

## Transcript of the Sheku Bayoh Inquiry

Wednesday, 19 June 2024

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(10.00 am)

LORD BRACADALE: Good morning, Ms Taylor, would you say the words of the affirmation after me, please.

Evidence of MS FIONA TAYLOR (affirmed)

Examination-in-chief by MS GRAHAME

LORD BRACADALE: Ms Grahame.

MS GRAHAME: Thank you. Good morning. You are Fiona Taylor.

A. Yes.

Q. And you joined Police Scotland in July 2018, as I understand?

A. Yes, that's correct.

Q. What rank were you when you joined?

A. When I joined Police Scotland, I joined in the rank of Deputy Chief Constable.

Q. And where had you come from?

A. So my policing career is quite varied. It began in 1993 in Lincolnshire, where I joined as a Constable under the auspices of the Accelerated Promotion Scheme for graduates. I spent my first ten years in Lincolnshire.

I then transferred on promotion to Superintendent to legacy Lothian and Borders Police. I was a Superintendent and Chief Superintendent in Lothian and Borders. I then qualified through the Strategic Command

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1 Course to be appointable as an Assistant Chief Constable  
2 and I was indeed appointed as an Assistant Chief  
3 Constable to legacy Strathclyde Police in 2009. I  
4 served in Strathclyde until 2012 when I applied for and  
5 was successful to be appointed as a Deputy Assistant  
6 Commissioner, the equivalent of Deputy Chief Constable  
7 in Scotland, with the Metropolitan Police Service.

8 I served with the Met in the ranks of DAC and  
9 Assistant Commissioner, temporary Assistant  
10 Commissioner, the equivalent of Chief Constable in  
11 Scotland until December 2017 when I resigned from the  
12 Met. I then spent six months in sort of retirement and  
13 then rejoined policing, as you say, counsel, in  
14 July 2018 as a Deputy Chief Constable with  
15 Police Scotland.

16 Q. Now, we've been advised by Police Scotland that you have  
17 had an extensive career and hit many high spots, if I  
18 can put it that way. I wondered if you would like the  
19 opportunity to provide the Inquiry with your more  
20 detailed CV.

21 If you have -- I appreciate you have retired now,  
22 but if you would like to provide that information,  
23 I think that would be helpful.

24 A. I can certainly do that, but what I would say is it has  
25 been a privilege to serve as a police officer, but I

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1           will certainly provide you with that more detailed CV,  
2           counsel.

3           Q. Thank you very much.

4           A. Thank you.

5           Q. Now, you transferred, as I understand it, to -- in  
6           Police Scotland, to the People and Professionalism  
7           Portfolio, within a few months of your appointment, so  
8           you joined Police Scotland in July 2018?

9           A. Yes.

10          Q. And within a few months you were appointed to the People  
11          and Professionalism Portfolio. Can you explain to us  
12          what that encompassed?

13          A. Yes, certainly. When I joined Police Scotland, I joined  
14          as the local policing Deputy Chief Constable. We then  
15          had a number of retirements and the like and I moved  
16          into what was then the newly created People and  
17          Professionalism Portfolio. The Portfolio was  
18          responsible for professionalism, all aspects of  
19          professionalism within Police Scotland, and was also at  
20          that point in time responsible for what would commonly  
21          be known as the human resources element of  
22          Police Scotland, the people element of Police Scotland.

23                 Additionally, I had responsibility for legal  
24          services, for strategy and policy, and also for  
25          corporate communications, but the Chief Constable asked

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1 me in particular to concentrate on the corporate centre  
2 of Police Scotland to ensure that the activity that the  
3 organisation engaged in was ethical, it was driven by a  
4 respect for our values or fairness, integrity, respect  
5 and an absolute commitment to upholding human rights.

6 The Professionalism Portfolio, whilst it had  
7 professional standards in it, also has governance and  
8 assurance in it, so those quality assurance elements of  
9 our policing activity, many of those sat within the  
10 professionalism portfolio as well.

11 Q. And as Deputy Chief Constable, am I right in saying that  
12 you are immediately underneath the Chief Constable in  
13 terms of the hierarchy?

14 A. So I was appointed under the auspices of the Police and  
15 Fire Reform Act as the designated Deputy Chief Constable  
16 at around about the same time that I moved into the  
17 People and Professionalism Portfolio. We have a flat --  
18 in Police Scotland at the moment, we have a flat  
19 structure underneath the Chief Constable, so it wasn't  
20 as if I had responsibility for the other deputies in any  
21 sort of shape or form, it was simply that should the  
22 Chief Constable be incapacitated in any way, then it  
23 would have been my responsibility to step up and step  
24 into that role in an interim basis and, indeed, that's  
25 what I did when the Chief Constable retired in

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1 August 2023 for those sort of intervening months between  
2 the new Chief Constable joining us and Sir Iain  
3 retiring.

4 Q. So the Chief Constable, there's one Chief Constable of  
5 Police Scotland?

6 A. Yes.

7 Q. He is at the top of the organisation?

8 A. Yes.

9 Q. And beneath that there are a number of Deputy Chief  
10 Constables, DCCs?

11 A. That's right.

12 Q. And if the situation arises, there will be one  
13 designated DCC and that was you?

14 A. That's absolute right, but again, just to be absolutely  
15 accurate, as well as the three Deputy Chief Constables,  
16 when I was serving, we also had a Deputy Chief officers  
17 who was the most senior member of police staff, the most  
18 senior civilian within Police Scotland, who was largely  
19 responsible for corporate services.

20 Q. Thank you. So there's one Chief Constable, and thinking  
21 only of officers --

22 A. Yes.

23 Q. -- there's three deputy Chief Constables?

24 A. That's right.

25 Q. And of those three one is designated and that was you?

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- 1 A. That's right.
- 2 Q. And that allows you or it requires you to step into the  
3 shoes of the Chief Constable if he is as on the occasion  
4 of Sir Iain Livingstone retiring or if they become  
5 incapacitated or unwell in some way?
- 6 A. That's right.
- 7 Q. And you remained in that Professionalism Portfolio until  
8 August of 2023; is that right?
- 9 A. That's right, counsel, yes.
- 10 Q. And then in August 2023, the Chief Constable at the time  
11 Sir Iain Livingstone retired?
- 12 A. Yes.
- 13 Q. And you became the designate interim Chief Constable and  
14 until the current Chief Constable, Jo Farrell, took up  
15 post?
- 16 A. Yes, that's right.
- 17 Q. And that was in October of 2023?
- 18 A. Yes.
- 19 Q. And from October 2023 until February 2024, you remained  
20 DCC designate?
- 21 A. Yes.
- 22 Q. And you had a key role, as I understand your statement,  
23 in supporting the current Chief Constable Farrell's  
24 induction, if you can put it that way, into  
25 Police Scotland?

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1 A. Yes, that's absolutely correct.

2 Q. Thank you. And you then retired from Police Scotland on  
3 9 February 2024?

4 A. Yes.

5 Q. Thank you. Before I get into your evidence at this  
6 stage, I understand that you would like to say a few  
7 words with the permission of the Chair.

8 A. That's correct. Thank you. Thank you, sir.

9 I just wanted to pass on my deepest condolences for  
10 the loss of a beloved son and brother in May 2015, and I  
11 also just wanted to thank you for the dignity, the  
12 tenacity, and the absolute generosity of spirit that you  
13 as a family have displayed and your generosity towards  
14 me personally in terms of being prepared to interact and  
15 to listen and to talk with Police Scotland.

16 I can't thank you enough and I just thought it was,  
17 with the indulgence of the Chair, the right thing to do  
18 this morning just to recognise that so thank you.

19 Q. Thank you very much. So in your portfolio as designated  
20 DCC, you have said that you were responsible for issues  
21 regarding legal services?

22 A. Yes.

23 Q. And am I to understand that in fact you took  
24 responsibility for Police Scotland's engagement with  
25 this Inquiry?

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- 1 A. Yes, that's correct.
- 2 Q. And if I remember correctly, you have attended on a  
3 number of days and you're briefed by the legal team in  
4 relation to the work of the Inquiry?
- 5 A. Yes, that's correct.
- 6 Q. You are also, you said, responsible for professional  
7 standards?
- 8 A. Yes.
- 9 Q. Or were responsible and for conduct?
- 10 A. Yes.
- 11 Q. And governance --
- 12 A. That's right.
- 13 Q. -- I think you said as well?
- 14 A. That's right. Conduct, as I think I said in my  
15 statement, is further delegated to an Assistant Chief  
16 Constable who has day-to-day responsibility for the work  
17 of the complaints and conduct function, but, ultimately,  
18 it sat within my portfolio, that's absolutely correct.
- 19 Q. Thank you.
- 20 A. Thank you.
- 21 Q. Let's look at -- first of all, I know you're aware of  
22 evidence in the Inquiry. You will know there is a blue  
23 folder sitting in front of you and you will probably  
24 have heard me say to many other witnesses that should  
25 contain a copy of your statement.



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1 A. Yes.

2 Q. And any other documents that you may find to be of  
3 assistance during the course of your evidence.

4 A. Thank you.

5 Q. If there is something you would like to see but you do  
6 not have a hard copy, if you let me know, we will try  
7 and get it for you.

8 A. Thank you.

9 Q. We may not have it immediately on the playlist to show  
10 on the screen, but we will try and get it at the next  
11 break.

12 A. Thank you.

13 Q. Please feel free to use that folder as you wish. Let's  
14 go through what's brought us here. You were sent a  
15 Rule 8 request by the Inquiry. Maybe we can have that  
16 up on the screen. That was from the 28 March this year,  
17 so the month after you retired; do you see that?

18 A. I do.

19 Q. And as with other witnesses, this is a written request  
20 from the Inquiry and if we scroll through, you'll see  
21 that a number of questions were asked and you were  
22 requested to write down the answers and provide what's  
23 known as a Rule 8 response. Do you recognise what we  
24 see on the screen?

25 A. Yes.

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1 Q. And you did that, and your Rule 8 response, which is the  
2 equivalent of an Inquiry statement, is SBPI 00546, and  
3 you'll see that this says "Witness Statement Fiona  
4 Taylor QPM" and that's dated, if he look at the end of  
5 that, final page, you'll see that although it's been  
6 redacted and doesn't show on the screen, you should see  
7 a copy yourself and that was signed by you?

8 A. Yes.

9 Q. And sent to the Inquiry and that was dated 22 April  
10 2024?

11 A. Yes.

12 Q. And the final paragraph of that statement, paragraph 31,  
13 says:

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

18 And you understood that to be the case when you sent  
19 it in?

20 A. I did.

21 Q. And that entire statement will be available to the Chair  
22 for consideration. Could we go back to the top of that  
23 document. I'm interested in paragraph 2, please. And  
24 we see here you say:

25 "I had line management responsibility for

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1 ACC Professionalism, who had delegated from the Chief  
2 Constable day-to-day responsibility for professional  
3 standards. I had regular meetings with then ACC Spiers  
4 who held this portfolio to understand emerging trends  
5 and themes in respect of misconduct and complaints.  
6 Also, I ensured we were aware of national trends, events  
7 and were responding to national reviews and reports."

8 So you say there -- you mention an ACC Spiers?

9 A. Yes.

10 Q. And you say you had line-management responsibility, for  
11 ACC Professionalism. First of all, who was  
12 ACC Professionalism?

13 A. That is ACC Spiers.

14 Q. ACC Spiers. and you say you had line-management  
15 responsibility for him?

16 A. Yes.

17 Q. And you say:

18 "Who had delegated from the Chief Constable  
19 day-to-day responsibility for professional standards."

20 A. Yes. I may have technically got that slightly wrong.  
21 That delegation might actually have come from myself as  
22 a designated deputy as opposed to the Chief. My  
23 apologies, I'm not au fait with the Police and Fire  
24 Reform Act as I might have been.

25 Q. I wanted to ask you about that. So the Chief Constable

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1 in a sense has appointed you?

2 A. Yes.

3 Q. You're a designate DCC and you then have line-management  
4 responsibility for ACC Spiers and he is the ACC for  
5 professionalism?

6 A. Yes.

7 Q. Is that effectively covering conduct, misconduct, that  
8 type of thing?

9 A. It does. It covers exactly that, counsel, covers  
10 conduct, misconduct, the discipline portfolio, but also  
11 covers governance and assurance as well.

12 Q. "And he had day-to-day responsibility for professional  
13 standards" and now you would like to correct that,  
14 that's come from you, that delegation.

15 A. Thank you.

16 Q. I would like to ask you about the 2014 Regulations and  
17 if we have those on the screen, they're SBPI 00633.  
18 Now, you have mentioned the 2012 Act and I'm sure you'll  
19 agree the Scottish ministers made regulations in  
20 exercise of the powers conferred under the Police and  
21 Fire Reform (Scotland) Act 2012 and those regulations  
22 are the ones we see on the screen now so they're the  
23 Police Service Of Scotland (Conduct) Regulations 2014.

24 A. Yes.

25 Q. And they were in place when you took on the role.

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- 1 A. Yes.
- 2 Q. And they came into force on 1 April 2014, so that was  
3 the year after Police Scotland came into existence.
- 4 A. Yes.
- 5 Q. One year exactly after they came into existence, and you  
6 joined in 2018 and they were still in force at that  
7 time.
- 8 A. Yes, that's correct.
- 9 Q. And am I right in saying they remained in force  
10 throughout your entire time?
- 11 A. Yes.
- 12 Q. Thank you. And these regulations apply, as they say in  
13 the brackets there, to issues of conduct and they apply  
14 to issues of conduct on the part of Constables below the  
15 rank of Assistant Chief Constable?
- 16 A. That's correct.
- 17 Q. So would that include Constables obviously, but  
18 sergeants?
- 19 A. Yes.
- 20 Q. Inspectors?
- 21 A. Yes.
- 22 Q. Anyone up to but not including Assistant Chief  
23 Constable?
- 24 A. That's correct, everybody up to the rank of Chief  
25 Superintendent.

