a)

14. Please read the email chain between you, Mr John Logue and Mr Green on 4 May 2015.⁴ At 5:37pm Mr Logue explains that, following a PIRC written briefing, PIRC's investigation was too focused on police contact and would need to be expanded, and that the matter would be dealt with the next morning "*once we get a clearer briefing*". What was unclear about the briefing to this point? What other matters were to be addressed before expanding PIRC's instruction? Would it have assisted for someone from COPFS to have attended to obtain a clearer understanding of what had happened?
15. Mr Green replied to Mr Logue's above email the same day at 7:30pm⁵ to say: "*I have not sent a formal instruction to PIRC or Police Scotland as yet due to the weekend and other issues.*" What was your understanding of the other issues Mr Green stated as being the reason for the delay in formal instruction? Further, Mr Bernard Ablett emailed an update following the post mortem examination on 4 May 2015 at 7:23pm⁶ confirming "*PIRC are looking for Terms of Reference from COPFS*" and that Police Scotland's ACC Ruaraidh Nicolson was looking for a meeting with COPFS to underline police commitment to an independent investigation. Mr Green replied that he was not sure if Mr Ablett is the right person to meet with ACC Nicolson. In light of all these considerations, would it have assisted to have Mr Green or a COPFS colleague attend in person on 3 May 2015 and beyond in order to provide updates and steer the Police Scotland and PIRC investigation as matters developed? Did Mr Green's attendance at the plane crash affect COPFS' ability to provide instructions to Police Scotland and PIRC in the early days of their investigation?
16. To what extent do you agree with Mr Alasdair MacLeod's summary of PIRC's instructions on pages 1 and 2 of the Briefing Note to Mr Justin Farrell dated 28 February 2020?⁷ Please see the PIRC instructions listed at the bottom of this Annex.
17. What is your understanding of COPFS' role in relation to a PIRC investigation carried out under Section 33A(b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the "2006 Act")? For example, do PIRC have autonomy or do they require the authority of COPFS before taking certain steps? Do COPFS direct the work to be carried out by PIRC as part of their investigation? Do COPFS supervise the PIRC investigation? If not, to what extent do COPFS influence the direction of the PIRC investigation?
18. Mr Bernard Ablett has stated the following position to the Inquiry in respect of COPFS' liaison with PIRC:

I have been asked whether COPFS supervised or directed the PIRC. Again, because I have no experience of COPFS liaison with the PIRC, I cannot say. In terms of S.33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006 it is a duty of the Commissioner to carry

⁴ COPFS-03876

⁵ COPFS-03876

⁶ COPFS-04705

⁷ COPFS-02126 (a)

out an investigation where directed to do so by the appropriate prosecutor. The provision is silent as to whether the prosecutor has the authority to supervise the PIRC in its day-to-day investigations. By contrast, the terms of s.17 of the Police (Scotland) Act 1967 make the police subordinate to the prosecutor: "...in relation to the investigation of offences the chief constable shall comply with such lawful instructions as he may receive from the appropriate prosecutor." I cannot comment as to whether this makes a practical difference.⁸

Please provide your comment on this matter. Do COPFS have authority to supervise PIRC in their day-to-day investigations? Is there a difference, practical or otherwise, between COPFS' role in an investigation carried out by the police and by PIRC? Do you have any concerns in there being a position whereby a police investigation into potential criminality has the guidance and supervision of COPFS whereas a PIRC investigation into potential criminality of police officers and Police Scotland does not? Why would this be the case?

19. Please read your email exchange with the Commissioner Ms Kate Frame on 12 May 2015 relating to PIRC seeking advice from COPFS.⁹ Did any further discussions take place on this matter following these emails? Is there a circular problem whereby PIRC's normal practice is to be guided by COPFS on these matters and for COPFS' advice to be for PIRC to follow their normal practice? What was the outcome?
20. Please read your letter to PIRC dated 5 May 2015 providing instruction.¹⁰ Why did you state the Mr David Green would be Senior Fiscal with oversight of the case? Was a handover to CAAPD inevitable or did you and your colleagues consider at the time that SFIU might take a lead for the duration of the investigation? Please note the final instruction letter to PIRC dated 5 May 2015¹¹ states Mr Les Brown and CAAPD would be overseeing the matter.
21. Please read your email to Ms Irene Scullion of PIRC dated 5 May 2015.¹² In your email you suggest you had discussed the matter with her prior to the instruction being sent, what was discussed? Please note your email to Ms Scullion earlier that day at 10:32am.¹³
22. Please read your letter to PIRC dated 12 June 2015 providing instruction.¹⁴ On page 2 you explain: "*I will forward a copy of this letter of DCCs Neil Richardson and Ian Livingstone of Police Scotland for their respective interest.*" What was the interest of Police Scotland in the terms of PIRC's instruction? Is it normal and, separately, appropriate to inform Police Scotland of the terms of PIRC's instruction and investigation? Was this done for all of PIRC's instruction?

⁸ SBPI-00370. Please note this statement has not been shared with you.

⁹ COPFS-02796

¹⁰ COPFS-04661(a)

¹¹ COPFS-02539

¹² COPFS-02751

¹³ COP S-03875

¹⁴ COPFS-04010 (a)

23. Please read your email to Mr Brown and others dated 4 January 2017.¹⁵ In respect of Police Scotland's communications with COPFS regarding updates on the investigation, you state:-

In neither case am I convinced that the police actually understand that they are potential suspects, that the usual rules of cooperation don't apply and they ought to be taking their own legal advice before saying anything to us.

Maybe we should discuss how we put all of this to them formally? I am concerned that they are using the informal relationships which we enjoy with the police when they are the reporting agency to ask for information in cases where they are the accused not the reporting agency.

What is the issue with the lines of communication between COPFS and Police Scotland you identified in your email? How was this matter resolved? Does this remain a problem in cases where Police Scotland and/or their officers are potential suspects? What is the difference, if any, between a potential suspect and a suspect?

24. On page 7 of Mr MacLeod's summary of the Investigation to Mr Farrell,¹⁶ the following is said to be the views of the precognoscers:-

The precognoscers found it of interest that the information about the rib fracture which was only made known to PIRC on 29th May 2015 was somehow potentially being explained away by three of the officers when they provided statements on 4th June 2015. After careful consideration of all the evidence there was insufficient evidence to make any more of it other than to say it was suspicious, and potentially called into question the integrity of the PIRC investigation at that point.

Were you aware of this view? If so, did you agree with this and in what respects was PIRC's integrity in question? Was this ever raised with PIRC directly? What was their response?

25. Please read your Notebook 4 at page 20: "*PIRC... Issues re initial response to Bayoh (some of which was with police) Need to develop. One or two issues arising in prec of Bayoh...at early stage.*" Please set out the background and context to you making these notes. Please explain the quoted points in more detail. What were the issues in the initial response? What needed to be developed and what was your role in that? Were the points in the prec the issue of PIRC's integrity? In any event, were these matters ever raised with PIRC? If so, what was their response?

¹⁵ COPFS-04814

¹⁶ COPFS-02126 (a)

26. What duties are incumbent on you in relation to PIRC's investigation? To what extent did you fulfil these duties? Insofar as not already covered, to what extent was your involvement in the control, direction and guidance of PIRC's investigation consistent with normal practice? Please set out your reasoning for any departures from normal practice. To what extent, if any, was race a factor for any departures from normal practice?
27. In your view, was race sufficiently covered in COPFS instructions to PIRC? Did COPFS provide sufficient guidance and advice to PIRC in order for them to investigate the issue of race sufficiently?
28. Please read the Memorandum of Understanding between COPFS and PIRC dated 10 and 11 December 2013 ("the MOU").¹⁷ Were you aware of the MOU during your involvement in the Investigation? Were any further duties incumbent on PIRC or COPFS in light of the MOU? If so, how did you satisfy these requirements on COPFS? In particular, at para 7.5 on page 5, were PIRC instructed to report by way of a Full Investigation Report on the agreed template or an SPR together with full statements and productions? What, if any, timescales were determined in the instruction?
29. The MOU¹⁸ at para 12.4 on page 9 provides that representatives of CAAPD, SFIU and PIRC will meet annually on a date agreed in order to discuss the operation of this MOU, issues of mutual interest and any requirement to amend the terms of the MOU; are you aware of these meetings taking place? What was your role, if any, in this aspect of COPFS liaison with PIRC?
30. What role, if any, did you have in any quarterly meetings with PIRC? Please set out the dates of these meetings and what, if anything, was discussed that relates to the Investigation.
31. Please read the email chain between you, your COPFS media colleagues and the Lord Advocate dated 28 to 30 August 2015¹⁹ relating to PIRC's media release following their report being provided to COPFS and criticism from Mr Bayoh's family's solicitor Mr Aamer Anwar relating to delays in PIRC establishing the cause of Mr Bayoh's death and the use of US-based experts speaking to "excited delirium". The Commissioner appears to have departed from the direction she was given by the Lord Advocate and released her own statement to the media to directly respond to Mr Anwar's comments in the media; please provide your comment on this matter and include your view on whether this is a breach of PIRC's duties to follow the Lord Advocate's direction. Do you consider this a breach of PIRC's duties under Section 41A of the Police, Public Order and Criminal Justice (Scotland) Act 2006? Please explain your reasoning.
32. Do you recall the Lord Advocate's response to the Commissioner's media line that was issued on 30 August 2015? Was anything done, or should it have been done, if the Commissioner had departed from the Lord Advocate's

¹⁷ PIRC-04453

¹⁸ PIRC-04453

¹⁹ COPFS-02682

direction? Do you know why the Commissioner released this statement to respond directly to Mr Anwar? Were you involved in any discussions between COPFS and PIRC on this matter following the media line being issued? Did you understand there to be any frustration in PIRC that their engagement with the media was not directly responding to criticism? Were you, or are you now, sympathetic to these frustrations?

