

Assistant Solicitor to the Inquiry  
[REDACTED]  
[REDACTED]



Mr Alasdair MacLeod  
Crown Office and Procurator Fiscal Service

By email only: [REDACTED]

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9 January 2024

Dear Mr MacLeod

### **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.

The Inquiry issued a Rule 8 request to you on 29 August 2023 and you provided a statement to the Inquiry on 21 September 2023. As explained previously, until now it has not been possible to provide you with a copy of the Crown Precognition. The position has now changed and this Rule 8 request is in respect of your involvement in preparing the Crown Precognition.

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 13 February 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 [REDACTED]

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.

If you have any questions regarding this letter or the content of your written statement please contact the legal team by email at [REDACTED]

Yours sincerely

[REDACTED]

## ANNEX

### COPFS PIM

#### AREAS FOR WITNESS STATEMENT

#### MR ALASDAIR MACLEOD

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

Alasdair [REDACTED] MacLeod DOB: [REDACTED]/69

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

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

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

1. What involvement did you have in drafting the Crown Precognition Narrative and Analysis of Evidence?<sup>1</sup> Please explain this process.

The Narrative was jointly drafted by myself and my colleague Mrs Carnan and countersigned by Mr Brown Head of CAAPD. Mrs Carnan and I drafted some parts individually which were brought together to form a single version. The analysis of evidence was drafted by Mrs Carnan who liaised with me regularly during drafting. As a team we were all content with the terms of the narrative and analysis and the recommendations to Crown Counsel.

The information contained in the narrative and analysis followed a detailed examination of the available evidence: statements, precognitions of eyewitnesses (which were compared with the accounts of the officers involved), airwave and CCTV footage.

2. What is the interaction between the matters covered in the Narrative<sup>2</sup> and Analysis<sup>3</sup> sections of the Crown Precognition? Do you require to offer analysis of all matters set out in the Narrative? How did you decide what to include in the Narrative and Analysis?

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<sup>1</sup> COPFS-06360 | COPFS-06361  
<sup>2</sup> COPFS-06360  
<sup>3</sup> COPFS-06361

The Narrative is essentially a detailed description of the events and the enquiries which have been carried out. The narrative addressed the issues raised in PIRC's terms of reference. The analysis is more focussed on any potential charges which might arise from the circumstances set out in the narrative. The purpose of both is to assist Crown Counsel as the decision maker to decide on any future proceedings. The purpose of the analysis is to detail evidence to Crown Counsel which may support the libelling of criminal charges. It is not necessary to analyse all of the matters which are set out in the Narrative. In this case the analysis considered whether there was evidence to support charges against the material officers of culpable homicide, assault, attempting to pervert the course of justice and breaches of the Data Protection Act.

3. What was your involvement, if any, in the preparation of the Crown Precognition Supplementary Report?<sup>4</sup>

As far as I recall the Crown Precognition Supplementary Report was drafted by my colleague Mrs Carnan. Prior to submission to Crown Counsel Mrs Carnan provided me with a draft copy for my input and views. Mrs Carnan, Mr Brown and I would have discussed the content of the report before it was forwarded to Crown Counsel.

4. In the Crown Precognition Supplementary Report,<sup>5</sup> to the extent that you were involved in its preparation, was consideration given to whether Police Scotland had risk-assessed the techniques they taught during Officer Safety Training? Please explain why. Was this a relevant factor in determining whether there was an offence under Section 3 of the Health and Safety at Work etc Act 1974?

I don't recall what consideration was given to whether Police Scotland had risk assessed techniques taught during Officer Safety Training. As far as I recall PIRC carried out significant enquiries in relation to Officer Safety Training provided to each of the officers. The content and delivery of Officer Safety Training was considered in detail as part of the precognition process and there was no evidence to suggest that the training being provided to officers was inadequate and as such there was no basis for a Health and Safety charge.