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1 Q. So both yourself and ACC Spiers were above the rank of  
2 anyone who would be covered by these conduct  
3 regulations?

4 A. Yes.

5 Q. And if we look at the interpretation regulation 2 and if  
6 we could look at the word "conduct" which we see there  
7 on the screen:

8 "Conduct includes acts and omissions."

9 So really it doesn't specify or limit the type of  
10 conduct that can be covered?

11 A. No.

12 Q. It's simply something that is done or something that is  
13 not done; is that correct?

14 A. Yes.

15 Q. And then if we look at the definition of "gross  
16 misconduct", it says:

17 "Means a breach of the standards of professional  
18 behaviour so serious that demotion in rank or dismissal  
19 may be justified."

20 So that would be a very particular serious type of  
21 misconduct?

22 A. Yes.

23 Q. And we see the definition of the word misconduct:

24 "Unless the context otherwise requires, conduct  
25 which amounts to a breach of the standards of

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1 professional behavior, but does not, unless the context  
2 otherwise requires, include gross misconduct."

3 So again, misconduct is defined under reference  
4 again to the standards of professional behaviour?

5 A. Yes.

6 Q. And these were set out in Schedule 1 of the Regulations.  
7 So if we look at the rear of this document, we'll see  
8 Schedule 1 of the Regulations.

9 Tell us what the standards are. We'll go throughout  
10 the specifics in a moment, but could you explain to  
11 everyone listening what these are for a police officer.

12 A. So these -- at risk possibly of repeating the title,  
13 these are the standards of behaviour to which every  
14 police officer, including those above the rank of Chief  
15 Superintendent, should rightly be held when they go  
16 about their day-to-day responsibilities as a police  
17 officer, but also be held to when they're not actively  
18 on duty so these are the standards of behaviour which,  
19 if you like, govern the activity of serving police  
20 officers.

21 Q. And that's every police officer?

22 A. That's every police officer, yes.

23 Q. And it's not just those on duty, off duty as well?

24 A. So the standards of professional behaviour also have an  
25 impact on how officers comport themselves off duty, yes.

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1 Q. And we've heard that police officers are in a unique  
2 position in society. They are permitted to use lawful  
3 force in relation to other citizens in the country, that  
4 that can in certain circumstances include deadly force,  
5 but there are obligations and privileges and  
6 responsibilities attached to that role of police  
7 officer; is that fair?

8 A. That's very fair, yes.

9 Q. And the standards to which officers are held, are these  
10 set out in Schedule 1 of the Regulations?

11 A. Yes, and it was certainly a focus of the Policing  
12 Together Programme, which I'm sure we will touch on  
13 later, through the auspices of our Professional  
14 Standards Department to ensure that we could bring these  
15 standards of professional behaviour to life for our  
16 colleagues so that they weren't just sitting in a set of  
17 regulations or a regulatory framework, but they were  
18 actually given a practical applicability in terms of how  
19 officers behaved on a day-to-day basis.

20 Q. Right. So these are not dusty regulations left on a  
21 shelf, they mean something?

22 A. Yes.

23 Q. They're important, they're significant to officers?

24 A. That's absolutely correct.

25 Q. And is it fair to say that Police Scotland expects the



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1           officers to comply with these standards, have regard to  
2           these standards in the course of their duties at the  
3           very least?

4           A. Yes.

5           Q. I would like to look at some of them. We won't go  
6           through all of them.

7           A. Okay.

8           Q. Can I look at the equality and diversity standard:  
9           "Constables act with fairness and impartiality.  
10          They do not discriminate unlawfully or unfairly."

11          So that's quite a widely drawn standard?

12          A. Yes.

13          Q. Would that include a standard that officers should not  
14          act in a discriminatory manner such as racial  
15          discrimination?

16          A. Absolutely.

17          Q. And they should not act in a discriminatory manner in  
18          relation to religion?

19          A. That's correct.

20          Q. Would it essentially be anything to do -- we've heard of  
21          characteristics under the Equalities Act?

22          A. Yes.

23          Q. Anything along those lines, would that be covered by  
24          this standard?

25          A. That's absolutely correct, but I think the first half of

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1 the standard, "not discriminating unlawfully or  
2 unfairly", is absolutely fundamental to our contract  
3 with the citizens of Scotland. We have to maintain the  
4 confidence of every community in Scotland to be able to  
5 police with consent, so that's absolutely fundamental,  
6 but also fairness and impartiality is actually about a  
7 mindset as well, counsel, and almost a protected  
8 characteristic or none, treat everybody with dignity and  
9 respect, treat them fairly and consider in the broadest  
10 sense their needs and requirements.

11 Q. Thank you. And if there are failings in relation to  
12 these standards, is it through -- via the Regulations  
13 that consideration is given to the extent of any failing  
14 to meet the standards and to what punishment or sanction  
15 should be applied, if there has been a failing?

16 A. Yes, if the standards of professional behaviour aren't  
17 met, then there will be an assessment carried out around  
18 the gravity, if you like, of an individual's failure to  
19 meet those standards of professional behaviour.

20 Now, what I would say is there is an absolute zero  
21 tolerance within Police Scotland for any discrimination,  
22 be that racist discrimination or any other type.

23 However, officers can on occasion make mistakes, so it's  
24 only correct that if an officer makes a mistake which is  
25 made genuinely with no malice, there is no malevolence,

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1           there is no forethought, then it's as important the  
2           organisation tries to reeducate that individual, in  
3           other words provide them with supplementary or  
4           additional training, support, guidance, supervision to  
5           ensure that they are not making those mistakes again.  
6           But as I say, there's a continuum, if you like.

7           If somebody makes an honest mistake and it's at the  
8           lower end of the continuum, then absolutely we would  
9           look to reeducate, support, retrain, additional  
10          supervision, but if there is any deliberate attempt to  
11          discriminate, if there's any dishonest then that would  
12          absolutely breach the standards of professional  
13          behaviour and there would be an assessment made by  
14          colleagues in Professional Standards to understand how  
15          that should be taken forward.

16        Q. Is there an assessment carried out by Police Scotland,  
17        an initial assessment, to decide whether this is a  
18        simple mistake, an honest mistake, which can be resolved  
19        through reeducation or there is some deliberate  
20        discriminatory behaviour?

21        A. Yes.

22        Q. And who carries out that assessment?

23        A. So those assessments would be carried out by colleagues  
24        within PSD. There are officers within PSD who deal with  
25        complaints and other who deal with conduct matters and,

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1 clearly, breaching the standard of professional  
2 behaviour would often result in a conduct issue being  
3 raised, so those assessments would be done by colleagues  
4 in Professional Standards.

5 Q. So we've heard about your role, we've heard about  
6 AC Spiers, who were the colleagues that would make these  
7 assessments?

8 A. So within the Professional Standards Department, when I  
9 was there, this may have changed in the meantime, there  
10 were different elements in different sections, if you  
11 like, within Professional Standards. So there was an  
12 anticorruption unit, there was a specialist  
13 investigations unit, there was a unit which dealt with  
14 complaints from the public, there was also a unit which  
15 dealt with conduct matters raised within the  
16 organisation.

17 Now, sometimes these responsibilities overlapped and  
18 it was probably, you know, in terms of understanding  
19 exactly what that looks like in 2024, it may have  
20 changed since my time, but there would certainly be  
21 officers within the -- with responsibilities within PSD  
22 to address matters of police officer conduct.

23 Q. At that stage, if there was an issue which came to the  
24 attention of Police Scotland --

25 A. Yes.

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1 Q. -- it could go to the Professional Standards Department?

2 A. Yes.

3 Q. And someone within one of these particular units could  
4 carry out an initial assessment and that initial  
5 assessment could be -- could result in deviating the  
6 matter away from these regulations towards some sort of  
7 reeducation?

8 A. Yes, given the -- every set of circumstances is  
9 different, every set of circumstances will be  
10 investigated on its merits, on the, you know, particular  
11 incident or series of incidents, yes.

12 Q. And in terms of that process, that's outwith these  
13 Regulations, is there policies or procedures that we  
14 could look at that would help us understand what  
15 standards are being applied, what rationale is being  
16 considered, what reasoning there is for the decision?

17 A. So in terms of the interdependencies, yes, we will  
18 have -- and again, the reason I'm hesitating slightly is  
19 these things are iterative, there's a lot of  
20 organisation, the learning and development going on  
21 within Police Scotland in terms of standard operating  
22 procedures and policies, but I'm sure we will be able to  
23 provide the Inquiry with the relevant policies to assist  
24 the Inquiry to understand the interaction between the  
25 regulations and the standards of professional behaviour.

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1 Q. The assessments carried out within standards will they  
2 be subject to a standard operating procedure or a policy  
3 of some kind in terms of that initial assessment?

4 A. I believe they will, yes, and there will also be  
5 overview and scrutiny by more senior officers within the  
6 complaints and conduct department as well, sergeants or  
7 inspectors.

8 Q. And is there a record of that assessment and the outcome  
9 of that assessment?

10 A. Yes.

11 Q. That would be kept. And who would keep that?

12 A. Again, that would be kept within, I would anticipate,  
13 and again this may have changed, but there was also a  
14 governance function within Professional Standards in its  
15 own right. What we would try to do would be, and I  
16 think I may be reference it in the statement, is to  
17 understand where themes may be emerging so it was really  
18 important that we would keep a record of any breaches of  
19 the standards of professional behavior or indeed any  
20 other conduct issues which came to the attention of  
21 Police Scotland so that we could understand whether, if  
22 a theme was emerging, did that mean that there was a  
23 deficit in some of the training that we were providing  
24 to probationers say. Was there a lacuna, something we  
25 just didn't understand and were consistently getting

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1           that wrong and as a consequence potentially breaching  
2           the standards or transgressing the conduct regulations.

3           So really important that we did keep a record, that  
4           we did understand the themes that were emerging and then  
5           we could go back into the organisation to try to  
6           remediate any of those behaviours, prevent them from  
7           happening again.

8           Q. I am keen to avoid any confusion between standards and  
9           the Regulations and assessment of any themes arising out  
10          of those, so cases are situations that are dealt with  
11          under the Regulations, leave that to one side at the  
12          moment.

13          A. Okay.

14          Q. And only look at this assessment which is done outwith  
15          the scope of the Regulations. You've said that a  
16          decision and assessment is made by someone within police  
17          Professional Standards and is there a record of those  
18          assessments?

19          A. I can't say definitively in terms of records of  
20          assessment. I think they would be kept, but I would  
21          need to check that for you or have that checked.

22          Q. Who keeps -- who monitors or keeps an eye on how many  
23          non-regulation matters are being dealt with by  
24          Professional Standards?

25          A. So that would be the senior management team within PSD.

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1 Q. And in terms of their ultimate responsibility for the  
2 senior management team, who do they answer to?

3 A. ACC -- well, the ACC Professionalism who was at that  
4 time ACC Spiers.

5 Q. Spiers, who is ultimately -- you were responsible for  
6 him?

7 A. That's right.

8 Q. So in terms of you and your role as DCC, what  
9 information were you provided with about these  
10 non-regulation assessments that were carried out?

11 A. So prominently two areas. If there was a particularly  
12 egregious incident involving a police officer, then  
13 I would be made aware of that. Alan and I, ACC Spiers  
14 and I spoke on a daily basis. We would talk everyday  
15 about themes emerging, trends, issues, come back after  
16 the weekend, any incidents that occurred over the  
17 weekend for arguments sake. So there was the issue of  
18 the seriousness or severity of any incident or  
19 incidents, but then, as I say, there was also the issue  
20 of are we starting to see sort of themes or -- trends  
21 emerging or themes developing and, again, we would  
22 discuss that on a one-to-one basis, but we would also  
23 discuss that in -- I created a forum within  
24 Police Scotland which enabled Professional Standards,  
25 Legal Services and colleagues in P & D to come together,



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1           again, just so that we had a corporate understanding of  
2           any issues such as the type that you mention, Council,  
3           so that, again, we would understand collectively what we  
4           might need to do about that.

5           Q.   Again, I would like to draw a distinction between  
6           matters that are dealt with under the Regulations and  
7           matters that are dealt with outwith the Regulations,  
8           where there's this assessment, initial assessment, where  
9           you said it could be a mistake, an honest mistake, there  
10          could be reeducation.  Those are diverted away from the  
11          Regulations and the framework that those provide.

12                 So when you're talking about a particularly  
13          egregious example, were those particularly egregious  
14          examples also dealt with to assess whether they were  
15          honest mistakes?

16          A.   So they would always -- that is the purpose of the  
17          assessment process, to understand, you know, could this  
18          possibly have been an honest mistake or actually is  
19          there something more here and there have been -- as I  
20          say, if we take, for example, elements of or elements  
21          surrounding, you know, dishonesty or violence or  
22          drunkenness or particularly discrimination, then that  
23          would be dealt with formally post assessment.

24          Q.   So are there categories that we would look at that are  
25          identified by Police Scotland that if it falls within

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1           this category, it must be dealt with under the  
2           Regulations or if it falls within this category, it can  
3           be dealt with as an honest mistake?

4           A. So you are at the absolute extent of my kind of working  
5           knowledge of the practices within the Professional  
6           Standards Department, but there will always be advice  
7           and guidance for investigators. The skills and  
8           experiences of those investigators would play into the  
9           decisions that they would make, but, as I say, there  
10          would also be oversight and scrutiny from more senior  
11          officers within Professional Standards, whether those be  
12          sergeants, inspectors, chief inspectors.