33. What is COPFS' role in relation to PIRC's funding of expert witnesses? What is COPFS' role in funding of expert witnesses in relation to criminal investigations that do not involve PIRC? Please read Mr Logue's PA's email to you dated 9 September 2015²⁰ regarding COPFS funding PIRC's expert witnesses. What was your response to the request and why? Were you aware of PIRC's costs to date in that regard? Did you expect PIRC to have incurred this level of cost?

Lord Advocate

34. What is your understanding of the role of the Lord Advocate in the Investigation? Please outline the dealings you had with the Lord Advocate during the course of your involvement in the Investigation.
35. Did you have any involvement in meetings between the Lord Advocate and Mr Bayoh's family? If so, which meetings did you attend? Who was present? What was your recollection of these meetings? What was the outcome of these meetings and what was your understanding of what the Lord Advocate, and COPFS, had undertaken to do?
36. In your experience, in what circumstances does the Lord Advocate meet with the family of a deceased person as part of a COPFS investigation? What difference in approach to Mr Bayoh's family, if any, occurred when Mr Wolffe QC succeeded Lord Mulholland as Lord Advocate on 1 June 2016?
37. To what extent was the involvement of the Lord Advocates in the Investigation normal practice or unusual, in your experience?
38. Please read your email to the Lord Advocate dated 5 May 2015,²¹ the PIRC Briefing Document²² that was attached to the email and PIRC's Ms Irene Scullion's email to you dated 5 May 2015.²³ Why was Ms Scullion emailing this update to you? Why were you updating the Lord Advocate? Were there any further sources of your update to the Lord Advocate beyond the PIRC Briefing Document and Ms Scullion's email? To what extent is the factual information accurate to your understanding at that point in the investigation? In particular, was it the case that COPFS had instructed PIRC in writing under Section 33A(b)(i) of the 2006 Act and did you understand that PIRC FLOs had engaged with Mr Bayoh's family the night before and PIRC were confident that a relationship could be established?

²⁰ COPFS-05126

²¹ COPFS-02685

²² PIRC-03694

²³ COP S-03875

39. Please read the Crown Agent Mr David Harvie's email to Mr Logue dated 10 June 2015.²⁴ Mr Harvie refers to a promise being made by the Lord Advocate to Mr Bayoh's family that he would make no public statement on this case until concluded. Were you aware of this promise prior to this email? What were the circumstances in which this promise was given? Did COPFS accommodate this promise in future public statements? Was this promise binding on Mr James Wolffe QC when he succeeded Lord Mulholland as Lord Advocate?
40. Please read your emails with Mr Logue dated 9 July 2015.²⁵ What is the issue set out in the emails and what was discussed with the Lord Advocate in your meeting that day? Was the matter resolved? You refer to the Lord Advocate having "*committed to us giving assistance*". What did you understand that to be and how was this commitment made? Was this commitment binding on Mr Wolffe QC when he succeeded Lord Mulholland as Lord Advocate?
41. Please read your email chain with your media colleagues dated 20 July 2015²⁶ and the letter from the Lord Advocate to Mr Torrance dated 19 June 2015²⁷ referred to in the emails. Was there a reasonable expectation at this time in COPFS that there would be an FAI and a prosecution? You asked whether this request was strictly background, what did you mean by that and what difference would it make?
42. Regarding the letter from the Lord Advocate to Mr Torrance dated 19 June 2015,²⁸ did the Lord Advocate's position that there would be an FAI have any impact on the Investigation? Please read your letter dated 23 October 2017²⁹ that confirms the Lord Advocate's commitment to an FAI. Why did Mr Wolffe QC maintain this position when he succeeded Lord Mulholland as Lord Advocate? Was this the case for all promises and undertakings made by the Lord Advocate? If not, why was this undertaking maintained? Was this position maintained when the possibility of a public inquiry was discussed within COPFS?
43. In or around November or December 2015, do you recall an issue being raised by Mr Anwar in a meeting with the Lord Advocate relating to harassment of the black community in Kirkcaldy and whether checks were being made by police officers? Do you recall if the Lord Advocate made you aware and asked you to raise this with the Police Scotland Divisional Commander in Kirkcaldy? What was the outcome of this?
44. In or around November or December 2015, are you aware if the Lord Advocate contacted with Prof Peter Watson, acting on behalf of the SPF, in

²⁴ COPFS-01309

²⁵ COPFS-05040

²⁶ COPFS-05535

²⁷ COPFS-01483

²⁸ COPFS-01483

²⁹ COPFS-01542

the context of his investigator leaving business cards with potential witnesses? If so, what contact took place and what was the outcome?

45. Please read your Notebook 4³⁰ on pages 8 to 11 headed with what looks like “*Sheku Bayoh LA Sol Gen APCC PS CA DCA PF*”. Who are these attendees? Page 7 contains a note of the date of 18 January 2016 and page 12 states 25 August 2016, do you recall the date of this meeting?
46. The purpose of this meeting is noted in your Notebook 4³¹ on page 8 to be to “*Update progress + propose timescale for further work*” and on page 11 you have written what looks like “*Timescale. Asked to have decision on criminal proceedings re indiv by end calendar year.*” There is no date on the notes of this meeting, however on page 13 in the notes under the date of “25/8/16” you have written “*Decision re indiv officers by end of year*”; would it be correct that the request was for the decision to be complete by the end of 2016? Please read your Minute to the Law Officers dated 29 August 2016;³² was the timescale of a decision being made by the end of the calendar year your decision or a decision of the Lord Advocate? Was anything done, or not done, in the Investigation in order to meet the Lord Advocate’s timescale? At the time, was it thought that a decision by the end of 2016 was reasonable and realistic? Why was this timescale not achieved?
47. Had the Lord Advocate, or anyone else, fixed a timescale for the Investigation at any point? To what extent is fixing a timescale for a decision on criminal proceedings normal practice in COPFS? Are you aware why the Lord Advocate made this request in this case?
48. Please read your email to Ms Ashely Edwards QC dated 7 February 2017.³³ What was the interaction between the role of Lord Advocate and Crown Counsel appointed to the investigation? Why would it not be appropriate for Crown Counsel to be present in the meeting with the Lord Advocate and Mr Bayoh’s family at this time? At what stage would the Lord Advocate be involved?

Expert witnesses

49. What is your understanding of COPFS’ role in the instruction of expert witnesses in a death in custody or death during or following contact with the police? How does COPFS’ role interact with the role of PIRC in instructing expert witnesses?
50. 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:

³⁰ COPFS-05233

³¹ COPFS-05233

³² COP S-05119(b)

³³ COPFS-04515

- (i) the identification and choice of experts (including consideration of their qualifications, expertise and independence), and ensuring they had no conflict;
- (ii) preparation of the letters of instruction, and
- (iii) the information and documentation provided to experts to assist in framing their opinion.

51. What was your involvement in the decision to instruct Dr Steven Karch? Why was this expert instructed? Do you recall if any concerns were raised about instructing this expert?

52. Please read your Notebook 5 part 1³⁴ at page 2 where the following is noted:-

25/8/15 Les Brown

J MacSporran was with Nat Carey. He sd the experts are the best we could get. Karch would...

What is written at the end of this paragraph of your notes relating to Dr Karch? Please explain the notes you have taken and the discussion that took place. Who said that the experts were the best you could get? To what extent was this conversation with Mr Brown a factor in deciding to instruct Dr Karch?

53. Do you recall the Lord Advocate having involvement in the choice of instruction of expert witnesses? In particular, do you recall the Lord Advocate's involvement in the decision to instruct Dr Karch? Please read PIRC's letter to COPFS dated 12 October 2015.³⁵ The letter suggests the Lord Advocate selected Dr Karch, does this conform with your understanding of the Lord Advocate's involvement?

54. Please read your Notebook 5 part 1³⁶ at pages 4 and 5 where you have written:-

Bayoh Family Meeting 26/8/15

...

*Concerns re Payne James / Karsh
Instructed in defence of police / etc in USA.*

...

Experts:- In just few days PIRC had concluded view that was an open & shut case. Partic re the use of "excited delirium". PIRC thought it was open & shut.

Dr Carey serious concerns. Proponents of excited delirium.

Sit on panel in US who exclude restraint techniques & positional asphyxiation.

Carey says not acceptable if

Karsh: Acc to Carey will try to have us believe that restraint techniques not part of COD.