5. At paras 58 to 63 of your Rule 8 statement dated 21 September 2023<sup>6</sup> ("Rule 8 Statement") you answered questions relating to liaison with the Health and Safety Executive ("HSE"). Did the outcome of liaison with HSE affect the quality of the reporting of the case to Crown Counsel? Was this raised with Crown Counsel and, if so, what advice was given and what further actions taken?

Liaison with HSE took place prior to my involvement in the case. As per my response at paragraph 62 of my previous statement my opinion is HSE's non-

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<sup>4</sup> COPFS-00003

<sup>5</sup> COPFS-00003

<sup>6</sup> SBPI-00367

involvement did not affect the quality of the reporting of the case to Crown Counsel. I don't recall any issues on this matter being raised with Crown Counsel.

6. At para 42 you explained the notes at pages 69 and 70 of your notebook<sup>7</sup> relating to Police Scotland's Use of Force SOP. Were these points and analysis included in the Crown Precognition?<sup>8</sup>

Yes, the level of Force used by the individual officers and their justification for the use of force was detailed in the analysis.

7. To what extent was race a factor in your analysis of the actions of the police officers in the Crown Precognition?<sup>9</sup> In your view, was this sufficient to inform Crown Counsel of the impact, if any, that Mr Bayoh's race had on the actions of the police officers who engaged him? At para 36 of your Rule 8 Statement<sup>10</sup> you refer to being made aware from the PIRC investigation that race was an issue and considered race throughout the investigation; did you take account of how the officers' perception of Mr Bayoh's race would be a factor in their decision-making and the reasonableness of their actions?

PIRC carried out an investigation as to whether race or racism played any role in the approach of the officers towards Mr Bayoh. This involved examination of the officers' disciplinary records which were summarised in the report to Crown Counsel. I am not aware of any evidence that indicated that Mr Bayoh's race played a part in the officers' decision making or reasonableness of their actions. The information in the report was in my view sufficient to inform Crown Counsel of the impact Mr Bayoh's race had on the actions of the police officers. As far as I recall Crown Counsel did not seek any further information from the team about the impact Mr Bayoh's race had on the actions of the police officers.

8. Within the Crown Precognition Analysis of Evidence<sup>11</sup> at pages 15 and 16, PC Short's account is summarised in parts and analysed:-

*Short herself claims that her actions were confined to drawing her spray and baton and using them in tactical communication with the now deceased, ordering him to stop. At one point she used her baton to "double strike" towards the male's torso but did not strike him. She justifies taking this stance because Sheku Bayoh was "out of control" and "too aggressive" as he was walking away from them. He was "not the type of person whom you like to allow to walk the streets" and that she felt he was "hell bent on hurting somebody, anybody who came into contact with him"... She found the now deceased to be an "intimidating figure" of very muscular male about 6' tall with hands clenched as if he wanted to fight... Her assessment of the demeanour*

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<sup>7</sup> COPFS-05247

<sup>8</sup> COPFS-06360 COPFS-06361

<sup>9</sup> COPFS-06360 COPFS-06361

<sup>10</sup> SBPI-00367

<sup>11</sup> COPFS-06361

*of the now deceased seems reasonable and fits with the impressions of other witnesses, particularly those who had reported him to the police that morning. It also assists in understanding the nature of the perceived threat to these officers.*

Please explain how PC Short's account assisted you "in understanding the nature of the perceived threat" to the officers, and the significance of the perceived threat to your assessment of the reasonableness of the actions of the police? To what extent did you consider the reasonableness of the officers' perception of threat? To what extent did you consider whether their perception of threat was influenced by Mr Bayoh's race?

As stated in the analysis PC Short's assessment of the demeanour of Mr Bayoh fitted with the impressions of witnesses who had reported him to the police earlier. The officers' perception of threat was considered by the OST expert. I don't recall any evidence that suggested that their perception of threat had been influenced by Mr Bayoh's race.

9. At the time of your involvement in the Investigation, were you aware of any racial tropes being used by any of the response officers in their statements? Are you aware of any racial tropes now? Would the use of these tropes be relevant to your analysis in any way? Would these racial tropes factor into the perceived threat to the officers from Mr Bayoh?