13                 So I appreciate I'm probably not saying  
14          definitively, yes, there are, but what I am saying is if  
15          they are in their current incarnation or current  
16          iteration, we can certainly get those to the Inquiry.

17          Q. Thank you. Is it fair to say that if the matter  
18          involved the death of someone after coming into police  
19          contact that that would not be one of those honest  
20          mistake issues, it would be an issue that would be  
21          covered within the Regulations?

22          A. So I think if somebody dies following police conduct,  
23          then I mean that's an incredibly serious set of  
24          circumstances, so there would be a full investigation,  
25          as you know, carried out into the death of any person or

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1 indeed serious injury of any person following police  
2 conduct. That investigation would be carried out by the  
3 PIRC and, as consequence of the investigation carried  
4 out by the PIRC, the conclusions that the PIRC would  
5 reach in terms of the culpability, for want of a better  
6 word, of any police officer involved in that -- those  
7 set of circumstances might go one of any -- one of a  
8 number of ways, counsel, but that is -- and again, back  
9 to our bond of trust and confidence with the communities  
10 of Scotland, the Article 2 rights of any individual and  
11 the necessity for a thorough investigation, the  
12 investigation would take place and then, as a  
13 consequence of the findings from that investigation, a  
14 determination follow-up.

15 Q. And that would include the provisions under these  
16 Regulations?

17 A. Yes, if -- yes, yes.

18 Q. And then if we can move on and look at the use of force:

19 "Constables use force only to the extent that it is  
20 necessary, proportionate and reasonable in all the  
21 circumstances."

22 And that reflects evidence that we've heard about  
23 what officers are taught under the OST Manual and things  
24 of that sort?

25 A. Yes. And again, it's probably worthy of note just to --

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1           and I'm sure colleagues have already expressed this much  
2           more articulately than I could, operational safety  
3           training is constantly evolving, the elements or  
4           operational safety training change based on previous  
5           experience and our understanding in terms of  
6           verbal-conflict deescalation training for colleagues  
7           within our C3 environment, so that again is a very  
8           iterative process, operational safety training.

9           Q. But the law remains this constant that Constables are  
10          only allowed to use force and force is only lawful to  
11          the extent that it is necessary, proportionate and  
12          reasonable in the circumstances?

13         A. Yes.

14         Q. And then:

15                 "Orders and instructions. Constables give and carry  
16                 out only lawful orders and instructions."

17                 So Constables have to carry out instructions, lawful  
18                 instructions, from their superiors?

19         A. Yes.

20         Q. And then if we can move down to "discreditable conduct":

21                 "Constables behave in a manner which does not  
22                 discredit the police service or undermine public  
23                 confidence in it whether on or off duty."

24                 So Constables have to behave in a manner not just  
25                 that complies with the other standards, but they also

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1           have to regard to things that don't discredit the police  
2           service or bring it into disrepute, if I can put it that  
3           way?

4           A. That is absolutely correct and, again, it is a matter of  
5           the confidence in the police service in Scotland.

6           Q. Thank you. Can we look at misconduct allegation.  
7           I think that might be in the interpretation section,  
8           which is Regulation 2, "Misconduct Allegation" -- there  
9           we are. It's on the screen -- means:

10                    "Any report allegation or complaint from which it  
11                    can reasonably be inferred that any conduct of the  
12                    constable may amount to misconduct or gross misconduct."

13                    And can I take that it's not necessary for there to  
14                    be a form or a formal letter raising issues of  
15                    misconduct in order for Police Scotland to deal with  
16                    the -- address the matter?

17           A. I mean that's absolutely correct and one of the areas  
18           that we really have tried to improve on is accessibility  
19           for members of the public to access the complaints  
20           system, so there are a number of different methods by  
21           which a complaint about an officer's conduct can be  
22           raised.

23           Q. Right. And so if something is even if brought to the  
24           attention of the police, can that be dealt with as a  
25           possible conduct issue?

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1       A. For arguments sake, if that's reported by a member of  
2       the public to a passing police officer who's not  
3       involved -- and again, I'm just trying to create a  
4       scenario here so that I hope I'm answering your  
5       question. If a member of the public comes into a police  
6       station or reports to another police officers or a  
7       member of police staff that a particular issue has  
8       occurred then, yes, absolutely that should be noted and  
9       acted upon.

10      Q. Does it have to be reported to a police officer?

11      A. So again, more recently, there are alternative reporting  
12      methodologies direct to the PIRC, for example,  
13      potentially into Crown if there's, you know, really  
14      serious allegations of assault made against a police  
15      officer, and we have -- this isn't potentially used that  
16      frequently, but there are third-party reporting  
17      mechanisms, for example, to report hate crime, which  
18      could also be utilised if a member of the public wants  
19      to make a complaint about a police officer but doesn't  
20      necessarily feel sufficiently confident to make that  
21      complaint to the Scottish police service itself.

22      Q. That's one route, complain to any police officer and  
23      that should be dealt with. What if a complaint is made  
24      to the press or in public, is that something that the  
25      Police Scotland have regard to and deal with?

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1 A. Yes.

2 Q. Not even a complaint to a police officer that's  
3 required?

4 A. So, no, no, absolutely, if a complaint was made in the  
5 press, then, you know, we would look to -- with the  
6 appropriate safeguards, we would look to follow that  
7 complaint or those concerns up with the relevant  
8 individuals.

9 Q. Thank you. Could we look at Regulation 5 now, please.  
10 There we are:

11 "Designation of Deputy Police Constable.

12 "5.1. The Chief Constable must designate a Deputy  
13 Chief Constable to exercise functions under these  
14 regulations and references in these regulations to the  
15 Deputy Chief Constable are ... unless the context  
16 otherwise requires references to that individual."

17 And I think you have said already you were that  
18 designated Deputy Chief Constable?

19 A. Yes.

20 Q. And it was your -- you were designated that role to  
21 exercise functions under these regulations?

22 A. Yes.

23 Q. And 2:

24 "The Deputy Chief Constable made direct or authorise  
25 another constable of at least the rank of

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1 Chief Inspector to carry out any of the Deputy Chief  
2 Constable's functions under these regulations." and.

3 You've mentioned ACC Spiers.

4 A. Yes.

5 Q. And so the Deputy Chief Constable, yourself, may direct  
6 or authorise another constable, ACC Spiers, to carry out  
7 any of the functions under these Regulations?

8 A. Yes.

9 Q. And then 3:

10 "A direction or authorisation under paragraph 2 does  
11 not affect the DCC's responsibility for the carrying out  
12 of delegated function."

13 A. Yes.

14 Q. Does this confirm that ultimately you were responsible?

15 A. Ultimately, yes.

16 Q. Yes. So in terms of the wording of the Regulations, as  
17 designated DCC, you had responsibility in terms of the  
18 Regulations?

19 A. Yes.

20 Q. And I think you said the ACC Spiers and you had a daily  
21 briefing?

22 A. We would speak daily. It was not always as formal as a  
23 briefing and on occasion, counsel, it was many times  
24 across the course of a day.

25 Q. So you worked very closely with ACC Spiers?



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1 A. Yes.

2 Q. Can I ask you briefly about the position from 2015 to  
3 2018. Now, I understand you were not actually part of  
4 Police Scotland at that time. But when you came to  
5 Police Scotland in 2018, you took over that portfolio  
6 and I'm interested in your understanding of the position  
7 prior to you immediately taking over that portfolio with  
8 regard to the Mr Bayoh's death.

9 So we have evidence that's been given to the Inquiry  
10 that it was DCC Neil Richardson who would have had  
11 oversight at that time prior to you taking on this role;  
12 is that correct?

13 A. I think -- I think that is correct, but I'm conscious  
14 that Neil Richardson retired from Police Scotland  
15 sometime before I joined, counsel, so there may well  
16 have been another designated Deputy Chief Constable  
17 in --

18 Q. In between?

19 A. -- in between.

20 Q. Right. So there may have been someone in the period  
21 shortly prior to you --

22 A. Yes.

23 Q. -- being appointed in 2018, but prior to that, would  
24 that have been Neil Richardson?

25 A. That's my understanding, but it is just my

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1 understanding.

2 Q. That's very helpful. And he would have been post in  
3 that role in 2015, would he?

4 A. Genuinely, I'm not sure of the dates of service of all  
5 of my predecessors so just a note of caution there from  
6 myself.

7 Q. I'm sure we'll be able to find out from someone else.

8 We have a copy of a briefing paper which I would  
9 like to look at first of all, PS 03545, and this was a  
10 briefing paper for your attention and it's dated  
11 12 September 2018. Do you see that? And it's from  
12 Superintendent Craig Blackhall and we understand he was  
13 in the Professional Standards Department. And it  
14 relates to the death of Mr Bayoh on 3 May 2015.

15 Now, was this the briefing paper you received  
16 regarding the death of Mr Bayoh when you took over in  
17 relation to this portfolio?

18 A. I can't remember, counsel, whether this was the briefing  
19 paper that I received or one of a number of briefing  
20 papers. I genuinely can't remember.

21 Q. This is the only one that relates to Mr Bayoh, but  
22 presumably that was not the only outstanding matter on  
23 your desk when you took over the job. There must have  
24 been other outstanding issues as well.

25 A. There were, yes.

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- 1 Q. This would have been -- is it fair to say this would  
2 have been one of many briefing papers you received?
- 3 A. It would have been, yes, but I think even coming -- not  
4 even coming, but coming from the Metropolitan Police  
5 Service and coming from a position as the Deputy  
6 Assistant Commissioner with responsibility for  
7 Professional Standards in the Met and understanding the  
8 implications and the impact on individuals and families  
9 and public confidence of deaths in custody, the death of  
10 Mr Bayoh, whilst, as you quite rightly say, may have  
11 been one of a number of issues that I assumed  
12 responsibility for, it would certainly have been  
13 something which was of really significant import.
- 14 Q. By the time you took on this role and even maybe before  
15 you took on this role, you would have been aware of the  
16 death of Mr Bayoh?
- 17 A. Yes.
- 18 Q. And the significant of that?
- 19 A. Yes.
- 20 Q. And in fact, the death of Mr Bayoh is the only matter  
21 that has resulted in a public inquiry that  
22 Police Scotland are dealing with since that date?
- 23 A. Yes.
- 24 Q. And that in itself is a reflection of the importance of  
25 the matter?

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1 A. Yes.

2 Q. And so you were aware of the issue, the death of  
3 Mr Bayoh, you would be aware of the concerns of the  
4 family at that time, were you?

5 A. Yes, albeit not personally firsthand.

6 Q. No.

7 A. I was fortunate to meet with the family shortly after I  
8 came into Police Scotland along with the then Chief  
9 Constable, Sir Iain Livingstone, which supported my  
10 understanding of them as a family and the implications  
11 on them personally of the death of a loved one, but  
12 I was also aware of the implications for the  
13 organisation of the events of May 2015 as well.

14 Q. And just if we go through this briefing paper and I  
15 simply want to skim through it to allow you to see what  
16 is. It deals with:

17 "The purpose of the briefing paper was to provide  
18 you with an update regarding the death of Mr Bayoh, the  
19 PIRC investigation. The paper will be restricted to  
20 aspects associated with the Professional Standards  
21 Department and it was understood Fife Division would  
22 provide a similar paper from an operation and staffing  
23 perspective."

24 But we're interested in the Professional Standards  
25 element of that?

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1 A. Okay.

2 Q. You're given some information about the background, and  
3 if we can -- sorry, can we just very quickly:

4 "About 7.15 hours on Sunday, 3 May, Police Scotland  
5 received several reports that a male was in the area of  
6 Hayfield Road in possession of a large knife."

7 And there was some preliminary information given to  
8 you in that document:

9 Now, if we can move down the page, keep going. You  
10 were then brought up to speed on the PIRC investigation.  
11 You were given some information about the instructions  
12 to PIRC, and some information about claims made by the  
13 family regarding one of the officers and issues that had  
14 been raised by them.

15 And if we can move down, there's then a heading  
16 "Complaints about the Police". We don't need to look  
17 through that.

18 Civil proceedings which have been raised in  
19 August 2018, and that would be the month prior to this  
20 briefing note, and the up coming specification of  
21 documents, and then some information about those  
22 proceedings and then if we can carry on, the conclusion.

23 So you're essentially being brought up to speed  
24 about the incident itself, the PIRC investigation, and  
25 the civil proceedings, and the conclusion is:

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1           "The incident was referred by Police Scotland to the  
2           appropriate authorities timously on 3 May 2015 and since  
3           then the force has supported the ongoing PIRC  
4           investigation as necessary. Police Scotland are however  
5           largely unsighted on the conclusions of PIRC and, as  
6           alluded to earlier, the contents of any reports  
7           submitted to Crown Office."

8           So this briefing note is dated, as we see from the  
9           very top, September -- if we go back there -- September  
10          2018 and we've heard that by this stage, in terms of the  
11          PIRC investigation, Crown Office was sent an interim  
12          report, they were sent a final report in 2016 and then  
13          there has been a Crown Office investigation, and all of  
14          that has happened.

15          Now, we've heard evidence that at that stage,  
16          Police Scotland had never seen the PIRC report, either  
17          the interim or the final; is that correct?

18          A. To the best of my knowledge, yes, up to that point, yes.

19          Q. So you did not have, as I understand it, the  
20          documentation from PIRC at that stage?

21          A. No.

22          Q. Thank you. And I wonder if we can just -- feel free to  
23          if you would like to look at any section of this.

24          There's no reference here to any sort of assessment  
25          having been carried out or -- by Professional Standards

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1           or anything of that line -- along those lines. No  
2           comment there about any consideration of misconducting  
3           proceedings or suspensions or anything along those  
4           lines, nothing in the briefing note about that, but I'm  
5           wondering what information were you given about the  
6           status of the officers, the status of proceedings under  
7           the Regulations, that type of information?