³⁴ COPFS-05234 (a)

³⁵ PIRC-04246

³⁶ COPFS-05234

Deborah Coles – says WHO says excited delirium is not an accepted term. Introduced by Karsh to US. She has similar concerns Carey & Coles say not independent.

Are your notes transcribed accurately? Please explain your recollection of this discussion with reference to your notes. What were the concerns raised, if any, in relation to Dr Payne-James? What was done, if anything, in light of these issues being raised in respect of Dr Karch and Dr Payne-James? Why did you take these notes?

55. Please read your Notebook 5 part 1³⁷ at pages 16 and 17 where you have written the following:-

13/10/15 PIRC / LA -> Experts LA/KF/LB/JM/

...

Karch (has seen histo slide)

Histological abnormalities. Deceased had pre-existing heart disease. So damaged that worthy of academic.

Karch is saying anabolic steroid use has so damaged the heart that it was fundamentally compromised.

Aside from heart combination of drugs could have caused death. Alpha PVP is dangerous than MDA or MDMA.

Whilst heart chronically damaged long term drug use can cause death anyway.

Dismisses excited delirium.

He says the heart. Doesn't mention mechanical asphyxia.

Are these notes transcribed accurately above? What was the purpose of this meeting and who attended? Did you raise the issues about Dr Karch that were raised in the meeting with Mr Bayoh's family? Were the issues of Dr Karch's opinion taken into account at all in the Investigation? If the Lord Advocate was present in this meeting, what were his views of Dr Karch and his point of view?

56. Please read the comments attributed to Dr Karch reported in the Sun newspaper on 1 November 2015.³⁸ When were you first aware of these comments?³⁹ How were they brought to your attention? What impact did these comments have on your assessment of Dr Karch's status as an independent expert witness? Was Crown Counsel made aware of these comments and any concerns you or your colleagues, including the Lord Advocate, may have had?

57. Please read your Notebook 5 part 1⁴⁰ at page 22 where you have written:-

2/11/15 LA/Les/Sheku Bayoh Family Pre-meet

³⁷ COPFS-05234

³⁸ See a copy of the Sun article under reference SBPI-00216.

³⁹ See COPFS-05986, the article is sent to COPFS.

⁴⁰ COPFS-05234

Letter to PIRC. Karch public. Not asked. Would have simply advised not to do it. Unhelpful. V disappointed.

Read it to family at the meeting.

*Letter to AA. Look forward to meet. Angry to see Karch. Issues re objectivity. ... re instructions
Cardiopath in instruction of Payne James. Duty to follow evidence.
Happy to instruct Lipsedge...*

Are your notes transcribed accurately above? What is written in the missing parts at the end of your notes? Who suggested reading the letter to the family at the meeting? What was the issue with Dr Karch that was discussed at the meeting? Did you discuss how Mr Bayoh's family would respond to seeing Dr Karch giving his opinion on the case to the media? How did COPFS decide to address this? Was it considered an issue that Mr Bayoh's family and their solicitor Mr Anwar had raised an issue previously with the instruction of Dr Karch? How was that addressed? What was done about Dr Karch and his opinion following this meeting? Did you receive any advice or direction from the Lord Advocate on this matter?

58. Please read your Notebook 5 part 1⁴¹ at pages 24 and 25 and Notebook 5 part 2⁴² at pages 1 and 2:-

5/11/15

...
LB

...
- Experts
- Dr Karch, extreme disquiet re remarks. Gross breach of confidentiality...

LA Karch comment a surprise.
Les raised with

...
AB Do/will experts sign confidentiality
... New to... re heart disease? Do ors in family have heart disease?
Following evidence
Not found any evidence
LA v. concerned at... & discussion by Peter Watson & SPF.
Personally v concerned re Karch
Even more concerned as meet...

AB
If Sheku does not come across any of the police officer that Sunday morning, is he still alive, or is he still dead?
Take police out of situation is he still alive or is he dead.

⁴¹ COPFS-05234

⁴² COPFS-05235

If alive duty of care kicks in.

LA If Sheku... had drugs in system & if discarded the knife in advance, the police have a duty of care to him

Re the heart, P-J advises. Other pathologists have not. We have duty to get your answers. Duty to instruct best experts

If after we have done all we can you are satisfied that we have got all of the evidence + that you have no further Qs I will take a decision

Want you to have confidence... you lose confidence. My job & duty to give you all of the answers

No confidence in Karch due to gross breach of confidence.

Are your notes transcribed accurately above? There are ellipses used above where the handwriting is not clear, please confirm what is written. Who was present in this meeting? Who is "AB"? What was the purpose of this meeting? Was the Lord Advocate addressing Mr Bayoh's family in the latter notes attributed to him? Do you agree that there is a duty to instruct the best experts and to give Mr Bayoh's family all of the answers? Standing the Lord Advocate's comment on there being no confidence in Dr Karch due to his breach of confidence, how does this affect COPFS' approach to his opinion and report? What impression do you consider Mr Bayoh's family were given by the Lord Advocate in this meeting regarding how COPFS would use Dr Karch's opinion?

59.



Family liaison

60. 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?
61. 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 Investigation? How were these duties or responsibilities fulfilled? Was there a handover of family liaison from PIRC to COPFS?

62. Please read the email chain between you, the Crown Agent Ms Catherine Dyer and Mr Logue dated 6 May 2015.⁴⁵ In the minute to the Scottish Ministers set out in Mr Logue's email of 14:34, the Lord Advocate explains that it would be important to build and maintain the confidence of the deceased's family in the independence and thoroughness of the investigation. Do you agree with this? What was done to ensure that this was built and maintained throughout the Investigation? Do you think COPFS were successful in achieving this? If not, what went wrong and what could have been done differently?
63. What involvement did you have in family liaison in relation to Mr Bayoh's death? What was your involvement, if any, in deciding what to disclose to Mr Bayoh's family?
64. With reference to Mr MacLeod's letter to Mr Farrell dated 28 February 2020 page 3,⁴⁶ the following summary is made in respect of family liaison:

From the outset the Anwar & Co were on an exceptional basis provided with significant disclosure. This disclosure was provided solely to enable them to instruct their own medical experts. The family were also from the beginning invited by the Crown to provide input to the Crown investigation and did so by e.g. suggesting particular lines of enquiry and providing the details of a number of expert medical witnesses some of who subsequently provided reports to the Crown.

Do you agree with this summary? What made the basis of the disclosure exceptional? In this regard, PIRC's Mr John McSporran has stated to the Inquiry the following: "*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.*"⁴⁷ Do you agree with Mr McSporran? Was the disclosure in this manner a departure from normal practice? If so, what was the basis for this departure? To what extent was race a factor in any departures from normal practice?

65. What was your understanding of Mr Bayoh's family's relationship with PIRC during the course of the PIRC and COPFS investigations and precognition process? What was COPFS' role, if any, in Mr Bayoh's family's relationship with PIRC? Do you recall any concerns being raised about PIRC by Mr Bayoh's family? What was done about these concerns? In your answers please refer to your Notebook 2⁴⁸ at pages 7 to 13 headed "9/5/16 S Bayoh Family Meet", including the following matters on page 9: "*But PIRC. Tone patronising. Spoken like "petulant children" ... Ask investigation on Karen*

⁴⁵ COPFS-04967

⁴⁶ COPFS-02126 (a)

⁴⁷ SBPI-00361 at para 91. Please note this statement has not been shared with you.

⁴⁸ COPFS-05231

Swan -> "These things happen in all families..." Karen Swan's back went up. I nearly terminated." Why did you take these notes in the meeting?

66. Please read the your notes in Notebook 2⁴⁹ on pages 7 and 8 and provide your comment on what is being set out in this meeting:-

9/6/16 S Bayoh Family Meet

...

FAI/ Public Inquiry

FAI

PI is for Scot Govt not for Crown

Timescale

-When get PIRC

-Experts

-Family timescale.

...

Family fed up hearing FAI will happen.

K this is the minimum of what can happen. K not at fault/blame.

FAI useless as doesn't see that it doesn't do something.

67. Please read your notes in your Notebook 3⁵⁰ at pages 9 and 10: "8/2/17 Bayoh Family Meeting... Will be an FAI... Family despair when hear will be FAI. That's bare minimum." Do you recall this point in the meeting? If so, what happened and what was discussed? From your notes it appears that Mr Anwar made COPFS aware in the meeting on 9 June 2016 that the family do not want to hear about an FAI and it was raised again in the meeting on 8 February 2017; is this correct and do you know why it was raised again? What was your understanding of why Mr Bayoh's family did not want it raised in the meetings? Do you think raising the matter again was detrimental to the relationship between COPFS and Mr Bayoh's family? Please explain why.

68. What is your understanding of the role of COPFS' Victim Information and Advice service ("VIA") in family liaison in a death investigation? Were VIA involved in this case? Insofar as you are aware, what was the basis for VIA involvement or non-involvement with Mr Bayoh's family?