I can't add anything further to my response at paragraph 76 of my previous statement.

10. PC Paton in his statement dated 4 May 2015 states: "*For a number of months checks have also been getting carried out by officers at a number of identified locations in Kirkcaldy due to increased terrorist risk. It also ran through my mind that this male could be part of a terrorist plot.*"<sup>12</sup> PC Kayleigh Good in her statement of 4 June 2015 states: "*I was also thinking at that point of the Lee Rigby incident in London, mainly due to the fact of the coloured male and the potential terrorist connotations.*"<sup>13</sup> To what extent did you consider the views of these officers that a terrorist incident was a possibility and how did you scrutinise this in the evidence and analysis? To what extent did you understand and assess that these views were held by all the officers involved in potentially unlawful actions? Please explain your reasoning.

The statements made by both PC Paton and PC Good were considered along with PC Walker who also expressed concern that the officers might have been dealing with a terrorist incident. The analysis at page 54 details their concerns may have been based on 'stay safe' messages from DCC Iain Livingstone and ACC Nicolson earlier in 2015 indicating an attack on police was highly likely. Their perception that this was potentially a terrorist attack was considered by the OST expert Mr Graves when analysing their thought

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<sup>12</sup> PIRC-00262 at page 4

<sup>13</sup> PIRC-00274 at page 7

processes at the scene. From memory only these 3 officers made reference to the possibility that this was a terrorist incident.

11. In the Narrative<sup>14</sup> at pages 2 to 7 a profile of each of the attending officers is set out, including allegations of racism [REDACTED] by PC Alan Paton [REDACTED].

What was the purpose of including the complaint history of the officers and what is the relevancy of the matters set out?

PIRC had been asked to assess whether race or racism had any bearing on the approach taken by the officers at the scene towards Mr Bayoh. In their report they provided a detailed account of the complaint history of each of the officers at the scene. The purpose of including the complaints history was to summarise PIRC's findings for Crown Counsel.

12. Are the profiles of any of the officers covered in the Analysis?<sup>15</sup> Why? To what extent is it normal to include analysis of the subject officers' profiles?

The profiles of the officers are not repeated in the analysis. As far as I'm aware the officers' profiles would normally be contained in the narrative.

13. What was your understanding of how PCs Walker and Paton interpreted the incident that they were attending? Was this understanding set out in the Crown Precognition?

My understanding is both officers interpreted the incident as one of high risk based on the information that was available to them from the airwave i.e. ongoing disturbance, an African looking male armed with a knife chasing someone may be carrying a large knife with a 9 inch blade, along with their own observations when they arrived at the scene. Their interpretation of the incident and the approach they took was considered in the Crown precognition.

14. Prof Eddleston in his report<sup>16</sup> opines on the circumstances of the incidents and how it relates to the Police Scotland Use of Force Framework:-

*21) The situation in Kirkcaldy on the morning of the 3<sup>rd</sup> May was stressful for the police officers. They believed that it might be a terrorist attack targeting them during their work. SB had already attacked ones of his friends and been seen with a large knife while attacking cars.*

*However, SB is not reported to have been aggressive towards, or attacked, any of the police officers until he had been sprayed three times (a level 5 response to level 3 resistance, Use of Force Framework, p 13)) and had three police officers facing him in a group.*

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<sup>14</sup> COPFS-06360

<sup>15</sup> COPFS-06361

<sup>16</sup> COPFS-00038

*At that point, he seemed to believe that he was being threatened and then unfortunately attacked Officer D. He was not seen to be bearing a knife, although it was not possible for the police to exclude the possibility that he had it hidden on his body.<sup>17</sup>*

This section of Prof Eddleston's report is copied into the Supplementary Report<sup>18</sup> at page 3. To what extent is this consistent with your understanding of PCs Walker and Paton's views when approaching Mr Bayoh?

The passage appears to be broadly consistent with the officers' views when approaching Mr Bayoh, however the officers were not aware of the altercation Mr Bayoh had with his friend earlier.