8           A. So I am going on memory here. I'm sure there would have  
9           been a follow-up conversation with  
10          Superintendent Blackhall and potentially other PSD  
11          colleagues. My recollection is that at that point --  
12          I am struggling here a little bit, counsel. You're  
13          particularly projecting back to what happened in the  
14          immediate aftermath, but my understanding was that there  
15          were no disciplinary procedures in train at that  
16          point -- at that point in time.

17          Q. All right.

18          A. But that is just -- that is my understanding.

19          Q. Thank you. So you've been told that there's no -- or  
20          you recall being told there was no disciplinary  
21          proceedings extant at that time. Can we look, please,  
22          at -- did you do anything about that at that stage? Did  
23          you intervene in any way at that stage or?

24          A. I would not have intervened at that stage, bearing in  
25          mind the PIRC would have carried out the investigation

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1 following the death of Mr Bayoh and, as you say, a  
2 number of reports had been submitted to Crown by that  
3 point. What I would have done at that point would have  
4 been to try to understand what the ongoing issues for  
5 Police Scotland still were.

6 Q. Can you help us understand what those ongoing issues  
7 were?

8 A. So those I think would have come throughout the auspices  
9 of -- there was a gold group I believe running at the  
10 time, which I assumed chairpersonship of or chair of and  
11 those were looking at issues such as community cohesion  
12 and the community impact of the death of Mr Bayoh both  
13 of people in Fife and more widely, any ongoing legal  
14 proceedings that there still were, the status of the  
15 investigation, albeit that was with the PIRC, and,  
16 obviously, duty of care towards the subject officers as  
17 well.

18 So I mean that's very broad and very high level  
19 obviously, but there was still a gold group structure in  
20 place in Police Scotland when I joined in 2018.

21 Q. Right. Could we go back to the Regulations, please, and  
22 look at Regulation 9, please, so that's SBPI 00633 and  
23 if we can look at Regulation 9, "Alleged Offences" 9.1:

24 "If the Deputy Chief Constable considers that it can  
25 reasonably be inferred that a constable may have



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1 committed a criminal offence, the Deputy Chief  
2 Constable:

3 "(a) must refer the matter to the appropriate  
4 prosecutor, and.

5 "(b) may spend or postpone any proceedings under  
6 these Regulations until the appropriate prosecutor  
7 intimates that:

8 "(1) criminal proceedings are not to be brought in  
9 respect of any matter mentioned in the misconduct  
10 allegation, or

11 "(2) any criminal proceedings which have been  
12 brought have been concluded."

13 I would like to look at that with you, if I may.  
14 If the Deputy Chief Constable considers it can  
15 reasonably be inferred, who's carrying out that  
16 assessment, that's the first step, whether it can be  
17 reasonably inferred that a constable may have committed  
18 a criminal offence?

19 A. So again, that would have been -- those initial  
20 assessments would be made by colleagues in the PSD who  
21 are trained and skilled and experienced in making those  
22 assessments.

23 Q. Okay. And do you know what standards or protocols they  
24 were applying in carrying out that initial assessment?

25 A. So in terms of a criminal offence, then Scottish

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1 criminal law would obviously be engaged, counsel. If  
2 there was a report or an allegation that an officer had  
3 broken the law, then that would be investigated in the  
4 same way it would be investigated with or for any other  
5 member of the public, police officers are certainly not  
6 above the law, so the investigation would be very  
7 similar to that which would be carried out for any other  
8 person who may have broken or be alleged to have broken  
9 the same law.

10 Q. And do you remember seeing a report or any reports in  
11 connection with that assessment regarding the events of  
12 3 May 2016?

13 A. I don't recall seeing any report.

14 Q. Was it normal practice for a report to be prepared if  
15 that assessment was being done?

16 A. So again, I suppose the issue for me might be that if  
17 such a report had been prepared, it would have probably  
18 been prepared some three years earlier, so it might not  
19 have been shared with myself in 2018 when circumstances  
20 had moved on, when the PIRC were engaged, when Crown was  
21 engaged and the like.

22 Q. I mean I have -- we have not got copies of reports that  
23 were prepared within the Inquiry and I wonder if you  
24 know if these would exist, could we recover them?

25 A. I don't know is the honest answer, I don't know. Again,

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1           we can certainly, through Police Scotland's counsel  
2           team, look at those issues, but I am not -- I have  
3           got -- and again, forgive me, this is 2018, so it's  
4           almost six years ago, I've got no recollection of seeing  
5           any such report. I suppose I was being briefed on the  
6           circumstances as they stood in 2018 with that attempt on  
7           the part of my colleagues to help me understand the  
8           events of May 2015.

9           Q. But in terms of your understanding of this Regulation,  
10           there would have been some sort of assessment carried  
11           out by PSD considering whether it could reasonably be  
12           inferred that a constable may have committed a criminal  
13           offence?

14           A. So I think the aspect that I would certainly like to get  
15           clarity on there for you, counsel, is given that the  
16           investigation was handed over to the PIRC, because of  
17           the Article 2 obligations on Police Scotland to ensure  
18           that it was a thorough external, independent  
19           investigation into the circumstances of the death of  
20           Mr Bayoh, it would not necessarily have been appropriate  
21           for Police Scotland officers to try to, if you like,  
22           jump the gun, if you like, in terms of coming to any  
23           determination on whether any criminality or any offences  
24           had been carried out on the part of those officers.

25           My understanding is that that would have sat with

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1           the PIRC for them to carry out their investigation and  
2           then for the conclusions of that investigation to lead  
3           to assessments of potentially criminal conduct on the  
4           part of the officer or officers.

5        Q.   Right.  So in terms of these regulations, that make no  
6           reference to PIRC, it says:

7                    "If the DCC considers that it can reasonably be  
8                    inferred that a constable may have committed an  
9                    offence..."

10                   Then certain things follow on from that.  There  
11                   appears to be an expectation in terms of Regulation 9  
12                   that the DCC will carry out consideration of that  
13                   question.

14                   Is it your understanding that as soon as PIRC had  
15                   instructed to carry out a crown-led investigation that  
16                   that means this obligation under Regulation 9 doesn't  
17                   apply?

18        A.   So I would -- under normal circumstances, if the PIRC  
19           had carried out an investigation, then there would be  
20           follow-on conversation with Police Scotland at that a  
21           point in time where the investigation was concluded.  
22           That again would generally be through the  
23           ACC Professionalism delegated rather than myself, but an  
24           event of such sort of gravity clearly as the case of  
25           Mr Bayoh was, I don't know -- I don't know what

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1 conversation went on between Police Scotland and the  
2 PIRC in 2015. What again I can say is in sort of 2023,  
3 when I handed over the Professionalism Portfolio, the  
4 day-to-day interactions, the communication, the  
5 understanding, the just basically the relationship  
6 between Police Scotland and the PIRC was very good, so  
7 there was ongoing kind of conversations, consultation  
8 and the like. I can't speak to what that might have  
9 been like in 2015.

10 Q. But in terms of your understanding of the position when  
11 you were in the role, if there's a PIRC investigation in  
12 relation to any matter regarding conduct, is it your  
13 understanding that this is interpreted by police as  
14 everything stops under these regulations, nothing is  
15 done until the PIRC investigation is concluded?

16 A. So again, that's not necessarily the case and I won't go  
17 into the detail of it, but I can think of one  
18 investigation that was carried on in the last sort of  
19 couple of years of my service with Police Scotland where  
20 actually we worked collaboratively with the PIRC. In  
21 other words, we supported them with some of the activity  
22 that they had to carry on in respect of it particular  
23 investigation that they were taking forward. So again,  
24 I think it's a question of looking at every set of  
25 circumstances on its merits.

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1           In that particular set of circumstances, again, I  
2           won't go into the detail of it, certainly the  
3           determination was made very early on by Police Scotland  
4           that the individual officer involved should be  
5           suspended. So, no, it's not the case that  
6           Police Scotland always take a step back. As I say,  
7           certainly in my tenure, there was much more -- there was  
8           a great deal of kind of communication and interaction  
9           between ourselves and the PIRC.

10          Q. When you were in the role, the example you're talking  
11          about where you worked collaboratively with PIRC, would  
12          you say that was a successful collaboration with PIRC?

13          A. Yes, I think it was. I mean they carried out the  
14          investigation, they have their own terms of reference,  
15          they have their own statutory remit, but we supported  
16          elements, some of the operational elements, of that  
17          investigation to enable them to reach a conclusion.

18          Q. And that was did you say 2023?

19          A. So that would have been around about probably 2022,  
20          counsel.

21          Q. Thank you. The officer was suspended, so misconduct  
22          proceedings in terms of the Regulations were initiated  
23          by Police Scotland?

24          A. Initiated under those very particular circumstances,  
25          because of the information which was available to us at

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1           the time, but then pended -- pended. What I'm trying to  
2           say is the misconduct was pended because the criminal  
3           investigation was ongoing. Sorry that was a clumsy way  
4           of putting it.

5           Q. The misconduct procedures under the Regulations were  
6           initiated, the officer was suspended?

7           A. Yes.

8           Q. And the PIRC investigation carried on and  
9           Police Scotland worked collaboratively?

10          A. Yes.

11          Q. Was that the first time in your experience that you had  
12          had that collaborative working with PIRC?

13          A. Not the first time, no, but that was I think a  
14          particularly good example of the two organisations  
15          working within their clearly defined professional areas  
16          of responsibilities, but with that sort of common  
17          determination to keep the public safe.

18          Q. When was the first time you became aware of this  
19          collaborative working with PIRC? What was your first  
20          experience of that?

21          A. So I think -- I mean there had always been -- there had  
22          always been communication at the kind of more senior  
23          levels between Police Scotland and the PIRC, but I think  
24          it was largely as a consequence -- and I have to give  
25          ACC Spiers a lot of credit here. ACC Spiers ensured

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1           that his team and the PIRC team were talking regularly,  
2           understand each other's terms of reference and each  
3           other's remit and, predominantly, we would never step  
4           into the PIRC's space unless they invited us to support  
5           them. So again, it would be a question of, well, is it  
6           appropriate, should Police Scotland just hands off and  
7           this is entirely in the gift of the PIRC or are there  
8           some operational activity that we can carry out that  
9           will support the PIRC that can be absolutely quality  
10          assured in terms of its professionalism, should that be  
11          required.

12                 But each, if you like, individual set of  
13          circumstances was quite different, but what I can say,  
14          counsel, is that over the course of my tenure in  
15          Police Scotland the working relationship between  
16          Police Scotland and the PIRC went from strength to  
17          strength and I never felt that the PIRC had concerns  
18          about asking for support if they felt that was the  
19          appropriate thing to do and Police Scotland could  
20          support them.

21          Q. You started the role in 2018. What was your first  
22          experience of working collaboratively with PIRC that  
23          you're aware of?

24          A. So again going -- I would speak to the -- and this is  
25          on, I guess, a personal rather than an obligation basis,



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1 I would speak to the then Commissioner on a I think it  
2 was on a quarterly basis, so we would speak regularly  
3 and of course if anything untoward happened, then we  
4 would speak more regularly than that. I think it is  
5 fair to say that that relationship improved yet further  
6 with the current Commissioner again and I remember the  
7 events of West George Street when Police Scotland  
8 officers discharged their firearms and I can remember  
9 speaking to the PIRC at a very early stage in respect of  
10 that particular incident back in I think that might have  
11 been 2020, or 2021, it was certainly during the Covid  
12 pandemic. So that working relationship, as I say, has  
13 improved, it has developed, it has enhanced and I think  
14 that is largely because of that sort of shared  
15 experience and understanding we have had.

16 What I would say though is that the current PIRC and  
17 indeed her predecessor are very, very clear on the lines  
18 of responsibility and those professional red lines, you  
19 know, that we don't cross, their investigation is their  
20 investigation.

21 Q. When you came into the role in 2018, was that  
22 collaborative working relationship in place, up and  
23 running, at that stage?

24 A. I think it was a different relationship at that point.

25 Q. Describe the relationship at that point?

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1           A. So I was getting to -- I came from an environment where  
2           the Department of Professional Standards in the Met was  
3           working on a regular basis with the IPCC, as it was  
4           then, the Independent Police Complaints Commission,  
5           obviously it's changed its name now, and there was a  
6           specific relationship that I had in the Met with the  
7           IPCC.

8           So it took me a little while time, counsel, just to  
9           understand what the roles and responsibilities of the  
10          PIRC were in Police Scotland and how Police Scotland  
11          interacted within the PIRC in this jurisdiction, in this  
12          environment. What I didn't want to do was to make any  
13          pronunciations based on the relationship I had with  
14          senior members of the IPCC in London. So I think it's  
15          fair to say it took me a little while to get up to speed  
16          on the relationship that we had organisationally with  
17          the PIRC as an entity.

18          Q. Is it fair to say that when you first came into the  
19          role, the working relationship with PIRC was different?