Police officers' status

69. What is COPFS' role, if any, in determining if a person's status is that of witness or suspect in an investigation into a death in custody or a death during or following contact with the police? What is the significance for the Investigation of a person's status? In the event that there is no reasonable suspicion in respect of any person(s) in an investigation, what is COPFS' role in identifying a suspect?
70. What was your involvement, if any, in determining if the status of the officers who engaged with Mr Bayoh, or any other persons, was that of witness or

⁴⁹ COPFS-05231

⁵⁰ COPFS-05232

suspect in the Investigation? To what extent were your decisions and actions in this regard consistent with normal practice? Was race a factor in any departures from normal practice? In hindsight, are there any aspects of your decision-making or actions in this regard that you would do differently?

71. When was the police officers' status decided? Why was it decided at that time? Was it subject to change? When would it be reconsidered, if at all? What was your involvement in any reconsideration of the police officers' status?
72. Can COPFS provide any undertakings to officers involved in a death in custody or death during or following police contact in order to obtain their account of the incident? If so, when are these undertakings made and what is their purpose? Were these undertakings considered in the Investigation?
73. What advantages, if any, would be gained from charging the officers and interviewing them under caution? What disadvantages, if any, would result from the officers being charged and interviewed under caution? To what extent were your decisions and actions in this regard influenced by reporting, or potential reporting, in the media? Is there a reluctance on you or your colleagues' part to instruct the police or PIRC to charge police officers with criminal offences occurring in the course of their duty that is not apparent when dealing with civilians? If so, what is the reason for this?
74. Please read your Notebook 4⁵¹ at page 16: "*16/9/16 Sheku Bayoh... Spontaneous concert. Do we record the interviews -> Policy issues*". Was the reference to spontaneous concert and interviews in relation to the police officers who engaged with Mr Bayoh? If not, what was this regarding? What was the discussion surrounding interviews in this note? What were the discussions surrounding interviews and what were the associated policy issues?
75. Please read your entry in your Notebook 1⁵² at page 5. The note appears to state:
- 1/2/16 PIRC
Bayoh
...
?
76. Please read your email to Mr Les Brown dated 12 May 2015⁵³ relating to PIRC's investigative update and your comments on PIRC's document.⁵⁴ Why did you have a deep sense of unease from PIRC's update? Why did you think the police witnesses being corresponded to through Police Scotland was having an impact on the investigation? Why were you interested in PIRC

⁵¹ COPFS-05233

⁵² COPFS-05230

⁵³ COPFS-03635

⁵⁴ COPFS-03635 (a)

prioritising a statement from the PIM? Were any of these views ever shared with PIRC? If so, what was their response?

77. Were you aware of any agreement of standard practice between PIRC and Police Scotland whereby PIRC would approach senior police officers, at Inspector level or above, to obtain statements from subject officers? If it is established in evidence in the Inquiry that this practice existed and continues to this day, would that concern you? Was the way PIRC approached the police witnesses an operational matter for PIRC? What is COPFS' role in this regard?
78. In your email to Mr Brown dated 12 May 2015⁵⁵ in relation to PIRC's update you state:-

Are we clear on the basis for which we are trying to get the statements from the police officers? Are we (a) instructing the police to report an apparent crime and giving an instruction per the Police and Fire Reform Act or (B) are we asking PIRC to get a witness statement. We need to give some thought to this and discuss.

I am tempted to think that PIRC should visit the officers, and seek to take witness statements from them. They should do that directly not through Police Scotland. If they decline note that and a statement from the PIRC investigator gets fed into the inquiry. Whether it results in a statement from the witness or not it at least attempts to break the unhappy stand off and give an auditable record direct from the witness of the position.

Please explain the difference between COPFS instructing the police to report an apparent crime and giving an instruction per the Police and Fire Reform Act and asking PIRC to get a witness statement. What difference, if any, does this make in terms of whether the police officers have the status of witness or suspect? What was discussed in this regard and what was the outcome? Was COPFS' request for statements to Police Scotland or PIRC? What was the "unhappy stand off" at the time?

79. Please read the following correspondence discussing whether there is a requirement for the police officers to provide a statement detailing their involvement in engaging with Mr Bayoh:-
- the letter from the Chief Constable to the Lord Advocate dated 15 May 2015;⁵⁶
 - the letter from the Lord Advocate to the Chief Constable dated 22 May 2015;⁵⁷
 - the letter from Mr Brown to DCC Neil Richardson dated 22 May 2015;⁵⁸

⁵⁵ COPFS-03635

⁵⁶ PS08484

⁵⁷ COPFS-02855

⁵⁸ COPFS-02851

- the letter from the Chief Constable to the Lord Advocate dated 29 May 2015;⁵⁹
- the letter from the Lord Advocate to the Chief Constable dated 5 June 2015;⁶⁰
- the letter from DCC Richardson to Mr Brown dated 10 June 2015;⁶¹
- the email chain between you, Mr Logue and Mr Brown dated 11 June 2015; and⁶²
- the letter from Mr Brown to DCC Richardson dated 25 June 2015.⁶³

In your email dated 11 June 2015 noted above you say you are struggling with what the inconsistency is and you are happy to meet with Police Scotland; did you have this meeting? If so, please provide your recollection. Was the expectation that the officers would provide statements in an interview setting with PIRC or write their own statement? What was the overall outcome of these discussions?

80. Please read your email to Mr Logue dated 10 June 2015⁶⁴ and the attached Minute to Law Officers and others relating to inconsistent practices in Police Scotland dated 24 June 2013⁶⁵ and minutes of the meeting between the Solicitor General Ms Lesley Thomson QC, the Commissioner and you on 3 March 2014.⁶⁶ Please explain the issues that were identified and how they were resolved.
81. Please read your Notebook 5 part 2⁶⁷ at page 2 as they relate to a meeting between you, the Lord Advocate and Mr Brown on 5 November 2015⁶⁸ and you have noted possibly Mr Anwar stating: *“Next week the grandfather & Karen Swan will speak to PIRC in AA’s office. PIRC need to understand that if there are threats to prec on oath, that hasn’t been done with police. Double standards.”* Do you know if PIRC, or COPFS, were in the position of compelling the police officers to provide a precognition on oath when they refused to provide statements? Was this discussed? Would this be for PIRC to arrange or for COPFS? Do you agree with the point in your note that there is a double standard from PIRC in how they approached the police officers compared to how they approached the Swan family? How did COPFS address this point?
82. In a letter to Mr Anwar dated 10 September 2015,⁶⁹ the Commissioner set out her response to a concern of the family in the following terms:-

⁵⁹ PS04250

⁶⁰ COPFS-02844

⁶¹ COPFS-02850

⁶² COPFS-06275

⁶³ COPFS-02849

⁶⁴ COPFS-06347

⁶⁵ COP S-06333(a)

⁶⁶ COPFS-06347 (a)

⁶⁷ COPFS-05235

⁶⁸ See COPFS-05234 at page 24.

⁶⁹ PIRC-01835(a). Please note this document has not been shared with you.

Firstly, I note that they suggested that the powers available to PIRC had either not been utilised or were lacking.

In particular, the family appear to be concerned that the police officers who engaged with Sheku Bayoh in Hayfield Road, were not detained immediately and interviewed.

As you will be aware, dependent on the circumstances of any case, a police officer may have the legal status of a witness or a suspect. If they are considered to be a witness, they may have the same rights as any civilian and therefore cannot be compelled to provide a statement. If on the other hand, they are considered to be a suspect, they may be detained for the purposes of giving a statement but cannot be compelled to speak or incriminate themselves.

For someone to be considered a suspect, you will appreciate that in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995, there has to be a reasonable suspicion that they have committed a crime.

In this particular case, as you know, as it has not been possible (to date) to establish a precise cause of death, it has not so far been possible, in a legal context, to establish that a crime has been committed.

Accordingly, the police officers could not be detained as suspects in terms of the Criminal Procedure (Scotland) Act.

In these circumstances and in compliance with Scottish Criminal Law, the police officers have been considered meantime as witnesses. As you will know, there is nothing in law which compels a witness to provide evidence to investigators (be they police officers or PIRC investigators) and I am sure you will recognise the importance of my investigators acting within the law, so that any evidence obtained by them, may be admissible in the event of any future proceedings.

In a further letter to Mr Anwar dated 9 October 2015,⁷⁰ the Commissioner states:-

With regard to your query relating to the detention of police officers in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995, as you know, from the inconclusive Scottish post mortem, it has not been possible to establish a precise cause of death or to establish meantime, that a crime has been committed. In terms of Scots Law, it is not lawful to detain any person (police officer or member of the public) unless it has been established that an offence punishable by imprisonment has been committed. In compliance with Scottish

⁷⁰ PIRC-01849

Criminal law, PIRC has not, to date, detained any police officer in respect of this case.

To what extent do you agree with the position the Commissioner has set out? If your understanding of the law at the time differed from the Commissioner, please explain why. What is it about the cause of death that you understand to be essential to reasonable suspicion, or establishment of an offence punishable by imprisonment? How does this interact with COPFS instructing an investigation under Section 33A(b)(i) rather than (ii) of the 2006 Act, being investigation of the circumstances in which a police officer may have committed an offence? In your view was there reasonable suspicion in relation to any of the officers at this point in the Investigation? Was this decision a matter for COPFS or PIRC?