15. Please read the Analysis<sup>19</sup> at pages 53 and 54 as it relates to intelligence about a terrorist attack. Page 54 concludes: "*[The "stay safe" memo] could be what the subject officers are referring to when they talk about their anxiety over a potential attack on the police.*" What impact, if any, did the officers' anxiety of an attack on police have on the analysis of the reasonableness of their decision-making and actions?

Their perception that this was potentially a terrorist attack was considered by the OST expert Mr Graves when analysing their thought processes at the scene.

16. Is there a difference between the analysis of the decision-making and actions of an officer who is attending a terrorist knife attack compared to attending any other knife incident? Was it accepted in the Analysis that there was a risk of a terror attack and the officers were entitled to act accordingly in this incident? Was the connection between PCs Walker and Paton's approach to Mr Bayoh and their perception of him as a terrorist explored in the Crown Precognition? Would analysis of the complaints and allegations against PCs Paton [REDACTED] have been appropriate to consider in relation to their position that they believed they were attending a terrorist incident? Please explain your reasoning.

An OST expert may be better placed to answer this question. As far as I'm aware officers are taught to approach any knife incident as high risk. It was accepted in the analysis that PCs Walker and Paton had concerns that they might be dealing with a terrorist incident. Their perception that they might have been dealing with a terrorist incident was considered by Mr Graves and considered in the precognition. PIRC examined the disciplinary records of [REDACTED] PC [REDACTED] Paton [REDACTED] which were summarised in the precognition.

17. On page 54 of the Analysis<sup>20</sup> a "stay safe" memo by ACC Ruaraidh Nicolson dated 19 February 2015 is referred to, including the threat level being severe

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<sup>17</sup> COPFS-00038 at page 7.

<sup>18</sup> COPFS-00003

<sup>19</sup> COPFS-06361

<sup>20</sup> COPFS-06361



and referring to Islamic extremist groups or individuals; what was it about the incident involving Mr Bayoh that related to Islamic extremist groups or individuals? Was the analysis that, because he was a black man and was reported with a knife in public, the police officers were entitled to draw a connection to Islamic extremism and approach the incident accordingly? Was there a concern that the attending officers were associating a black man with a knife in public as being a terrorist incident?

The analysis at page 54 details 'stay safe' messages from DCC Iain Livingstone indicating an attack on police was likely and from ACC Nicolson detailed above. I don't recall any consideration of how the incident with Mr Bayoh referred to Islamic extremist groups or individuals. The analysis was that the first two officers at the scene PC Walker and PC Paton had indicated in their statements that they might have been dealing with a terrorist incident and that their anxiety over a potential attack on the police may have been based on these stay safe messages issued a few months previously. In his report Mr Graves said their belief that this was a terrorist incident was one element which provided support for the assertive approach they adopted

18. Please read the summaries of PIRC's investigation into racism covered in the Narrative<sup>21</sup> at pages 123 and 124. What conclusions were drawn from this evidence? Was this explored in the Analysis? Please explain your reasoning.

The conclusion drawn from the PIRC investigation summarised in the narrative at pages 123 and 124 was that there was no evidence to show that race or racism played a part in the approach of police officers at the incident. As per the narrative there was also no evidence to suggest that racist incidents or racially discriminatory conduct by Fife officers was more widespread than other Force areas.

19. Was the reason race was covered in the Crown Precognition because it was raised by Mr Bayoh's family? Would it have been covered at all if Mr Bayoh's family had not raised it as a concern?

When I became involved in the case the issue of race had already been identified for investigation.

20. Mr Zahid Saeed's allegation of assault is covered in the Narrative<sup>22</sup> at page 123. What was the purpose of including this matter in the Crown Precognition?

Mr Saeed's allegation of assault was included in the narrative for Crown Counsel as it formed part of PIRC's terms of reference. I understand in July 2015 PIRC had been instructed to carry out an investigation into Mr Saeed's allegations. Their investigation was detailed in their report to COPFS.