20          A. It was different.

21          Q. But it has evolved since then --

22          A. Yes.

23          Q. -- into a much more collaborative working relationship?

24          A. Into certainly what I would describe now as a properly  
25          collaborative working relationship.

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- 1 Q. But that wasn't the relationship that existed in 2018?
- 2 A. It was a different relationship in 2018.
- 3 Q. Right. And so in terms of the Regulations, to come back  
4 to those, when you first arrived in the role, is it fair  
5 to say that if PIRC were involved at that stage, no  
6 matters were initiated in relation to the misconduct  
7 regulations, conduct regulations?
- 8 A. So I can't recall -- and again, just thinking back to  
9 notwithstanding the circumstances surrounding Mr Bayoh's  
10 death any incidents and I can't recall any incidents or  
11 events in 2018 that I could use to better explore your  
12 question, counsel, but I certainly don't recall there  
13 being any incidents which were investigated by the PIRC  
14 where we were making -- but I can't recall. That's not  
15 to say it didn't happen.
- 16 Q. Right. But from your memory at least, it would appear  
17 that in 2018 if PIRC were involved carrying out an  
18 investigation, Police Scotland did not carry out an  
19 assessment in terms of the conduct regulations?
- 20 A. Unless there was -- and again, and just reflecting on  
21 the circumstances in 2022, had it been very clear to us  
22 that, for arguments sake, there was incontrovertible  
23 evidence that an officer had misconducted themselves or  
24 appeared to be incontrovertible evidence or there was a  
25 need to protect the investigation from a PIRC

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1 perspective, there may have been a determination made to  
2 restrict or suspend an officer, so that may still have  
3 gone ahead.

4 Q. Right. But we know in relation to Mr Bayoh's death that  
5 PIRC were involved on 3 May 2015?

6 A. Yes.

7 Q. On the day he died and commenced an investigation at  
8 that stage. We've heard a lot of evidence about that  
9 investigation. Is it possible that PIRC being involved  
10 from that day and that existence of that PIRC  
11 investigation meant that in fact there won't be reports  
12 available regarding an assessment under Regulation 9,  
13 because matters were left until the PIRC investigation  
14 was concluded?

15 A. That's possible, but I genuinely don't know.

16 Q. Okay. We'll have to check that.

17 A. Yes.

18 Q. Thank you. Let's move on to the second stage. Looking  
19 at this assessment as it's set out in the Regulations,  
20 Regulation 9, that the DCC considers it can reasonably  
21 be inferred that a constable may have committed a  
22 criminal offence, I'm interested in how that assessment,  
23 that consideration is given. Presumably you're not  
24 looking at it on the standard of beyond reasonable  
25 doubt, but how would that assessment be carried out?

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1       A. So, counsel, I do, you know, I do understand the limits  
2       of my professional competence in this area and because I  
3       haven't conducted these assessments myself, I would ask  
4       that that is a question which is probably better put to  
5       the ACC Professionalism or indeed to a colleague in the  
6       Professional Standards Department who deals with these  
7       assessments on a day-in, day-out basis and should be  
8       able to describe to you exactly how they would take  
9       place.

10      Q. Thank you. In relation to this assessment then, you may  
11      not be in a position to help me with this, I'm  
12      interested in the sort of practice that's adopted,  
13      whether Police Scotland ever ask for statements from  
14      PIRC. Perhaps you can use the 2022 example you have  
15      been talking about to enlighten us about the procedure  
16      that's now followed.

17      A. So I think -- so again, just understanding, you know,  
18      the limits of my professional competence, I think there  
19      are others who can talk you through that assessment  
20      process. I may see the ultimate outcome from it, but  
21      I wouldn't carry it out myself and, again, I think the  
22      incident in 2022 may well have been a referral from  
23      Police Scotland to the PIRC. So we were made aware of  
24      the initial set of circumstances, we acted to secure and  
25      preserve evidence to ensure we kept the public safe in

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1           the first instance and then understanding the  
2           circumstances, we referred the matter to the PIRC, so  
3           slightly different perhaps.

4       Q. We have heard evidence that PIRC can become involved  
5           either with a crown-led investigation?

6       A. Yes.

7       Q. Which is the situation that occurred here, and that  
8           we're looking at here in relation to the death of  
9           Mr Bayoh, or they can have a CC, a Chief  
10          Constable-directed investigation.

11               Now, as I understand it, where it's a Chief  
12          Constable directed one, Police Scotland are still  
13          continuing with their investigations, still proceeding  
14          in charge of matters, but with a crown-led one it's the  
15          crown that take responsibility for that?

16       A. Yes.

17       Q. So in the one that you're talking about, that was a  
18          Chief Constable-directed investigation and that's how  
19          PIRC got involved?

20       A. That's my recollection. Again, there may have been  
21          crown direction in there as a circumstance -- whoops --  
22          as the circumstances started to evolve, but I think it  
23          was Chief Constable related. It was a relatively  
24          complex set of circumstances, as I am sure you can  
25          imagine.

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- 1 Q. Even in 2022 then or 2023, before you left, if it was a  
2 crown-led investigation, did that mean Police Scotland  
3 stepped back completely not just from the investigation,  
4 which they hand over to PIRC, but also in relation to  
5 conduct regulation matters?
- 6 A. Not necessarily. There may have been that assessment  
7 carried out and that assessment may have led to an  
8 individual being, as I say, suspended from duty or  
9 potentially put on to restricted duties.
- 10 Q. And in terms of the collaborative working relationship  
11 that you described earlier, would that involve sharing  
12 information and material between PIRC and  
13 Police Scotland, even if it was a crown-led  
14 investigation or became a crown-led investigation?
- 15 A. I genuinely don't know the answer to that. I am very  
16 conscious that, you know, if PIRC asked  
17 Police Scotland -- we would provide anything to PIRC  
18 that they required of us, whether it was crown directed  
19 or we had referred or the Chief Constable had referred  
20 to PIRC. If PIRC tasked us to, for arguments sake, go  
21 and carry out a house search, then that material would  
22 be obviously then also provided back to PIRC, but I, you  
23 know, I need to be really clear about the, you know,  
24 professional boundaries between PIRC and ourselves,  
25 counsel, and the proper regard they took to the

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1 integrity of any investigation that they carried  
2 forward.

3 Q. Right. Looking back at Regulation 9, so we've looked at  
4 the consideration of whether it can reasonably be  
5 inferred and:

6 "The Deputy Chief Constable (a) must refer the  
7 matter to the appropriate prosecutor."

8 That would be the crown more likely than not?

9 A. Yes.

10 Q. And:

11 "(b) may suspend or postpone any proceedings under  
12 these regulations until the appropriate prosecutor  
13 intimates:

14 "(1) the criminal proceedings are not to be brought  
15 in respect of any matter mentioned, or

16 "(2) any criminal proceedings which have been  
17 brought have been concluded."

18 So once the assessment has been carried out, the  
19 Chief Constable, if he or she considers the constable  
20 may have committed a reasonable offence or that can be  
21 reasonable inferred, must refer it to the prosecutor and  
22 may suspend or postpone any proceedings under these  
23 regulations. So it's not compulsory to postpone  
24 proceedings under the conduct regulations, but that may  
25 be done?



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1 A. Yes.

2 Q. And so in terms of a decision and making a decision  
3 about whether or not to suspend or postpone proceedings  
4 under the conduct regulations, whose responsible for  
5 doing that?

6 A. So again that would -- that would predominantly be  
7 throughout the ACC Professionalism and the Department  
8 for Professional Standards and I think it's right to  
9 say, counsel, that custom and practice would generally  
10 be within Police Scotland if there is a criminal  
11 investigation ongoing that takes priority over any  
12 misconduct proceedings, because the last thing that we  
13 would want to do would be in any way to prejudice those  
14 conduct -- sorry, those criminal proceedings.

15 Q. We'll come on to that in a moment. So there is a  
16 decision which has to be made because the DCC:

17 "Although you must refer the matter to the  
18 prosecutor, you may suspend or postpone proceedings  
19 under the conduct regulations."

20 So a decision will have to be made about whether or  
21 not to suspend or postpone proceedings under the  
22 Regulations, and who would be responsible for that?

23 A. Again, that would sit -- given that that's a further  
24 delegation of those responsibilities to the  
25 ACC Professionalism, that would sit with the

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- 1 ACC Professionalism and their senior team generally.
- 2 Q. And is that discussed with you at one of your daily  
3 discussions with --
- 4 A. It would, yes, in terms of an individual officer has --  
5 now, whether this has gone to the PIRC or this has been  
6 investigated by Police Scotland, a file has gone to  
7 crown, the officer is suspended or restricted and  
8 conduct will follow any outcome from crown.
- 9 Q. And are you asked to approve those decisions?
- 10 A. No, if there was anything which was particularly  
11 contentious, then Alan would come and discuss it with  
12 me, but, no, on an ongoing basis, and again this is  
13 largely to do with the volume of activity that PSD is  
14 engaged with and also the range of activity that was my  
15 responsibility within Police Scotland, that was why we  
16 had those levels of delegation and designation.
- 17 Q. But with a very serious matter, would you expect that to  
18 be discussed with the DCC?
- 19 A. I would expect to have the conversation, yes, but if it  
20 was a very serious matter, counsel, my take would be  
21 almost invariably we need to put the -- we need to put  
22 the crown investigation and any criminal proceedings  
23 first. And that can -- that can result in officers  
24 being suspended for a considerable period of time while  
25 a file goes through the crown process.

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1 Q. They may suspend or postpone these proceedings under the  
2 Regulations until the prosecutor intimates criminal  
3 proceedings are not to be brought or they have been  
4 concluded. What is the position if the prosecutor says  
5 we're not bringing proceedings at the moment but that  
6 may change in the future? What impact does that have on  
7 these Regulations?

8 A. So again, it's difficult to generalise, but my take  
9 would be and, again, the current ACC Professionalism or  
10 now DCC Spiers I'm sure would give you a much more  
11 articulate overview of this, but my take at the moment  
12 is if crown decides not to proceed for the time being,  
13 then the conduct process would begin. It can be halted  
14 at any point. The conduct process could be halted at  
15 any point, but if crown takes the decision not to  
16 proceed, then the likelihood is that -- again, it's --  
17 it's difficult to be utterly definitive, but the conduct  
18 process is -- if circumstances were -- demanded a  
19 conduct process then it sits there.

20 Q. So if the prosecutor says we're not bringing  
21 proceedings, it would be open to Police Scotland at that  
22 stage to proceed with any matters under the Regulations?

23 A. It would certainly be open to Police Scotland to  
24 consider whether there are conduct allegations which  
25 could be taken forward.

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1 Q. Even if that had not been done previously, at the point  
2 at which the prosecutor has said there will be no  
3 prosecution, it was then open -- there's nothing to stop  
4 Police Scotland from considering it at that point?

5 A. That's right.

6 Q. And a decision can be made at that point?

7 A. It could be potentially, yes.

8 Q. Under the Regulations?

9 A. Yes.

10 Q. And then if we look at the next step, if we could look  
11 at -- I think we have not looked at 2:

12 "If proceedings are suspended or postponed under  
13 paragraph 1(b), the DCC must inform the constable that  
14 these proceedings have been suspended or postponed."

15 So there has to be some sort of formal intimation to  
16 the constable --

17 A. Yes.

18 Q. -- that there has been a suspension or postponement.

19 "And those proceedings or any other proceedings may  
20 be taken against the constable whether or not criminal  
21 proceedings are brought, regardless of the outcome of  
22 those."

23 And then it says who the prosecutor is. We don't  
24 need to look at that.

25 So there will at some point, if there is a decision

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1 taken to spend or postpone proceedings under these  
2 Regulations there must be something sent to the  
3 constable, some intimation to the constable involved, so  
4 they know what's happening really?

5 A. Yes.

6 Q. That will be part of what I think you said earlier about  
7 thinking about welfare and --

8 A. That is exactly right, and certainly, again, in my time  
9 in Police Scotland, the welfare wraparound for  
10 Constables under -- or indeed any rank under  
11 investigation was significantly enhanced, counsel, given  
12 our duty of care for those individuals as, you know,  
13 regardless of any conduct or criminal proceedings that  
14 they may have been involved in.

15 Q. Thank you. I would like to move on to Craig Blackhall's  
16 statement now, SBPI 00601 and he was the superintendent.  
17 We've seen his name on the briefing paper. He was the  
18 superintendent for Professional Standards Department  
19 from 2015 to 2019.

20 LORD BRACADALE: Ms Grahame, it's now half past, so perhaps  
21 we'll take a 20 minute break before you embark on this.

22 (11.30 am)

23 (A short break)

24 (11.30 am)

25 LORD BRACADALE: Ms Grahame.

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1 MS GRAHAME: Thank you. We were just about to move on to  
2 Craig Blackhall's statement, which we'll bring up on the  
3 screen, SBPI 0601.

4 Now, Craig Blackhall, as I understand it, was the  
5 Superintendent for the Professional Standards Department  
6 and that was from February 2014 to 2019. And I think we  
7 looked at the briefing paper that he prepared for you in  
8 2018 --

9 A. Yes.

10 Q. -- in relation to Mr Bayoh. I would like to look at two  
11 of the paragraphs in his statement, 42, first of all,  
12 and then 44. So this is the Inquiry statement he has  
13 given to the Inquiry and it's signed:

14 "I'm asked who's responsible for deciding whether to  
15 discipline or raise misconduct proceedings in relation  
16 to the officers who engaged with Sheku Bayoh.  
17 Ultimately, the Deputy Chief Constable who had oversight  
18 of Professional Standards would be responsible. I think  
19 at the time this was Mr Neil Richardson."

20 So is that likely to be correct then?

21 A. I think so, to the best of my recollection.

22 Q. Yes. So you've no reason to disagree. Superintendent  
23 Blackhall was the superintendent in charge of the  
24 Professional Standards Department in 2015?

25 A. And he was in the organisation in 2015.

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1 Q. He was. He was in that particular department from  
2 February 2014, but he had been a police officer for many  
3 years prior to that so he's likely to be correct.

4 A. Yes.

5 Q. And when he says who's responsible for deciding whether  
6 to discipline or raise misconduct proceedings in  
7 relation to the officers who engaged with Sheku Bayoh,  
8 he said, ultimately, Mr Richardson would be responsible;  
9 would you agree with that?