83. The Lord Advocate in his letter to the Chief Constable dated 5 June 2015⁷¹ sets out the following position:

The discussions between Crown Office officials and Professional Standards Department did not in any event cover investigations conducted by PIRC on the instructions of the Lord Advocate. The concerns about compelling officers suspected of committing a crime to provide a statement only apply to investigations about police officers carried out by the police themselves. They do not apply to PIRC who when investigating allegations of criminality against police officers must make their own operational judgements as to who is a suspect and who is a witness.

Do you agree with the Lord Advocate's point that determining whether a police officer is a witness or a suspect is a matter for PIRC's own operational judgement? How does this fit with what the Commissioner has stated in her above letters to Mr Anwar and your views on what she has explained?

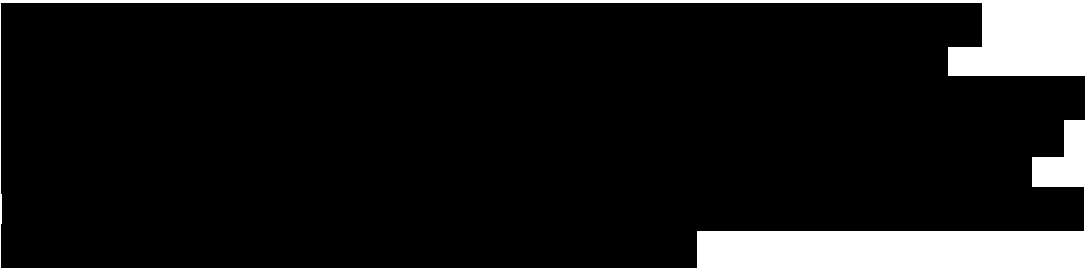
84. Please read your letter to Police Scotland's Ch Supt Ellie Mitchell dated 25 August 2015.⁷² You refer to allegations of criminality in respect of information being published in the Sunday Mail on 28 June 2015. You explain: "*In light of that I can see no basis on which there would be a reasonable suspicion to commence a criminal investigation into PIRC.*" Were you advising Police Scotland of how to proceed in this criminal investigation? Do COPFS provide the same advice to PIRC in respect of their investigations? If there is a distinction between what advice is given to Police Scotland and to PIRC, why is that the case?

⁷¹ COPFS-02844

⁷² COPFS-04012 (a)

85. You were asked above to comment on the difference between a potential suspect and a suspect as suggested in your email to Mr Brown and others on 4 January 2017.⁷³ How does the concept of a potential suspect fit into your understanding of the status of the officers and reasonable suspicion that you have explained in this chapter? Should the officers who engaged with Mr Bayoh have been advised that they were potential suspects rather than witnesses?
86. To what extent is it normal for PIRC to conduct an investigation and prepare a report of findings when there is no reasonable suspicion in respect of any person? To what extent is it normal to draft and submit the Crown Precognition where there is no reasonable suspicion in respect of any person? In light of your answers and to the extent that you were involved, please set out why the Investigation and precognition process was conducted in the way it was standing the status of the police officers.

Ingathering of evidence and analysis

87. What is your understanding of COPFS' role in investigating a death in custody or death during or following contact with the police? How does COPFS' role interact with the role of Police Scotland and PIRC in investigating?
88. After you first became involved in the Investigation, what description of the events leading up to and including Mr Bayoh's death was explained to you? When, how and by whom was this information provided to you?
89. Over the course of your involvement in the Investigation, in what ways, if any, did your understanding of the circumstances of Mr Bayoh's death change from the information initially provided to you?
90. 
91. Please read the email from Mr Brown to you dated 24 August 2015⁷⁴ relating to the restraint of Mr Bayoh by the police officers. What discussions took place, as referred to in the email? What were the concerns and how were they addressed?
92. Please explain your involvement, supervision, direction or management of PIRC or COPFS staff, if any, in considering if any of the actions of police officers and civilian staff relating to searches of Mr Bayoh and Mr Anwar in police databases. What was your understanding of any benefit to the police

⁷³ COPFS-04814

⁷⁴ COPFS-02035

investigation and 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?

93. How did COPFS take these matters forward following the PIRC report being provided?
94. Please read the following notes in your Notebook 3⁷⁵ at pages 3 and 4: *"13/1/17 Les... Ashley watched CCTV footage. Ashley bullish about it. She thinks lots we can do to evidence. Approach folk who work out of Gartcosh... Ashley agrees shows on the ground... Says seems clear from statements that he is face down & handcuffed but after that he is laid over."* Do you recall this conversation? Please explain the discussion with reference to the notes. [REDACTED]
95. What is your recollection of how race was investigated by PIRC and COPFS? How did this change or develop over the course of the Investigation? Were you satisfied that race was explored fully in the Investigation?
96. Please read your Notebook 5 part 1⁷⁶ at pages 12 and 13 where you have written the following: *"11/9/15 PIRC... Race issue -> covered but a Police Scotland issue."* Was this in relation to a meeting with PIRC on 11 September 2015? What was discussed regarding race? How would it be covered? Why would it be a Police Scotland issue and why did you underline "Police Scotland"? Did you agree that it was a Police Scotland issue?
97. Please read your Notebook 5 part 1⁷⁷ at page 15 where you have written the following: *"13/10/15 LA/Media... Sheku Bayoh -> Investigate racism -> was it endemic?"* What is your recollection of this meeting and what was discussed? Who posed the idea of racism being endemic and why? Was this taken forward in the Investigation?
98. Please read your notes in your Notebook 5 part 1⁷⁸ at pages 16, 19 and 20:-

"13/10/15 PIRC/LA -> Experts LA/KF/LB/JM

...

Inquiry alive to racial motivation... Also alive to racism... [REDACTED]. Fife racism in the former constabulary...

PIRC to look generally re the racial conduct in Fife Constabulary Supp Report to be done by end of the month before LA meet with the family.

Are these notes transcribed accurately? What is written in the paragraph relating to the inquiry being alive to racism at the bottom of page 19? Who

⁷⁵ COPFS-05232

⁷⁶ COPFS-05234

⁷⁷ COPFS-05234

⁷⁸ COPFS-05234

was present in this meeting? What was discussed in relation to the investigation of race?

99. Please read your Notebook 5 part 1⁷⁹ at page 24:-

5/11/15

...

L B

- *other aspect racial motivation*
- *Re Fife Constabulary + individuals...*
- *Experts*
- *Dr Karch...*

This appears to be a meeting on 5 November 2015 between you, the Lord Advocate and Mr Brown, is that correct? What is written after "individuals"? What was discussed in relation to the investigation into race? Is the reference to experts in this note regarding experts in race or in relation to other matters relating to Dr Karch? Were there any experts in race considered in the Investigation? Was there any connection between issues of race and the problem you encountered with Dr Karch?

100. Please read your Notebook 4⁸⁰ at pages 12 and 13:-

Sheku Bayoh L M / LM / L B 25/8/16

- *Meeting with Aamer Anwar*
- *Need to do*

...

? Racism allegations ? – Not part of the precognition

Who were the attendees in this meeting? What was discussed relating to the racism allegations? Why was it said that they were not part of the precognition? Which precognition is this referring to? What had changed between the meetings discussing race and this meeting? Was race a resolved issue by this point?

101. Please read your Notebook 4⁸¹ at pages 16 and 17:-

16/9/16 Sheku Bayoh

...

- *excited delirium*
- *The "superhuman strength" issue.*
- *Analysis, Analysis, Analysis*

Do you recall making these notes? What was the superhuman strength issue? What was discussed in this regard? What was discussed in relation to excited delirium? Insofar as you have not already explained in answering these

⁷⁹ COPFS-05234

⁸⁰ COPFS-05233

⁸¹ COPFS-05233

questions, what is your understanding of how race is a factor, if at all, in these issues and what was done to address it?

102. Please read the notes in your Notebook 3⁸² at pages 6 and 7 headed: "2-1/1/17 Death of Sheku Bayoh SMG/LB/EC/AEQC+LM". What was the purpose of this meeting and who were the attendees? Please set out what happened in the meeting with reference to the notes. It appears to be a note of a meeting to discuss the next steps in the Investigation as of 24 January 2017, there does not appear to be any mention of race as a matter to address in the Investigation, is that correct? Was the issue of race resolved at this time or was anything further taken forward?
103. Please read your notes in your Notebook 3⁸³ at pages 9 to 11 as they relate to a public inquiry:

8/2/17 Bayoh Family Meeting

LA intro. Committed to investigation.

...

Public Inquiry: Procedures / guidelines / Race / PIRC & the way the invest done...

...

No inquiry is legally binding re the reasonableness

L Mulholland sd pushing at an open door re a public inquiry.

Please set out your recollection of these discussions in this meeting. It appears that Mr Anwar raises issues of race and the way the investigation was done, were these matters that would be addressed in the Investigation? Did you make Mr Bayoh's family aware, per the above note, that the racism allegations were not going to form part of the precognition? Was anything done or not done in light of these matters being raised in the meeting? Are you aware if Lord Mulholland, the former Lord Advocate, had said that a public inquiry was pushing at an open door? What did you understand this phrase to mean? Did you understand at the time that this is accurate? Please explain why.