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<sup>21</sup> COPFS-06360

<sup>22</sup> COPFS-06360

21. Your colleague Ms Erin Campbell emailed Mr Les Brown and Ms Ashley Edwards QC on 7 December 2016<sup>23</sup> setting out an approach to instructing an OST expert. She includes the following paragraph in her email:

*Both Alasdair and I have discussed a concern that the police may have been too quick in deploying their sprays and pulling out their batons and that, in his altered mental state, this may have contributed to his heightened aggression, assault on Nicole Short and ultimate restraint. It's easy to see how, when suffering from a drug induced episode, he might have perceived the actions of the police as an attack on him rather than an effort by them to do their jobs.*

Is it accurate that you had discussed this concern with Ms Campbell? Did you share this concern? In light of this concern, were you satisfied that this was addressed in the expert evidence and in the Crown Precognition?

I did discuss this concern with Ms Campbell. When I first started reading the materials. I did have a concern that the police may have been too quick in deploying their sprays and pulling out their batons. As per Ms Campbell's email there was a recognition that an opinion from an OST expert would be required. I am satisfied that this concern was addressed by the OST Expert Mr Graves. His views on the actions of both officers are detailed at pages 11 - 14 of the analysis.

22. On page 3 of your notebook<sup>24</sup> in your notes under the heading "*Martin Graves 21/3/18*" you write: "*Perceptions – Walker + Paton – counter terrorism – officer being targeted... just after Paris attacks – ISIS attack on UK police officers... thought process in back of their minds*". What are these notes regarding? What was the issue that was being addressed? How did this discussion inform your analysis? How were these points addressed in the Crown Precognition?<sup>25</sup>

These are notes I took during a telephone call Mrs Carnan and I had with the OST Expert Mr Graves on 21 March 2018. This was the first consultation we had with Mr Graves. This was prior to submission of Mr Graves's report. These notes appear to relate to a discussion about the approach taken by PCs Walker and Paton and their mindset and perceptions when they encountered Mr Bayoh. As far as I can recall, the issue being discussed appears to be whether the 'hard approach' adopted was appropriate or whether a softer approach could have been taken. The issue was addressed in the analysis at pages 12 and 13.

23. On page 4 of your notebook<sup>26</sup> in your notes under the heading "*Martin Graves 21/3/18*" you write: "*Alert to E.D. Drug induced psychosis – enough there for them to consider it – ruled it out.*" What are these notes regarding? Were

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<sup>23</sup> COPFS-02308

<sup>24</sup> COPFS-05202

<sup>25</sup> COPFS-06360 COPFS-06361

<sup>26</sup> COPFS-05202

these matters addressed in the Crown Precognition?<sup>27</sup> Please confirm what is written in the paragraph at the bottom of page 4, beneath the quoted paragraph, beginning with the word “Enough” and ending “lights are on – no verbal response”. What are these notes regarding? How did this discussion inform your analysis of the issues? Was this addressed in the Crown Precognition?<sup>28</sup>

These are also notes I took during the telephone call Mrs Canan and I had with Mr Graves on 21 March 2018. I think the notes read as follows:

*Enough triggers there- walking down middle of road-staring blankly, set for fight- lights are on*

*No verbal responses-  
whatsoever*

These notes appear to relate to a discussion with Mr Graves about signs of excited delirium. I am unable to give further context of the notes. The issue of excited delirium or ABD and when it ought to have become evident to the officers was addressed in the analysis at page 14.

24. Please confirm what is written on pages 10 and 11 of your notebook<sup>29</sup> from the sentence in the middle of page 10 which includes “E.D.” down to the middle of page 11 ending at “Knowledge of Police”. What are these notes regarding? How did this discussion inform your analysis of the officers’ actions? Was this addressed in the Crown Precognition?<sup>30</sup>

I think the notes read as follows:

*Dawning on them suffered from E.D.*

*Once restraint starts options were very limited-if disengage all at risk-likelihood one or more*

*Once they realise/ consider what they are doing could contribute to his death- ambulance should be called and treated as a medical emergency-*

*Nobody says suffering from ED-  
Any police officer would have said alarm bells-*