10 A. Yes.

11 Q. Thank you. And then paragraph 44, if we could have that  
12 on the screen:

13 "In this case I wasn't involved, but the PIRC  
14 investigation would take primacy. The assessment of any  
15 possible misconduct wouldn't have been considered until  
16 the outcome of the investigation because Police Scotland  
17 wasn't conducting the investigation."

18 And I'm interested in that, because it appears to  
19 say on the face of it that when PIRC became involved,  
20 their investigation would take primacy and there would  
21 be no assessment, it wouldn't have been considered,  
22 until the outcome of that PIRC investigation, because  
23 Police Scotland weren't conducting the investigation.  
24 Is that your understanding of that procedure at that  
25 time?

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- 1 A. My understanding of the procedure at that time is  
2 difficult for me to speak to, counsel, because I wasn't  
3 in the organisation at that time so difficult for me to  
4 comment on that paragraph.
- 5 Q. All right. But certainly on the face of it it does look  
6 like Superintendent Blackhall, who's in charge of PSD,  
7 is saying an assessment of any possible misconduct  
8 wouldn't have been considered until the outcome of what  
9 was the PIRC investigation.
- 10 A. That's -- yes.
- 11 Q. Was that the -- did that remain the position in 2018  
12 when you came into the department and took charge of the  
13 portfolio?
- 14 A. I think that was still the case.
- 15 Q. That was?
- 16 A. I believe so, yes.
- 17 Q. Although the Regulations exist, if there was a PIRC  
18 investigation, they would not be considered. The  
19 Regulations and an assessment under the Regulations  
20 about misconduct would not have been considered until  
21 the outcome of the PIRC investigation.
- 22 A. Particularly if that was a criminal investigation.
- 23 Q. So if there was a criminal investigation being conducted  
24 by PIRC, there would be no assessment of possible  
25 misconduct under the regulations?



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1 A. Until the conclusion of the investigation.

2 Q. Right. Thank you. Can we go back to Regulation 9.

3 Thank you. We were look at this just before the break.

4 Now, it says here:

5 "If the Deputy Chief Constable considers it can  
6 reasonably be inferred that a constable may have  
7 committed a criminal offence ... must refer the matter  
8 to the prosecutor, may suspend or postpone any  
9 proceedings under these Regulations until criminal  
10 proceedings are not to be brought or they have been  
11 concluded."

12 It would appear from Regulation 9 that there is to  
13 be some sort of assessment to consider by the Deputy  
14 Chief Constable if it can reasonably be inferred that a  
15 Police Constable may have committed a criminal offence.

16 Now, I have gone through these Regulations, there's  
17 no mention, as far as I can find, I'll be corrected if  
18 I'm wrong, of PIRC. PIRC did exist at this time, but  
19 they're not mentioned. There's no mention of an FAI.

20 A. Hm-hmm.

21 Q. This is about criminal proceedings, FAI's, fatal  
22 accident inquiries, are not criminal proceedings.  
23 There's no mention of victim's right of reviews or any  
24 of that type of procedure that we've heard something of  
25 in relation to the crown.

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1           So the Regulations do not say Police Scotland should  
2           not consider whether misconduct -- whether it can be  
3           reasonably inferred that a criminal offence has been  
4           committed. So I'm interested in your assessment of the  
5           situation here, because on the one hand the Regulations  
6           do not say, don't carry out an assessment under these  
7           regulations if PIRC are doing an investigation, but that  
8           seems, certainly according to that Superintendent  
9           Blackhall's statement, that that is what was being done,  
10          that was the impact really of a PIRC investigation.

11          Can you explain why the Regulations, even when you  
12          were there, were being interpreted in that way, that as  
13          soon as there was a PIRC investigation, no assessment  
14          was being done?

15          A. My understanding of those circumstances was that the  
16          PIRC investigation would take primacy. The PIRC  
17          investigation would continue -- would take place, would  
18          ultimately result, and depending on the outcome from  
19          that PIRC investigation, there could then be an  
20          assessment carried out.

21          Now, as I say, that wouldn't stop us if there was  
22          any immediate concern for a public safety or for the  
23          integrity of that PIRC investigation for whatever reason  
24          from taking a decision to restrict or suspend an  
25          officer, but the misconduct assessment wouldn't have

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1           been carried out at that stage to the best of my  
2           recollection.

3           Q. And in the absence of a specific provision within the  
4           Regulations that Police Scotland should not consider  
5           misconduct, can you explain why it was being done in  
6           that way?

7           A. So in terms of -- from my perspective, I think there is  
8           a logic to that, and there is also an element of custom  
9           and practice. The logic being that if PIRC have been  
10          asked to investigate, then the circumstances are going  
11          to be quite serious or severe. Therefore, if you like  
12          the preeminence of the PIRC investigation is clear, it's  
13          right that they should have a clear field to carry on  
14          that investigation. And equally, if Police Scotland --  
15          what I would never have wanted to see was that any  
16          determination around misconduct at an early stage might  
17          have interfered with or undermined the PIRC  
18          investigation.

19          Q. Right. The standards of behaviour that we looked at  
20          before, we talked about Constables must behave in a  
21          manner which does not secret the police service or  
22          undermine public confidence in it. We can put the  
23          schedule back on the screen if that helps. I think you  
24          accepted that that was one of the standards of behaviour  
25          that officers are held to account in terms of those?

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1 A. Yes.

2 Q. And they have got to undermine public confidence.

3 What steps were being taken then in relation to --  
4 we've heard evidence about considerable public concerns  
5 about the death of Mr Bayoh and in terms of not just the  
6 public's concerns, the family had considerable concerns.  
7 So what steps were being taken when you were in the role  
8 about dealing with those public concerns which continued  
9 during your tenure?

10 A. So those concerns were picked up on a regular basis  
11 through the gold group which I chaired, where local  
12 senior managers in Fife Division and indeed from our  
13 Safer Communities Team would be updating themselves and  
14 updating myself on public sentiment. If there are areas  
15 of concern or consideration, which as you say, counsel,  
16 there were, then there were mechanisms for local  
17 divisional commanders to meet with concerned parties,  
18 whether that was, you know, potentially members of  
19 Mr Bayoh's extended family, potentially, or their  
20 representatives or indeed community leaders.

21 So there were a number of options and opportunities,  
22 both divisionally and indeed centrally, for  
23 Police Scotland to work to understand where those  
24 community concerns lay and to do our best to ensure that  
25 the local policing response was sensitive to and

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1           addressed those concerns.

2           Q. Right. But in terms of opportunities available to  
3           Police Scotland to deal with public concerns, none were  
4           being taken in terms of the Regulation or throughout  
5           prison of the Regulations at that time?

6           A. Predominantly through community impact and community  
7           cohesion, certainly in my time when I joined in 2018.

8           Q. That was the route that Police Scotland took. They did  
9           not go throughout prison of the Regulations?

10          A. I can only speak for the period that I was in  
11          Police Scotland.

12          Q. Yes.

13          A. And certainly the gold group which I chaired at the time  
14          was very sensitive to community concerns, ongoing  
15          community concerns from 2015.

16          Q. But in terms of the standards that are set out in  
17          Schedule 1 of the Regulations that Constables behave in  
18          a manner that does not discredit the police service or  
19          undermine public confidence in it, there was no  
20          consideration given at that stage when you were in the  
21          role about dealing with matters through regulations. It  
22          was dealt with through alternative routes.

23          A. It was dealt with in alternative routes and the  
24          rationale for that clearly was that there had been a  
25          significant inquiry ongoing, still ongoing in certain

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1 elements, into the death of Mr Bayoh. That obviously  
2 would lead in time to a public Inquiry. If not a public  
3 Inquiry, then we anticipated that there would be a Fatal  
4 Accident Inquiry. The magnitude of the incident would  
5 demand one of the other.

6 So again, you know, from not wanting to undermine  
7 any ongoing process we did use alternative mechanisms at  
8 that point in time, counsel, rather than going back some  
9 years later to the standards of behaviour at that point  
10 in time, as I say, knowing there were other processes in  
11 train.

12 Q. So you didn't want to undermine the ongoing process.  
13 What assessment did you carry out in relation to the  
14 extent to which the process PIRC were carrying out --  
15 the investigation PIRC were carrying out? To what  
16 extent that could or would or perhaps be determined, was  
17 there an assessment carried out about whether any steps  
18 taken under the Regulations would undermine or would  
19 potentially undermine the PIRC investigation?

20 A. So there was no investigation carried out by myself. As  
21 I say, I go back to my -- and no doubt I would have  
22 received advice on this at the time that actually we  
23 need to allow those hierarchically preeminent processes  
24 to work through in the first instance.

25 Q. Right. So nothing specific about whether the

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1           proceedings under the Regulations would undermine the  
2           PIRC investigation at that stage?

3           A. Not carried out by myself, no.

4           Q. No. Was there any consideration given to whether  
5           proceedings under the Regulations would undermine the  
6           role of the crown or possible potential criminal  
7           proceedings?

8           A. So again, as I said earlier, our take in Police Scotland  
9           has always been that criminal proceedings take  
10          precedence and take priority. Because of the issues  
11          around conduct with different standards of proof, there  
12          is a possibility that a conduct investigation will reach  
13          a particular outcome, you know. That may  
14          inadvertently -- that may inadvertently influence or  
15          sway any further criminal proceedings, which, as I say,  
16          clearly are preeminent in terms of any order of  
17          hierarchy, so we would allow criminal proceedings in the  
18          vast majority of cases to conclude. Under the current  
19          regulatory system, we would allow the criminal to work  
20          through and conclude the determination being made about  
21          whether the proceedings were going to follow before  
22          embarking on any misconduct assessment.

23          Q. And you say that's the vast majority of cases. If  
24          there's criminal proceedings pending or possible, you  
25          would not proceed with conduct under --

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- 1 A. Yes.
- 2 Q. So where Regulation 9(b) says "the DCC may suspend or  
3 postpone proceedings", you interpret that as, the DCC  
4 shall suspend or postpone proceedings and that's in the  
5 vast majority of cases?
- 6 A. So I think, yes, can suspend, you know, and did in the  
7 vast majority of cases, but then, you know, there would  
8 be a conversation around the best and most appropriate  
9 course of action if anything was sufficient sort of  
10 gravity and significance, counsel.
- 11 Q. So anything that is of sufficient gravity to involve the  
12 PIRC or involve the crown would be taken out of -- would  
13 effectively mean in practice that Regulation 9(b) means  
14 any proceedings will be suspended?
- 15 A. It would come out of the conduct space in the interim,  
16 yes.
- 17 Q. Come out of the conduct space. Can I ask you to look at  
18 another document, PS11500. This is a memo. So this is  
19 a memo that we've heard evidence about dated  
20 1 April 2013 and that's the date that Police Scotland  
21 came into existence, it's the date that PIRC came into  
22 existence, and it's headed, "Police Investigations and  
23 Review Commissioner. Operational discharge of CS  
24 incapacitant spray."  
25 From 1 April 2013, there is a legal requirement for



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1           the Police Service of Scotland and PIRC to ensure  
2           compliance with the provisions of the Police Public  
3           Order and Criminal Justice (Scotland) Act, as amended by  
4           the 2012 Act that you've mentioned and the Human Rights  
5           Act and Articles 2 and 3 of the European Convention On  
6           Human Rights, so this is a legal requirement on  
7           Police Scotland and it's to ensure compliance, it's not  
8           to take reasonable steps, it's to ensure, and then it  
9           goes on to say:

10            "This means that on every occasion where CS  
11           incapacitant spray is discharged operationally there is  
12           a legal requirement to record the incident and report  
13           onwards to PIRC within 24 hours."

14           And then it mentions the form that has to be  
15           completed. We have heard evidence that CS spray is  
16           dealt with as if it was a firearm and so it's treated  
17           very seriously and there's a legal requirement that  
18           notification be sent to PIRC about this. And a form was  
19           provided for and that's to be done within 24 hours.

20           Now, we have heard evidence that spray was used at  
21           Hayfield Road and we have heard evidence that forms were  
22           not completed for the use of play and a number of  
23           witnesses have spoken about that. Is a failure to  
24           comply with the legal requirement a failure to comply  
25           with the law contrary to the standards of professional

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1           behaviour?

2           A. Very likely to be, yes.

3           Q. Well, very likely or can a police officer break the law  
4           and not breach the standards of professional behaviour?

5           A. So if somebody were to exceed the speed limit in terms  
6           of a pursuit, then, technically, they are breaking the  
7           law, but actually that pursuit will have been authorised  
8           through the control room, so in those circumstances, no,  
9           they are not.

10                  What I would argue here though is if we have a force  
11           memo and, again, this is a force memo from 2013, if it  
12           says explicitly, then you should do this, then from my  
13           perspective, unless they have a very compelling  
14           rationale not to or are given particular advice that  
15           they shouldn't for whatever reason, counsel, then the  
16           presumption is that, yes, they should.

17           Q. Okay. In relation to the failure to complete these  
18           forms that is something that would have been known by  
19           Police Scotland an early stage within 24 hours. Can you  
20           help us understand why -- and I'm using this as an  
21           example. Can you help us understand why no steps were  
22           taken to address this issue within the Regulations?

23           A. So I think that is possibly a question which is better  
24           posed to somebody who was in service in 2015 when the  
25           events occurred at Hayfield Road and, as you say, the

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1 follow-up events in terms of post-incident took place.  
2 It's very difficult for me, retrospectively, to help you  
3 to understand why those forms were or were not filled  
4 in.

5 What I would say is the post-incident procedures  
6 that pertain to Police Scotland have evolved  
7 significantly in the intervening number of years, not  
8 least because there was a recommendations within  
9 Dame Elish Angiolini's Report, but also because the  
10 post-incident procedures were being refreshed and  
11 updated in any event, but difficult for me to put myself  
12 back in the situation in Police Scotland in 2015 and  
13 give you a compelling answer to that question, counsel.