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

104. What is your understanding of COPFS' role in instruction and attendance at the post mortem examination in the case of a death in custody or death during or following contact with the police? To what extent, if any, does this differ from any other type of death investigation?
105. Please explain your involvement in the post mortem examination and reporting process. To what extent was your involvement consistent with normal practice?

⁸² COPFS-05232

⁸³ COPFS-05232

106. Please read your emails with Mr David Green dated 5 May 2015⁸⁴ regarding the post mortem examination. What were the circumstances of the Lord Advocate making this promise to Mr Bayoh's family? What exactly was the promise?
107. Please read the email chain between you, Mr Green and Mr Logue relating to delay in the investigation.⁸⁵ This email chain includes an email from Mr Green to you on 6 May 2015 at 3:36pm with Mr Green setting out the reasons for a delay in releasing the body of Mr Bayoh, includes a comment on the independence and impartiality of the NHS laboratory staff and in which he states: "*If slides are prepared then these slides should be available for examination by anyone else the family would like to have a look at them.*" Mr Green then explains: "*I appreciate that this does not meet the Lord Advocate's desires but that is simply not possible.*" What were the Lord Advocate's desires and what part of this explanation did not meet with them? Please provide the background and context to this email. What did you do following this explanation?
108. Please read the email chain between you, the Crown Agent and Mr Logue dated 6 May 2015.⁸⁶ You explain that a pathologist Dr Colin Smith was able to do an examination on Mr Bayoh's body before going on holiday and that the Lord Advocate was irate and demanded Dr Smith's report because appearance is everything. You then had a telephone call with Mr Logue. Please explain these matters further and, in particular, provide your recollection of your telephone call with Mr Logue, set out your understanding of why the Lord Advocate was irate and explain your understanding of what he meant by "*appearance is everything*".
109. In a comment on PIRC's Situation Report dated 12 May 2015⁸⁷ at page 5, in light of DCI Keith Hardie attending, you query why Police Scotland were represented at the post mortem examination. Why did you raise this point? Was this a matter for COPFS or PIRC? Was this matter taken any further?
110. What was your involvement in the release of Mr Bayoh's body?

European Convention on Human Rights ("ECHR")

111. During the Investigation, 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 approach to your work?
112. To what extent was Article 2 of the ECHR considered in respect of the duties of Police Scotland and PIRC?

⁸⁴ COPFS-06079

⁸⁵ COPFS-04924

⁸⁶ COPFS-04967

⁸⁷ COPFS-03635 (a)

113. Please read the notes in your Notebook 3⁸⁸ at pages 9 and 13:-

8/2/17 Bayoh Family Meeting

LA Intro

Committed to investigation

...

Art 2

In E+W inquiry...

Seems (S) is behind in contrast to E+W.

Procedures & guidelines down there. PIRC such an example.

Article 2 breach as all in one room. Everyone says clear Art 2 breach.

No robustness & transparency

What was discussed in this meeting in relation to Article 2 of the ECHR? Did you agree with any of the points that were being made? How did you address these points raised on behalf of Mr Bayoh's family?

114. Please read your Minute to the Law Officers dated 7 February 2017.⁸⁹ On page 3 you explain that although throughout the course of the PIRC investigation there has been disclosure to Mr Bayoh's family and their solicitor reflecting their rights under Article 2 of the ECHR, now that this is a live criminal investigation that has passed to COPFS it should now remain confidential. You note that the family members themselves may be witnesses to criminal proceedings. You conclude this part by suggesting further disclosure to Mr Bayoh's family should be carefully managed. What is the difference between the Bayoh family's Article 2 rights in respect of PIRC compared to COPFS? What would Mr Bayoh's family be speaking to in the criminal proceedings that relates to disclosure of the COPFS precognitions of witnesses and COPFS-instructed expert reports?

115. Please read your email to the Lord Advocate and others dated 8 February 2017⁹⁰ which discusses a letter dated 7 February 2017⁹¹ sent on behalf of Mr Bayoh's family. In your email you state:

In relation to the request for access to unredacted material, our advice is that we have given access to material where we can. However, we are critical point of the Crown's investigation and decision making. We can't compromise that at this stage by giving unredacted access to statements reports etc. There is a risk of comprising the Article 5 and 6 rights of others by doing so. In any event decision making is a matter for the Lord Advocate.

...

In relation to the question as to whether there has been a breach of Article 2, we don't accept there is a breach. The state has initiated an impartial investigation which is thorough and ongoing. The family have, and continue to be involved in that investigation. There is a distinction

⁸⁸ COPFS-05232

⁸⁹ COPFS-03252a

⁹⁰ COPFS-04513

⁹¹ COPFS-02937

between involvement in the investigation to enable the family to protect their interests and full disclosure to allow them to be involved in decision making which is for the Lord Advocate independently of any other person. The family will have disclosure of fruits of the investigation before the FAI. In relation to the guidance promulgated in England and Wales, we cannot accept that because police in another jurisdiction have promulgated guidelines, the fact that such guidelines exist means that the lack of similar guidance to officers in Scotland means there is a breach of article 2. In any event, the effectiveness of the investigation in Article 2 terms compliance can only be considered retrospectively.

What is the risk of compromising Articles 5 and 6 of the ECHR in disclosing statements and reports of the COPFS investigation to Mr Bayoh's family? How does this differ from disclosure of the material ingathered in the PIRC investigation? Why is it that Article 2 compliance can only be considered retrospectively? Is it normal practice for COPFS to consider Article 2 issues after, rather than during, their investigations? Would it not be appropriate to ensure during the investigations that Police Scotland, PIRC and COPFS were all complying with their obligations under the ECHR?

116. Please read the letter from the Commissioner to the Crown Agent dated 14 February 2017⁹² and the reply from you to PIRC dated 15 March 2017.⁹³ The Commissioner raised the issue of lack of response to the public criticism of the PIRC investigation by Mr Anwar, no response from COPFS for the basis for Mr Anwar's comments in the meeting with the Lord Advocate and concern that the Lord Advocate shares Mr Anwar's views; did you respond to these matters in your letter? You mention a meeting between the Commissioner and the Deputy Crown Agent, Ms Miller; were you involved in these discussions and what was the outcome?

117. In your letter to the Commissioner dated 15 March 2017⁹⁴ you state: "*The position of the Crown is that the investigation into the death of Mr Bayoh is live and ongoing and that accordingly it is premature to consider any issue relating to compliance with Article 2 of the Convention.*" What was the basis for this point? Was this your position on behalf of the Crown, or did a colleague advise you of this?⁹⁵ What are your views on whether it would have been important to consider compliance with Article 2 in the course of the Investigation? Is it normal practice to wait until an investigation is no longer live and ongoing before considering compliance with Article 2? Please explain the reasons for any departures from normal practice.

The Health and Safety Executive ("HSE")

⁹² PIRC-02100

⁹³ COPFS-02576

⁹⁴ COPFS-02576

⁹⁵ See the email under COPFS-04023, it appears that the Crown Agent, Mr David Harvie, asked you to prepare this letter and that you could discuss the matter with him.

118. Prior to your involvement in the Investigation, what experience did you have in investigations involving HSE?
119. In what circumstances would COPFS normally invite the involvement of HSE or engage with HSE where a work-related death has been reported and Section 3 of the Health and Safety at Work etc 1974 is being considered?
120. What was your role in liaison with HSE in relation to the incident in which Mr Bayoh died? Why did COPFS request HSE's involvement? What benefit to the investigation would HSE have provided had they agreed to assist with the Investigation?
121. Was consideration given to any disparity in resources between HSE and PIRC insofar as it may impact on the investigation into the death of Mr Bayoh? In your view, were PIRC sufficiently skilled and experienced to investigate all matters without the involvement of HSE?
122. Insofar as not covered above, was HSE's involvement envisaged to be in relation to investigating potential offences by the officers, Police Scotland as an organisation, or both?
123. In your view should COPFS have received notification of a work-related death via the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, also known as RIDDOR? If so, what steps would be taken and how, if at all, would COPFS' response be different to what took place?
124. Please set out the background and purpose of your correspondence and meetings with HSE. What was the outcome of COPFS' liaison with HSE? Please refer to the following documents:-

- your Notebook 1 entry at page 2 describing a telephone call with Mr Alistair McNab of HSE on 5 January 2016;⁹⁶
- your letter to Mr McNab of HSE dated 11 January 2016;⁹⁷
- Mr McNab's response to you dated 31 March 2016;⁹⁸
- your letter to the Commissioner dated 5 April 2016;⁹⁹
- your letter to Mr Barry Baker of HSE dated 13 September 2016;¹⁰⁰ and
- Mr Baker's responses to you and Mr Brown dated 17 November 2016¹⁰¹ and 24 January 2017.¹⁰²

How did this outcome impact the Investigation? Were you satisfied with this outcome?