*Attaching cuffs?*

*-lack of communication when cuffed?*

<sup>27</sup> COPFS-06360 COPFS-06361

<sup>28</sup> COPFS-06360 COPFS-06361

<sup>29</sup> COPFS-05202

<sup>30</sup> COPFS-06360 COPFS-06361

*Lot of incidents-person not right-*

*All tell tale signs there-*

*Minimum? Distance-20 feet- Take that time to...weapon to do something about it.*

*Information provided not as detailed as it could have been-Limited availability to fully consider threat.*

These are also notes I took during the telephone call Mrs Carnan and I had with Mr Graves on 21 March 2018.. The notes appear to be further discussion on signs of excited delirium or ABD. Given the passage of time I am unable to add further context to the notes. As per previous answer the issue of excited delirium was addressed in the analysis at page 14.

25. Please explain the notes you have made on page 90 of your notebook<sup>31</sup> regarding the accounts of officers relating to the threat of an attack on a female officer. What was the purpose of compiling these notes and what was the outcome of any further discussions or analysis about this issue? Was this issue covered in the Crown Precognition<sup>32</sup> and how, if at all, did this factor into an assessment of the credibility and reliability of PC Paton, PC Walker and PC Good?

The notes referred to appear to have been noted by me whilst I was examining the PIRC statements provided by PC Paton, PC Good, and PC Walker. I have been considering their assertions of a potential attack on a police officer. It looks like I have been checking which officers had referenced this potential threat in their statements. This was considered and detailed at pages 53 and 54 of the analysis. As per the analysis the officers may have been referring to the warning issued by DCC Livingston and the memo issued by ACC Nicolson.

26. At para 68 of your Rule 8 Statement<sup>33</sup> you explained that Dr Karch's opinion was reported along with all other expert opinion. To what extent, if any, did you rely upon Dr Karch's opinion in order to form conclusions of the cause of Mr Bayoh's death in the Crown Precognition?<sup>34</sup> Please read the comments attributed to Dr Karch reported in the Sun newspaper on 1 November 2015;<sup>35</sup> how, if at all, did this factor into the analysis of Dr Karch's evidence in the Crown Precognition?<sup>36</sup>

As per my previous response I don't recall having read Dr Karch's comments in the Sun newspaper article. I summarised Dr Karch's opinion in the narrative

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<sup>31</sup> COPFS-05247

<sup>32</sup> COPFS-06360 COPFS-06361

<sup>33</sup> SBPI-00367

<sup>34</sup> COPFS-06360 at page 78.

<sup>35</sup> See a copy of the Sun article under reference SBPI-00216.

<sup>36</sup> COPFS-06360 COPFS-06361

of the precognition alongside the other medical evidence. Given the importance of the cause and mechanism of death a reviewing pathologist Dr Lawler was instructed to review all the expert reports in this area. I am also aware Crown Counsel consulted with a number of medical expert witnesses including pathology and Dr Lawler the reviewing pathologist. Crown Counsel may be better placed to confirm what if any reliance was placed on Dr Karch's opinion.

27. With reference to the Crown Precognition Analysis of Evidence at pages 13 and 14,<sup>37</sup> to what extent was the opinion of Prof Eddleston, noted in the analysis as being that "*the police ought to have considered the possibility that [Mr Bayoh] may have been suffering from excited delirium*", taken into consideration by you in your analysis of the evidence? To what extent did you defer to the opinion of Mr Graves to understand what had occurred in the minds of the officers in relation to their assessment of Mr Bayoh on arrival?

Professor Eddleston's opinion was carefully considered and set out in reports to Crown Counsel. Professor Eddleston's opinion was put to the OST expert Mr Graves whose view was officers thought process would have been focussed on the report of a knife and stopping and searching Mr Bayoh. He also thought Professor Eddleston's view related to mental illness in a hospital environment and not practical in an open area.

28. Why was Prof Eddleston provided with a copy of the Use of Force SOP? Was Prof Eddleston a suitable expert to opine on officers' use of force? Did you query his expertise in this regard? What was the basis for considering Prof Eddleston's opinion on these matters in the Crown Precognition?