14 Q. Right. If it had happened during your tenure that  
15 officers failed to comply with a legal requirement, what  
16 steps would you have required to be done?

17 A. So as in any set of circumstances, there would have been  
18 colleagues within -- as we've discussed previously,  
19 there would have been colleagues within PSD, including  
20 up to the ACC, dealing with any of those circumstances,  
21 but I would have wanted to understand why, if there was  
22 a stipulation that a police officer should do a  
23 particular thing and do that thing within a particular  
24 timescale, if that timescale had been breached, I would  
25 want to understand why that was the case.

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1           Again, to give you an example of that, if an officer  
2           had been injured perhaps in the course of an event or  
3           series of events after having discharged their CS spray  
4           and were not back at work for a number of days there may  
5           be mitigating circumstances there. Equally, one could  
6           argue, well, why didn't your sergeant or your supervisor  
7           or what have you complete those forms on your behalf.

8           Generally, yes, I would want to know why if a force  
9           memo which was active within the organisation hadn't  
10          been adhered to, particularly, as you say, with personal  
11          protective equipment such as CS, I would certainly want  
12          to understand why that hadn't been complied with.

13         Q. If this had happened when you were in post, is that the  
14         type of thing you would have wanted to be investigated  
15         by Police Scotland?

16         A. I would certainly have wanted to understand why that  
17         didn't happen.

18         Q. Yes. And from what you're saying, would you then have  
19         wanted an assessment to be carried out as to the  
20         circumstances as to why it didn't happen?

21         A. I think that's a -- you know, given as I have just  
22         described there may have been extenuating circumstances  
23         then, yes, I think an assessment would be appropriate.

24         Q. So is the situation that where an officer has failed to  
25         comply with a legal requirement that the circumstances

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- 1           can be taken account of and no proceedings could be  
2           initiated under the Regulations?
- 3       A. That's possible, yes, that's absolutely possible. As I  
4           say, it's important to take every set of circumstances  
5           on their merits. In some cases there may be extenuating  
6           circumstances and in others there may not.
- 7       Q. Right. We've heard evidence that after the death of  
8           Mr Bayoh forms were not completed and, ultimately,  
9           statements were not given until the 4 June 2015. You'll  
10          be aware of that. And we've taken a lot of evidence  
11          from various witnesses in PIRC and other witnesses about  
12          what could have helped to try and encourage officers to  
13          giving statements during that period of just over a  
14          month. Was any consideration, as far as you know, and  
15          you may not, being given to whether the Regulations  
16          could be used to assist the PIRC investigation and get  
17          forms from the officers?
- 18      A. Statements or forms?
- 19      Q. Sorry. The forms that we're talking about here with the  
20          incapacitant spray. The statements were ultimately  
21          given on 4 June.
- 22      A. Right.
- 23      Q. But in the period between 3 May 2015, and 4 June 2015,  
24          there were no statements, no initial accounts, no basic  
25          facts, no operational statements, no witness statements,

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1 no use of force forms and no use of spray forms. But in  
2 relation to the use of spray forms, there was a legal  
3 requirement for completion and we have spoken to a lot  
4 of witnesses about what things could have perhaps been  
5 done to make the situation better and I'm interested in  
6 your perspective about whether the Regulations and the  
7 apparent lack of compliance with this legal requirement  
8 could have been used to try and assist the PIRC  
9 investigation during that time, because the evidence  
10 from PIRC, if I can summaries it this way is, they  
11 didn't have statements from the people who were  
12 effectively eye witness?

13 A. Yes. It's a very, very pertinent point and there are  
14 two issues there, counsel, if I may. The first goes  
15 back to the issue of post-incident procedures and,  
16 particularly, post-incident procedures in non-firearms  
17 incidents, because I think you will no doubt have heard  
18 evidence that back in 2015 post-incident procedures were  
19 largely applied to firearms incidents where firearms --  
20 what you or I would conventionally describe as a  
21 firearm, as in a carbine or a pistol.

22 So there were post-incident procedures for firearms,  
23 not so much for circumstances such as tragedy of a death  
24 in police custody or a death following police contact.  
25 So there has been an awful lot of work done in the

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1           intervening years around ensuring that those  
2           post-incident processes are now fit for purpose and the  
3           officers understand the periods of time where the  
4           different statements should be provided to the PIRC to  
5           support and those operating statements -- again, I might  
6           be getting my terminology slightly wrong, it might have  
7           moved on in my absence -- but those operational  
8           statements can be provided to the PIRC or the  
9           investigators at very early stage to your point to help  
10          them to understand the set-up of the incident, who was  
11          where, who said did what, very high level, but then  
12          enables them to continue their investigation up until  
13          the point in time where they get a more full witness  
14          statement with all of the proper safeguard around that.

15                 So there's certainly something about post-incident  
16          having improved in the intervening seven -- nine years  
17          now, isn't it, seven years since the -- seven years  
18          since the public Inquiry I believe, I believe started.  
19          So post-incident procedures have improved in the  
20          meantime. In terms of --

21          Q. I think you have got your dates wrong there, but we  
22          won't worry about that.

23          A. Certainly 2015 to 2024 a lot has changed in terms of the  
24          post-incident and support for subject officers through  
25          that period, and a lot of learning from earlier events.

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1           In terms of use of regulations to provide for the  
2           use of force forms, again, that's always -- that's a  
3           possibility. Difficult for me to say because I wasn't  
4           there whether that was a consideration that the senior  
5           officers at the time actually had.

6           Q. Can you think of any reason, from when you were in your  
7           role, why Police Scotland could not make a request to  
8           officers or instruct officers to complete these forms if  
9           the 24-hour deadline is missed?

10          A. So again, from my perspective, and I was fortunate to be  
11          in the organisation when our post-incident procedures  
12          had matured, there would be post-incident managers,  
13          there would be support for those officers, those subject  
14          officers through Federation or other staff associations  
15          depending on rank, so it should have been possible to  
16          ensure actually about me from the perspective of the  
17          post-incident manager that any of the relevant paperwork  
18          that could or should have been completed was completed  
19          and then, as necessary, provided to the PIRC or, you  
20          know, retained as part of the documents set following  
21          the incident.

22          Q. Right. So nothing to stop Police Scotland from  
23          requesting that if they become aware that forms haven't  
24          been filled in in terms of use of spray forms and I'm  
25          talking in particular about CS incapacitant spray?



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1       A. Now, again, a current post-incident manager would be  
2       able to give you an absolutely clear view on this, but  
3       my anticipation would be that in terms of the checklist  
4       of material that should be provided in the first  
5       24 hours after a incident of a magnitude that requires a  
6       post-incident management to be set up, then I would  
7       anticipate that had CS been discharged then that would  
8       have been one of the, if you like, documents on any  
9       checklist to be completed and provided to either the  
10      post-incident manager or further on to the PIRC.

11      Q. Right.

12      A. As I say, I need to check that with a current  
13      post-incident manager, but that would be one of, I would  
14      anticipate, a raft of documents that would be completed  
15      in the early stages following any post-incident  
16      investigation.

17      Q. So it would be requested and it would be done now?

18      A. Yes, to the best -- certainly to the best of my  
19      knowledge and awareness post-incident in my time in  
20      Police Scotland if there were -- if there was a  
21      responsibility on the officer or the post-incident  
22      manager to be provided with a particular form or set of  
23      forms, that would be done.

24                Now, I can never say never and there may well be  
25      with an incident or I genuinely don't know, but my

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1           anticipation would be, unless there were extenuating  
2           circumstances, those forms would be provided within the  
3           prescribed timescale.

4           Q.   So Police Scotland could request the forms and if  
5           they're not provided, there could be an assessment  
6           carried out to consider whether there were extenuating  
7           circumstances for the failure to comply?

8           A.   Yes, I think so. Understanding the circumstances behind  
9           that failure to comply I think is important.

10          Q.   Thank you. And we have heard evidence that in around  
11          August 2018, so after you have joined Police Scotland  
12          and would that be at the time that you were appointed to  
13          this particular role, this portfolio?

14          A.   Do you know, I genuinely can't remember. I know that --  
15          I know that I came in as the local policing DCC.  
16          I think I was a local policing DCC for more than a  
17          month, but again, apologies, I just can't remember when  
18          there was a move around in portfolios. I'm sure it was  
19          the before the end of 2018, but whether it was as  
20          quickly as August I genuinely can't remember.

21          Q.   I think if I remember rightly when I looked at the  
22          briefing note earlier that was 12 September. I'm not  
23          aware of anything being raised at that stage that a  
24          decision had been taken by the crown not to prosecute,  
25          but we have heard evidence that around about August 2018

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1           that decision was or in the process of being taken. And  
2           we've also heard that there was an investigation into a  
3           purported leak to the Mail On Sunday of the decision not  
4           to prosecute and that was around about 23 September,  
5           2018.

6           So it was around about that period in 2018 when it  
7           became publicly known that a decision had been taken not  
8           to prosecute the officers. When did you become aware  
9           that there had been a decision not to prosecute the  
10          officers?

11         A. I can't remember. I cannot give you a specific date  
12          that on that, counsel, probably when the -- when  
13          Police Scotland was notified, but I can't -- I couldn't  
14          say definitively when that was.

15         Q. But at the very least by the time there was a leak to  
16          the newspaper and it became very publicly known, you  
17          would have known at that stage?

18         A. I don't know. I can't remember whether we would have  
19          known beforehand or whether we would have known  
20          afterwards. I genuinely can't remember.

21         Q. All right. Thank you. So at some point you would have  
22          become aware that the officers weren't being prosecuted?

23         A. Yes.

24         Q. And it may have been around about that time, August or  
25          September 2018. What steps did you take at that stage

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1 in connection with the Regulations, if any?

2 A. So in terms of the officers not being prosecuted, I'm  
3 very aware that there would have been I would refer to  
4 it as victim's right to review. So there would be the  
5 opportunity for the family through their legal  
6 representatives to go back to crown to ask for that  
7 decision to be reconsidered.

8 Q. Mm-hmm.

9 A. So again, you know, just following on from the  
10 conversation that we had slightly earlier this morning,  
11 I wouldn't want to do anything to undermine any further  
12 decision-making that might come from crown.

13 Q. We've -- our terms of reference exclude consideration of  
14 the victim's right of review or VRR.

15 A. Okay.

16 Q. But we've heard that that process was embarked upon.  
17 That was in February 2019. So the decision not to  
18 prosecute was taken around about August, it became  
19 public in September 2018, and then, ultimately, in  
20 February of 2019, the VRR was formally sent in.

21 Now, there's no deadline imposed for CRR. It's not  
22 the situation that a family wishing the decision to be  
23 reviewed have to complete a form within 14 days or  
24 28 days. There's no deadline. So in the period  
25 between, say, September 2018 and February 2019, what

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1 steps did you take in relation to carry out an  
2 assessment under the Regulations, so this is prior to a  
3 VRR being lodged?

4 A. To my recollection, there were no steps taken at that  
5 point in time. I may be wrong in that, counsel, but  
6 I don't remember there being any steps taken in terms of  
7 any assessment at that point, simply because I don't  
8 think that we felt the proceedings were concluded.

9 Q. So given the concerns, the public concern and the work  
10 that's been ongoing with the gold group and any other  
11 areas of Police Scotland, why was there no assessment  
12 carried out in terms of the Regulations?

13 A. Because, as I say, I don't think we were -- I think we  
14 felt that there would be further potential for  
15 consideration by crown, so it was a question of just  
16 let's -- let the process work through. So my  
17 recollection is that there was no assessment made at  
18 that point in time.

19 Q. Right. Given your role and obviously the interests of  
20 the officers who are in -- have this hanging over them,  
21 the concerns of the family, which you were aware of, and  
22 the public concern, did you consider whether it was  
23 appropriate simply not to make that assessment under the  
24 Regulations or whether that should be done?

25 A. Again, genuinely, I can't remember not -- I can't

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1           remember taking a decision not to do it, but I can't  
2           remember if -- I have got -- I genuinely can't remember  
3           taking a decision actively not to do it, but, equally,  
4           there was no decision taken, to the best of my  
5           knowledge, to carry out that assessment.

6           Q. So simply no consideration at that stage whether to do  
7           anything under the Regulations?

8           A. To the best of my recollection, you know. I may be  
9           misremembering, but I don't recall.

10          Q. Okay.

11          A. I don't recall having a conversation at that point in  
12          time about any assessment.

13          Q. Right. Well, looking back now, at that, given that we  
14          are here in a public inquiry, the only public inquiry  
15          that Police Scotland have been involved in in relation  
16          to since 2015 in relation to this death, the fact that  
17          no consideration at all was being given in terms of the  
18          Regulations, do you think that that was perhaps a missed  
19          opportunity to deal with that?

20          A. So I still think that it was proper to -- should the --  
21          you know, should the family wish to review or ask crown  
22          to review their decision-making, to allow that process  
23          to come to a conclusion prior to making any  
24          determination. So in terms of the one -- I mean the  
25          magnitude of the events which occurred on May in 2015

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1           were incredibly significant, counsel. They were  
2           incredibly significant.

3           An assessment around whether or not one form was  
4           completed, which I think is the space that we're still  
5           in, one form was completed within that requisite 24-hour  
6           period, you know, perhaps we could have gone back and  
7           looked at that, there may have been other aspects we  
8           could have gone back and looked at that, however we  
9           didn't. I think I thought that the magnitude of the  
10          situation that crown should be -- that that process  
11          should be exhausted first.

12         Q. Well, I apologise if I have confused you. I have moved  
13          on from the spray. Perhaps we should take that from the  
14          screen. It is perhaps misleading.