⁹⁶ COPFS-05230

⁹⁷ COPFS-01953

⁹⁸ COPFS-01954

⁹⁹ PIRC-02047(c)

¹⁰⁰ COPFS-04978(a)

¹⁰¹ COPFS-01955

¹⁰² COPFS-04735(a)

125. Please read your Notebook 2¹⁰³ at pages 3 to 5 relating to HSE and PIRC. Were these notes of the meeting between you and Mr McNab on 24 March 2016? This meeting is referred to in his letter to you dated 31 March 2016.¹⁰⁴ If not, in what context were these notes taken? Were these points you were framing or were you being advised by someone else? In any event, how did the HSE document "Striking the Balance"¹⁰⁵ apply in this case? Do you agree with all the points that are taken in this note? If not, please explain further. Are PIRC the appropriate regulator for this incident?
126. Further, in the same entry in your Notebook 2¹⁰⁶ at the bottom of page 4, you have written: "*Not prepared to investigate, but prepared to deal with the issue of CS/PAVA and PSoS prepared to work with ... re that.*" Please confirm what is written here. What was your understanding of what the HSE and Police Scotland were going to do? Do you know what was the outcome of this liaison?

Media engagement

127. What is your understanding of COPFS' role in engagement with the media following a death in custody or death during or following contact with the police? How does COPFS' role interact with the role of Police Scotland and PIRC in media engagement?
128. Were you following the media reporting of the matter? To what extent, if any, was your involvement in the Investigation influenced by what was reported in the media? Were you aware if any of your colleagues were influenced by what was reported in the media?
129. 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.
130. On 3 May 2015, Police Scotland prepared the following statement¹⁰⁷ and shared it with PIRC and COPFS for approval:-

Death in police custody, Kirkcaldy

At around 7am this morning (Sunday, May 3) police in Kirkcaldy responded to a number of calls from members of the public reporting a man brandishing a knife in the Hayfield Road area.

On arrival the officers encountered the man and whilst attempting the apprehend him, he lost consciousness and a female officer also sustained a head injury.

¹⁰³ COPFS-05231

¹⁰⁴ COPFS-01954

¹⁰⁵ COPFS-04487(d)

¹⁰⁶ COPFS-05231

¹⁰⁷ PS02751

Police officers commenced first aid procedures and the man was taken to Victoria Hospital by the Scottish Ambulance Service, where he sadly died. The female officer was also taken to hospital, and she has now been released.

Divisional Commander Chief Superintendent Garry McEwan said: "This is a tragic set of circumstances and my condolences go to the man's family. We currently have officers with them to provide information and support where appropriate.

"We recognise that this is an extremely difficult and distressing time for both the family and the officers involved and I have instigated the necessary post-incident procedures.

"The investigation of deaths in Scotland is the responsibility of Crown Office and Procurator Fiscal Service, who have instructed the Police Investigations and Review Commissioner to lead on this enquiry. The circumstances into the death will be fully explored and reported to the Crown Office in early course"

Anyone with information regarding this incident is asked to contact Police Scotland on 101 or anonymously through Crimestoppers on 0800 555 111.

Were you aware of this? What was the basis for this statement not being released? Was the narrative of events consistent with what was understood by COPFS at the time? Could this statement have been amended and released? In this regard, to what extent were your decisions and actions, and those of COPFS generally, consistent with normal practice?

131. What is your understanding of the SPF's role in Police Scotland's media engagement? What is your awareness of the SPF's approach to media engagement? Do you have any comment on the suitability of the SPF's approach? Do SPF seek COPFS' approval before releasing a statement in the same manner as Police Scotland did?
132. In preventing a statement, such as the above draft attributed to Ch Supt Garry McEwan,¹⁰⁸ being released by Police Scotland, did you have any concerns that the police officers involved would be unhappy that no comment was being made in response to the speculation in the media about what happened in the incident? Were you made aware of any concerns on the part of the officers involved? What difference, if any, did this or would this have made to your approach to media engagement? Did you expect the SPF to issue a statement on behalf of the officers following the lack of comment from Police Scotland? If a statement had been made by Police Scotland, do you think this would have prevented, or minimised to some extent, speculation in the media

¹⁰⁸ PS02751

of what happened in the incident? In hindsight, would you have made different decisions or acted differently in relation to this?

133. Were you aware that a statement was released attributed to Ch Supt Garry McEwan, the P Division (Fife) Divisional Commander, in the Dundee Courier offering condolences to Mr Bayoh's family on 3 May 2015? Was this statement approved by COPFS? Are you aware of why this statement was made but the above statement was refused?
134. Please read the email chain between Mr Logue and COPFS' Head of Communications at the time Ms Lorraine Davidson on 4 May 2015.¹⁰⁹ Ms Davidson explains by way of update that the brother-in-law of Mr Bayoh is a lay advisor to Police Scotland and "*told Police Scotland FLOs his view is that police planted the knife on the deceased as an excuse for police brutality.*" Police Scotland are said to be concerned that "*the family will seek media attention for their views and they want to be in a position to defend themselves if that happens*". Police Scotland are said to also want to clarify basic facts to correct inaccurate reporting at the time. In the email at 11:22am you are said to have advised Ms Davidson that PIRC can clarify the incident took place on Sunday morning not Saturday night however the police were advised to hold the line that PIRC are investigating, is this correct? If so, why did you advise that the date could be clarified, but not other matters? In terms of media strategy, how did you and COPFS accommodate the concerns of Police Scotland that they would need to defend themselves in the media and correct inaccurate reporting?
135. Please read your emails with your COPFS colleagues dated 6 May 2015 between 15:49 and 17:01¹¹⁰ and the draft PIRC media line that was attached thereto.¹¹¹ You wrote that you spoke to Mr Anwar which you said went fine, and Mr Logue replied that "*He knows we are playing it straight*". What did you discuss in this call with Mr Anwar? Do you agree with Mr Logue that Mr Anwar knew you were playing it straight, and what did you understand that to mean?
136. There is evidence before the Inquiry¹¹² that on or before 6 May 2015 PIRC: "*...tried to release a statement to media re allegation deceased had been asphyxiated, however the COPFS would not allow the statement to go out.*" Were you aware of this? What was your involvement, if any, in this decision? What was the reason for the decision?
137. Please read the email chain between you, Mr Logue and Ms Davidson dated 6 May 2015.¹¹³ In relation to describing Mr Bayoh's death as a death in custody, Mr Logue states:

Can we refine slightly by removing the reference to police custody in both paras? Don't want to cause any confusion in relation to the point

¹⁰⁹ COPFS-02685

¹¹⁰ COPFS-04923

¹¹¹ PIRC-02767(a)

¹¹² PIRC-04156 at page 6. Please note this document has not been shared with you.

¹¹³ COPFS-06075

as to whether or not it is a mandatory FAI - we think not, and describing it as police custody may confuse that position in future.

In first para we can just leave it as a death in Kirkcaldy on Sunday 3 May.

What did you understand to be the point relating to causing confusion in the event that there is an FAI? Mr Logue writes "*we think not*"; what discussions had taken place to that point regarding there being a mandatory or discretionary FAI and with whom? Did you and those in discussion on this point expect that there would be an FAI rather than a prosecution of the officers involved in Mr Bayoh's death? Did this position change over time? Regarding the letter to KM Law, acting for Mr Paton, dated 23 October 2017¹¹⁴ was

138. Please read your notes in your Notebook 3¹¹⁵ at page 3:-

13/1/17 Les

BBC programme.

Personal doc. Follows family & funeral

Family will say what their position is.

Will be used as oppressive

The did say

Put pressure on them to satisfy the family

Is this an accurate copy of the handwritten notes in your notebook? Please explain these notes. Do you recall all that you discussed? What did you mean by "*Will be used as oppressive*" and "*Put pressure on them to satisfy the family.*"? What was the discussion surrounding these notes?

Parallel investigation

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

140. Were you aware of witness accounts that investigators provided them with information from other sources and made them feel uncomfortable?¹¹⁶ If so, was anything done to address this?

141. 

¹¹⁴ COPFS-01542

¹¹⁵ COPFS-05232

¹¹⁶ 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*".

¹¹⁷ 

142. Please read your notes in your Notebook 5 part 1¹¹⁸ at pages 9 and 10:-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

143. Please read your Notebook 5 part 2¹¹⁹ at page 3 as it relates to what appears to be issues raised on behalf of Mr Bayoh's family in a meeting on 5 November 2015:¹²⁰ "Peter Watson. Leaving calling cards Fatal Accident Inquiry. TF wrote to PBW. Inadequate response. On 1/9 put on website criticism of AA + Family... COPFS to write to PBW re Fatal Accident Inquiry. Info put into public domain by "police sources". Is there an inquiry. Family believes that PIRC + SPF are briefing the media." Were these matters addressed by COPFS? Who was "TF"? What was the "inadequate response"?

144. You wrote to PBW Law on 10 November 2015¹²¹ in the following terms:-

As you may be aware the Lord Advocate met with the family of Sheku Bayoh on 5 November 2015 at Crown Office. During the course of that meeting, concerns were raised in relation to cards apparently produced by your firm that include reference to 'Fatal Accident Enq' and that these are being used in connection with the case. I am sure that you

¹¹⁸ [REDACTED]

¹¹⁹ COPFS-05235

¹²⁰ See COPFS-05234 at pages 24 and 25.