As far as I can recall, I think the SOP may have formed part of the Expert Witness Pack provided to expert witnesses. There would have been a discussion about what materials were to be provided to him once the letter of instruction was finalised. Professor Eddleston was asked to provide an opinion on what effects the drugs had on Mr Bayoh and not the use of force. As Professor Eddleston raised a concern in his report about the adequacy of the SOP further investigations were carried out and detailed in the reports to Crown Counsel.

29. In the Crown Precognition Analysis of Evidence<sup>38</sup> at pages 50 and 51, under the chapter headed "*Addressing Concerns Raised by the Family*" the following point is made relating to post incident management:-

*Beyond doubt the officers did confer in the aftermath of this event. While this might be an entirely natural thing to do, officers ought to have been separated and a debriefing exercise carried out so that their initial positions were captured at the earliest opportunity. This was frustrated at the outset by the position of PC Walker who immediately on his return to Kirkcaldy PO sought out the Police Federation Rep and*

*insisted that he would not be providing any statements. His lead on this seems to have been followed by the others and the PIM process was not put in place as it should have been.*

What is the basis for the statement that it was beyond doubt that the officers did confer in the aftermath of the incident? What is the basis for the assertion that the officers ought to have been separated? What PIM process did you understand should have been put in place? What impact, if any, did the officers not being separated have on your understanding of the incident and the assessment of the credibility and reliability of the officers as set out in the Crown Precognition?<sup>39</sup>

A number of the officers in attendance at Hayfield Road indicated in their statements that they had discussed the incident afterwards in the canteen at Kirkcaldy Police office. Although I don't have access to statements the officers' accounts re conferring are detailed at page 54 of the Narrative. As at page 51 of the Narrative my understanding was it was agreed by senior officers that a Post Incident Management Function was to be put in place and procedures followed as outlined in Pro 325 'Association of Chief of Police Officers Authorised Professional Practice Armed Policing 2013' From memory given the circumstances the view was officers ought to have been separated and basic facts obtained. In assessing the officers' credibility and reliability I was mindful of the time taken for officers to provide statements and that they had had the opportunity to confer by not being separated.

30. In the Crown Precognition Analysis of Evidence<sup>40</sup> at page 53 the following is noted:-

*The rib fracture*

*In the statement of PC Walker provided on 4<sup>th</sup> June 2015, he mentions hearing the sound of what he thought was a crack of a rib during CPR. Notably there is no reference to hearing a crack when carrying out CPR in his self-prepared statement that he handed over to PIRC. It is odd that information only made known to PIRC by the Head of CAAPD on 29<sup>th</sup> May 2015 about the discovery of the fractured rib was somehow potentially explained away by not only Walker but also PCs Paton and Tomlinson when they came to provide statements on 4<sup>th</sup> June 2015.*

*That said there is insufficient evidence to make any more of it than to say that it is suspicious, and potentially calls into question the integrity of the PIRC investigation at that point.*

What is meant by the paragraph at the end of this excerpt? What concerns did you have as to the integrity of the PIRC investigation? What was done about this issue and how did it factor into the analysis of the officers' credibility and reliability? Was the issue regarding the integrity of the PIRC investigation

<sup>39</sup> COPFS-06360 COPFS-06361

<sup>40</sup> COPFS-06361

raised with the PIRC? If not, why not? Did Crown Counsel make any comment about the issue?

The paragraph highlighted a potential concern that information about the rib fracture provided by CAAPD to PIRC on 29 May 2015 had somehow been made known to the 3 officers. No other evidence was available to support this theory. I am unaware if this issue was raised with PIRC or whether Crown Counsel made any comment. I would envisage any concerns would be raised at a higher level.

31.

[REDACTED]

[REDACTED]

32. Is there any aspect of any conclusions in the Crown Precognition that you would like to reconsider in light of your answers in this statement or any information you may now be aware of following your involvement in the Investigation?

No

33. Please explain your involvement in preparing the Briefing Note to Mr Justin Farrell dated 28 February 2020.<sup>44</sup> Who asked you to prepare this note? Where did you get the information to put in it?

I was asked to draft the note by Mr Farrell who had replaced Mr Brown as Head of CAAPD. Mr Farrell had been asked to attend a meeting with the Scottish Government regarding the terms of the Public Inquiry and wished to have an accurate timeline of the Crown's actions during the investigation. When I prepared the note I would have been able to access all case related

<sup>41</sup>

<sup>42</sup> SBPI-00367

<sup>43</sup> COPFS-06360 COPFS-06361

<sup>44</sup> COPFS-02126 (a)

documents including PIRC reports, precognition, statements, reports, emails and correspondence. Given the passage of time which had elapsed since the precognition was submitted to Crown Counsel I would have referenced the above materials when drafting my note.

34. In your Briefing Note to Mr Farrell at page 3,<sup>45</sup> 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.”* What made the basis of the disclosure “exceptional”? In this regard, PIRC’s Mr John McSporrán has stated to the Inquiry the following: *“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.”*<sup>46</sup> Do you agree with Mr McSporrán? Was this disclosure 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?

As previously indicated, I did not commence work on this case until September 2016 so I was not involved in decision making re provision of materials to the family and their solicitor at the outset. In my experience the fact that materials were being provided so early in in the investigation made it exceptional and a departure from normal practice. I agree with Mr McSporrán that this was unusual. As I was not involved in decision making colleagues involved at the outset will be better placed to answer the final two questions.

35. To what extent were the experts provided with a clear and consistent explanation of the engagement of the police officers with Mr Bayoh, in particular a detailed explanation of the restraint of Mr Bayoh? Could anything further have been done before the experts were instructed, or before supplementary instructions, to provide this? To what extent were the experts provided with explanations of any inconsistencies between the accounts of the police officers and civilian witnesses? Was this taken into account by the experts? What impact, if any, would an incomplete or inaccurate account of the engagement and restraint have on the expert reports? Please refer to the relevant sections in your Briefing Note to Mr Farrell.<sup>47</sup>

As far as I’m aware the experts were provided with a clear and consistent explanation of the engagement of the police with Mr Bayoh. Prior to my involvement the experts instructed by PIRC had been provided with an Expert Witness Package which contained inter alia a briefing paper, redacted police and civilian witness statements and CCTV footage. I don’t now recall what else was in the Package. With regards to experts instructed by the Crown materials provided would be detailed in the letters of instruction. Crown

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<sup>45</sup> COPFS-02126 (a)

<sup>46</sup> SBPI-00361 at para 91. Please note this statement has not been shared with you.

<sup>47</sup> COPFS-02126 (a)



experts were also provided with precognitions obtained from the civilian witnesses. I don't recall if the experts were provided with an explanation of any inconsistencies between statements of the police and civilian witnesses. I don't know what if anything more could have been done prior to the Crown instructing expert witnesses. I'm not aware of any suggestion from experts that they were provided with an inaccurate account of the engagement. As per my report to Mr Farrell at page 6 any statement where errors were identified was sent to expert witnesses to confirm if anything within caused them to alter their opinion.

36. At page 7 of your Briefing Note to Mr Farrell,<sup>48</sup> you provide 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.*

Why did you raise this with Mr Farrell? Did you discuss the issue of the integrity of the PIRC investigation with him? Was this matter taken forward?

As stated at paragraph 33 the purpose of my note to Mr Farrell was to provide him with a timeline of the Crown's actions during the investigation in preparation for a forthcoming meeting. At page 7 I am highlighting the extensive further enquiries which were carried out in relation to Mr Bayoh's rib fracture. I did not discuss any potential integrity issues of the PIRC investigation with Mr Farrell. From memory Mr Farrell did not take up position at CAAPD until the end of 2019, start of 2020. I am unaware if the matter was ever discussed with PIRC.

37. Please state the following in the final paragraph of your statement:-

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

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

38. Please sign and date your statement.

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<sup>48</sup> COPFS-02126 (a)



9 February 2024