¹²¹ COPFS-01557

would agree that it would be unfortunate if an impression was to be created that a decision had been reached in relation to the investigation by PIRC. As you are aware, this investigation is ongoing and no decision will be taken by the Crown until PIRC has completed its enquiries and reported to the Lord Advocate.

I would accordingly be grateful if you would ensure that cards and other material produced by your firm are not open to misinterpretation on this important fact.

Do you consider that the terms of this letter addressed the issue that was raised at the meeting? Do you recall ever seeing any photographs of the business card that was being distributed prior to sending this letter?¹²² One concern may be that, intentionally or otherwise, the business cards suggest the investigator is part of the “Fatal Accident Enquiry into Death of Sheku Bayoh” which may be misleading the witness into thinking the investigator is part of an official state function. Is it possible that you misunderstood what issue was raised in the meeting with the Lord Advocate? Otherwise, why did you not raise this problem with PBW Law in your letter?

Crown Precognition

145. Please explain the process of reporting a COPFS investigation to Crown Counsel. What is the role of Crown Counsel in the Precognition process? In this case Ms Edwards QC was appointed Crown Counsel for the Investigation; to what extent is it normal to have an appointed counsel, and what is her role in this respect?
146. Please read your minute to the Law Officers dated 29 August 2016¹²³ on page 2 under “*Work Required*” you have stated: “7. *We considered whether we could rely on the statements taken by PIRC but do not consider it appropriate to do so given the nature of the decision that Crown Counsel will be asked to make.*” What was the issue and why was it not appropriate to rely on the statements taken by PIRC? Who considered this point? What did you do to overcome this issue? How, if at all, was this addressed in the Crown Precognition?
147. Please read your Notebook 7¹²⁴ at page 3: “*Les B Bayoh -> Met APCC with Al McLeod. 2 courses of action agreed. First she is concerned we’ll get report where we say no pro & then subsequently someone breaks... Attracted to...*” What is written in this note? The note above it appears to be dated 9 November 2017, will this meeting with Mr Brown have been around that time? What was the discussion that Mr Brown explained relating to Ms Edwards QC and what was agreed?

¹²² See BBC-00069 and BBC-00070.

¹²³ COPFS-05119(b)

¹²⁴ COPFS-05237

148. What involvement did you have in preparation and reporting of the Investigation to Crown Counsel? Did you read any part of the Crown Precognition¹²⁵ during your involvement in the Investigation?
149. Who decided what to include in the Crown Precognition? What was your role in this?
150. To what extent was Mr Bayoh's race considered in the Crown Precognition? Do you know why? Did you have any involvement in deciding the extent to which race should be a matter to address in the Crown Precognition? Would you have expected race to have been covered to a greater extent in order to assess the reasonableness of the officers' decision-making and actions in engaging with Mr Bayoh?

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

151. What is normal practice for COPFS in a situation where there is a possible unauthorised release of information about an investigation to the media by a COPFS official? What breaches of COPFS policies and protocols may occur if a COPFS official releases information about an investigation to the media without authorisation? What is usually done in response to the release? What is the difference between situations where the investigation considers that it is a certainty that there is an unauthorised release of information from COPFS and a situation where it is not certain? What is normal practice for determining whether it is a certainty that the release of information is from a COPFS official? What difference, if any, is there between an investigation into the unauthorised release of information and the unauthorised release of documents by a COPFS official?
152. When did you become aware of the Mail on Sunday newspaper article dated 23 September 2018¹²⁶ reporting the decision of COPFS not to prosecute any of the officers, prior to Mr Bayoh's family being informed? Were you aware of this article prior to its publication? If so, what was done in advance and who made the decisions? What was done on the day of the publication?
153. What was your role and involvement in the investigation within COPFS into the source of the information in the Mail on Sunday's article?¹²⁷

Learning from other investigations

154. Prior to and during your involvement in the Investigation, 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 learned from these investigations result in any change in approach to your involvement in this case compared with your involvement in prior investigations?

¹²⁵ COPFS-06360 ; COPFS-06361 COPFS-00003

¹²⁶ PS18106

¹²⁷ PS18106

155. Insofar as not covered above, to what extent did you consider the approach of the CPS in cases of deaths in custody or during or following contact with the police in which restraint was used? What were you interested in understanding or learning from the approach of CPS?

156. Please read your Notebook 4¹²⁸ at page 7:-

LA 17/1

Dame Elish

Report in 6... on deaths in custody.

Recommendations. ? Read across ?

1. Police Federation & collaboration

2. Families automatically get legal assistance

What is your recollection of what was discussed in this meeting? You mention Bayoh in your notes, how did this matter relate to the Investigation?

Race

157. 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.

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

159. Prior to your involvement in the Investigation, in your experience, did COPFS routinely consider the role of race when dealing with a death in custody or death during or following police contact of a person who was not white? Has that position changed between the time you were involved in the Investigation and now?

Training

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

161. Insofar as not already covered, what training had you completed at the time of your involvement in the Investigation in relation to the matters relevant to your role?

162. Insofar as not already covered, what training had you completed by or during the time you were involved in the Investigation in relation to equality and diversity issues? Which aspects of this training, if any, were applicable to your role?
163. 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? Over the course of your involvement, did you make use of any of these materials?
164. What, if any, training do you consider would have assisted you in your involvement in the Investigation? This may be training you have carried out since, training you are aware of but have not completed or training that is not, as far as you're aware, provided by COPFS.

Records

165. 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 for internal record-keeping?
166. What records did you keep in relation to the Investigation? 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.

Miscellaneous

167. 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 from Mr Bayoh's death to reporting to Crown Counsel?
168. When did you become aware of the possibility that a public inquiry would be commissioned to examine Sheku Bayoh's death and the Investigation? Was anything done or not done in light of this? Was this a factor in relation to the issue of whether a FAI should take place?
169. Insofar as not already covered, to what extent was your involvement, decisions and actions in the Investigation 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?
170. Insofar as not already covered, what significant difficulties or challenges did you encounter during your involvement in the Investigation? 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?

171. In what circumstances, if any, would COPFS share the findings of (i) a PIRC investigation including the PIRC Report and (ii) the Crown Precognition with Police Scotland? Do COPFS have a role in advising or suggesting if misconduct proceedings should be taken forward by Police Scotland following an investigation by COPFS? Do you consider any of your findings in the course of the Investigation, 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 considering disciplinary action?

172. Please read your email to Ms Fiona Carnan dated 12 February 2020¹²⁹ relating to a request from the SPA for the redacted statements of the police officers who engaged Mr Bayoh. What is the basis for not giving them the statements under GDPR etc? What was the issue with the SPA considering the material in terms of the Lord Advocate's decision not to prosecute? Were you suggesting that disciplinary action against the officers by the SPA would be encroaching on the Lord Advocate's powers under the Scotland Act? What was the outcome of this issue?

173. 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."

174. Please sign and date your statement.

Undernoted list of correspondence comprising instruction to PIRC

COPFS-02539	5 May 2015
COPFS-02833(a)	11 May 2015
COPFS-02769 (a)	18 May 2015
COPFS-02769 (b)	18 May 2015
COPFS-02532	1 June 2015
COPFS-04010 (a)	12 June 2015
PIRC-02759	2 July 2015
<small>COPFS-02768(a)</small>	24 August 2015
COPFS-02557	7 September 2015
COPFS-02556	5 October 2015
COPFS-02547	10 November 2015
COPFS-02546	19 November 2015
COPFS-02562	13 January 2016 ("2015" appears to be a typographical error)
COPFS-02567	27 October 2016

¹²⁹ COPFS-00336

COPFS-02565	29 November 2016
PIRC-01914	5 October 2017
PIRC-02774	22 November 2017
COPFS-03744	4 December 2017
COPFS-02781	11 December 2017
COPFS-03820	14 December 2017
PIRC-01951	14 December 2017
PIRC-01953	3 January 2018

Undernoted list of letters on behalf of Mr Bayoh's family

COPFS-04636 (b)	30 September 2015
COPFS-04636 (d)	30 September 2015
COPFS-05984	1 October 2015
COPFS-03486	1 October 2015
PIRC-01849	9 October 2015
AAC-00364	16 October 2015
COPFS-02919	28 October 2015
COPFS-02916	5 November 2015
[REDACTED]	6 November 2015
COPFS-02930	22 February 2016
COPFS-02933	25 July 2016
COPFS-06263 (a)	10 August 2016
COPFS-03068	19 August 2016
COPFS-02937	7 February 2017
COPFS-05103(j)	7 March 2017
COPFS-03242a	26 September 2017
COPFS-04855 (a)	12 October 2017
COPFS-03424a	9 March 2018
COPFS-02955	9 March 2018
COPFS-03431a	9 March 2018
COPFS-02953	23 March 2018
COPFS-02949	25 April 2018
COPFS-00855 (b)	14 December 2018
[REDACTED]	25 January 2019
COPFS-02112(b)	8 February 2019
[REDACTED]	25 March 2019
[REDACTED]	1 May 2019
[REDACTED]	14 May 2019
[REDACTED]	14 June 2019
[REDACTED]	6 May 2020
COPFS-03338a	21 June 2020
[REDACTED]	21 July 2020
[REDACTED]	12 October 2020