15                 I'm moving on to the situation where post  
16          August/September 2018 a decision has been taken by the  
17          crown not to initiate criminal proceedings. That is  
18          known to you. You become aware of that. This is a much  
19          bigger issue. It is a change now because you know the  
20          crown are not prosecuting officers. It's not to do with  
21          the sprayer spray.

22                 So a decision is taken there's to be no criminal  
23          proceedings. Roughly at some point around about that  
24          period, you would have become aware of that. Would you  
25          agree that changes things in terms of the role that

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1           Police Scotland can take under the Regulations because  
2           there will not be criminal proceedings?

3           A. Potentially, yes.

4           Q. Yes. And then there's no deadlines for VRR and it's not  
5           actually a step that's taken until the February of 2019,  
6           and I'm asking about this period during, say, September,  
7           or slightly later October 2018, to February 2019, and  
8           what's steps, if any, were taken by Police Scotland in  
9           terms of the Regulations?

10          A. So I'm not aware that there were any steps taken. My  
11          recall may be wrong, but I'm not aware that there were  
12          any steps taken at that point.

13          Q. And given there's no obligation on the family to  
14          intimate or lodge a request for a right of review, they  
15          may not ultimately, and that's not actually done until  
16          the February, why was there no assessment under the  
17          regulations between -- for those -- that period?

18          A. So again, the Inquiry, the investigation, was carried  
19          out by the PIRC. So there was, you know, the logical  
20          issue of I don't think at that point we had disclosure  
21          of any -- now, again I may be wrong, counsel, but  
22          I don't think we had disclosure of material from the  
23          PIRC at that point in time.

24          Q. We certainly heard that the PIRC report was not sent to  
25          Police Scotland --



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- 1 A. Yes.
- 2 Q. -- by PIRC or by the crown?
- 3 A. Yes. So again, in terms of what we would found any  
4 assessment on then that would be the report of the  
5 investigation into the circumstances surrounding the  
6 death of Mr Bayoh. So we didn't have that PIRC  
7 investigation to the best of my knowledge and I think  
8 you have confirmed that.
- 9 Q. So in terms of Police Scotland and the Regulations, you  
10 would have considered the PIRC report to be necessary  
11 before you could carry out an assessment?
- 12 A. In terms of that assessment being as complete as it  
13 could possibly be, it would have been helpful to have  
14 had that material, certainly.
- 15 Q. Did Police Scotland consider making their own  
16 investigation in terms of the Regulations?
- 17 A. Not to my knowledge, no.
- 18 Q. No. So even after the crown have taken the decision not  
19 to prosecute, at that stage, no VRR has been lodged or  
20 intimated to the crown by the family, was there any  
21 active lines of investigation adopted by Police Scotland  
22 at that time to seek statements, recover documentation,  
23 consider what had happened at Hayfield Road?
- 24 A. No, because that material, as I recollect, was still  
25 with the crown, so in terms of going and taking further

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1 statements there was no -- there was no -- there was no  
2 activity on the part of Police Scotland to go and take  
3 further statements from, for argument's sake, the  
4 subject officers, given that statements had been given  
5 contemporaneously in 2015.

6 Q. So, no attempts to either ask the officers who had been  
7 involved with the events with Mr Bayoh or officers who  
8 had attended Hayfield Road as to what they had seen,  
9 what they had heard?

10 A. So -- no, certainly, again, the statements which had  
11 been taken contemporaneously had been taken, you know,  
12 back in 2015, so to go back and to reinterview those  
13 officers some three or potentially four years later that  
14 was not -- that was not -- I don't recall there being  
15 consideration, certainly in the latter months of 2018 or  
16 early 2019, of doing that, counsel.

17 Q. No, consideration given to that possibility?

18 A. So what I can't -- and this is a recollection issue for  
19 me. I cannot remember whether, in all good conscience,  
20 within the gold group we had those conversations, but  
21 certainly that activity was not undertaken.

22 Q. Right. So that activity was not undertaken, but we may  
23 be able to get minutes from those gold groups?

24 A. There should be minutes, absolutely, yes.

25 Q. And if there was a discussion during those meetings of

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1           the gold group at that time, if there were discussions  
2           about whether Police Scotland should start to gather in  
3           information and do an assessment under the Regulations,  
4           they would be noted in the minutes presumably?

5           A. That would be my anticipation, yes, yes.

6           Q. Do you have any recollection of that type of discussion  
7           taking place in the gold group?

8           A. Genuinely, no, I don't, but that's not to say that it  
9           didn't taken place, but I have no recollection of it  
10          taking place, certainly not in 2018 into 2019.

11          Q. But ultimately, in any event, no steps were taken in  
12          relation to investigating matters yourselves?

13          A. Not at that point, no.

14          Q. Can I look at something else --

15          LORD BRACADALE: Just before you do that, Ms Grahame.

16                 Ms Taylor, it's clear that at that point, having the  
17                 PIRC report would have been, as you put it, helpful at  
18                 the very least. Did you explore at all with the crown  
19                 or the PIRC whether you could get the PIRC report?

20          A. Sir, I can't remember whether we did or not. You're  
21                 right it would have been incredibly valuable. We may  
22                 well have had that conversation, but I suspect we would  
23                 have pended that conversation until, as I have explained  
24                 to counsel, we understood whether the family wanted to  
25                 exercise their right to review.

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1 LORD BRACADALE: Looking to the future, would it assist  
2 those responsible for misconduct proceedings in the  
3 police to have the PIRC report --

4 A. Yes, I think --

5 LORD BRACADALE: -- at a point where proceedings were not  
6 being taken?

7 A. Yes, sir, I think it would and this is a set of  
8 circumstances that we have experienced on occasion with  
9 PIRC that they have carried out an investigation, they  
10 still have the report and because the investigation has  
11 been carried out by PIRC's investigators,  
12 Police Scotland doesn't have a full set of whether that  
13 statements or indeed all the facts in front of them.  
14 So, yes, I think that would be incredibly valuable.

15 LORD BRACADALE: Thank you.

16 MS GRAHAME: And given there's no deadline on the family  
17 seeking a VRR, would Police Scotland have left this  
18 indefinitely if the family had taken a year to think  
19 about whether to lodge a VRR?

20 A. So I think we absolutely have to give the family agency  
21 in this, counsel, you know, really, really try -- my  
22 anticipation, a traumatic set of circumstances, take the  
23 time that they need to take to decide what their next  
24 steps should be. Once, you know, there was -- and of  
25 course the situation was then further complicated by the

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1 announcement by the then Justice Secretary of a public  
2 inquiry to be held into the death of Mr Bayoh. But once  
3 that determination by crown had been taken that there  
4 was going to be, no -- there was going to be -- there  
5 were going to be no criminal proceedings taken against  
6 the officers, under any other circumstances, I would  
7 anticipate that when the paperwork were then received  
8 back in Police Scotland the issue of conduct could then  
9 be properly assessed.

10 Q. So you anticipated that at some point the paperwork  
11 would be received by Police Scotland from PIRC or the  
12 crown?

13 A. Yes.

14 Q. Was it ever?

15 A. Not to my knowledge, no.

16 Q. No.

17 A. You know, until the -- until the circumstances  
18 surrounding the public inquiry and disclosure and the  
19 like.

20 Q. Given your comments about the family and the -- and very  
21 rightly they can take as much as time as they wish to  
22 consider whether to lodge a VRR, and given your views  
23 about the Regulations until that process has concluded,  
24 is it fair to say that until a VRR is concluded, there  
25 will be no assessment by Police Scotland under the

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1 Regulations?

2 A. Again, I'm never in the stage of being utterly binary  
3 around anything, but I think, again, given the gravity  
4 of the events of 2015 and given our absolute  
5 determination not to interfere with any decisions that  
6 crown might take explicitly or implicitly, in these  
7 circumstances, I think that was the appropriate  
8 approach.

9 Q. So if the family take a year or two years or three years  
10 to take a view to lodge a VRR, Police Scotland would  
11 take no steps under the Regulations during that period?

12 A. So again, I think there would logically come a point in  
13 time, whether that's three months, six months,  
14 12 months, 18 months, where we would say, look, there  
15 are outstanding matters here, there are still issues,  
16 counsel, issues that the officers themselves have not  
17 been concluded in terms of will they face any misconduct  
18 or not as a consequence of the situation that occurred  
19 back in 2015, so, no, I think at some point there would  
20 have a, okay, look, if nothing is happening here, this  
21 is not concluded, we need to bring it to some kind of  
22 conclusion, how might we go about doing that.

23 Q. And whose responsibility would it be to say the point  
24 has now been reached?

25 A. Again, given the significance of the events of 2015,

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1 I would anticipate that would be a conversation that  
2 would be had between the Chief Constable, the designated  
3 deputy, and very probably the ACC Professionalism along  
4 with our legal colleagues, counsel.

5 Q. Was there ever any discussion between you and the ACC  
6 and the Chief Constable about whether that stage had  
7 been reached --

8 A. No.

9 Q. -- in this matter?

10 A. No, because we didn't think it had. I certainly didn't  
11 feel that it had.

12 Q. I mean is there any guidance available to someone such  
13 as yourself in that role that that point should be  
14 considered even after three months, six months, nine  
15 months, a year, or is it simply left to individual  
16 discretion?

17 A. So I think the decision-makers in any situation such as  
18 this are very senior and very experienced, so actually  
19 I think that is probably more valuable than any policy  
20 in these circumstances. Certainly there is no policy to  
21 the best of my awareness, but, again, I might not be  
22 aware that that policy exists, but I'm not aware of any  
23 policy. But I think, you know, certainly with the Chief  
24 Constable at the time having been within Police Scotland  
25 over the period of the events 2015, ACC Spiers likewise,

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1           albeit in a more junior capacity, and myself coming in,  
2           if you like, with a fresh perspective, there would have  
3           been significant experience sat within that group of  
4           people, supported by our legal advisors around should we  
5           now be changing our focus and potentially looking to  
6           pursue other elements -- outstanding elements from the  
7           death of Mr Bayoh.

8           Q. It's left to the discretion of individuals to decide  
9           whether that question should be asked, even if there's  
10          no VRR?

11          A. That's right, but there would be no intention on the  
12          part of Police Scotland. This wouldn't ever have, if  
13          you like, to use, I don't know, a term that might be  
14          used if you're a pilot, this would never have  
15          disappeared off the radar. You said right at the  
16          beginning of the conversation this morning, counsel,  
17          just how important and iconic an event this was, how  
18          important for Police Scotland to maintain community  
19          confidence and the confidence of the family. So this  
20          would never just have fizzled out.

21                 We would always have at some point said, look, there  
22                 is more yet, here that needs to be done and whether that  
23                 is a consequence of asking if there's going to be no --  
24                 we're obviously into the public inquiry space -- but if  
25                 there's no public inquiry, then we would be into the



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1 space of saying to the PIRC, can you disclose that  
2 documentation to us, please, so we can conclude those  
3 conduct assessments and the like that we need to do as a  
4 consequence of that.

5 Q. Even though it wasn't done here, it would have been done  
6 at some point at some stage?

7 A. There are no circumstances that we under -- that we  
8 could possibly have allowed this just to continue  
9 indefinitely, counsel. We would have had to have  
10 brought it back or had that conversation with PIRC to  
11 bring this back in at some point so we could conclude  
12 all of the activity which needed to be concluded around  
13 the investigation.

14 Q. But from the point that the VRR was lodged by the  
15 family, then at that stage, again, Police Scotland chose  
16 not to take any steps under the Regulations and to allow  
17 to process to take its own time to conclude?

18 A. Yes.

19 Q. Can I ask you to clarify one part of your statement,  
20 answer 9. There we are. We'll have to look at the  
21 question as well, sorry. This might take us a moment.  
22 So if we look at the Rule 8 request, this is SBPI 00547,  
23 it's on the screen, and it's dated 28 March, 2024.

24 And the question is:

25 "In your capacity as head of the Discipline

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1 Portfolio and/or as Chair of the Sheku Bayoh gold group,  
2 were you responsible for recommending or actioning any  
3 Police Scotland disciplinary proceedings in respect of  
4 any of the officers involved in the incident involving  
5 Sheku Bayoh on 3 May 2015 or any officer involved in any  
6 aspect of the Police Scotland post-incident management?"

7 So the question is, were you responsible, and then  
8 the subsequent follow-up question was if not, who was  
9 responsible?

10 And then if we can look at your actual answer,  
11 number 9, "No". That suggests you weren't responsible,  
12 but I think you have already clarified that point in  
13 terms of the evidence this morning.

14 A. Yes, so I wasn't -- I didn't take any -- I didn't  
15 recommend or action any Police Scotland disciplinary  
16 proceedings in respect of the officers involved in the  
17 incident involving Sheku Bayoh on 3 May 2015 or any  
18 officer involved in any aspect of Police Scotland  
19 post-incident management. As we've discussed, I didn't  
20 recommend any disciplinary proceedings and, again, back  
21 to that further delegation of the conduct -- complaints  
22 and conduct responsibilities to the ACC Professionalism.

23 Q. And you say -- then say:

24 "Decision-making is delegated from the Chief  
25 Constable to ACC Professionalism."

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1 I think again earlier today you have clarified that.

2 A. Yes.

3 Q. So if the Chair is reading that paragraph, I think,  
4 would you agree, he should consider your fuller evidence  
5 today?

6 A. Yes.

7 Q. Thank you.

8 A. Thank you.

9 Q. Can we move back to the Regulations, please. I would  
10 like to move on to Regulation 8 and this is the one that  
11 relates to suspension. Regulation 8.1:

12 "A constable may be suspended from the office of  
13 constable by a Senior constable if an allegation comes  
14 to the Senior constable's attention from which it can  
15 reasonably be inferred that any conduct of the constable  
16 may constitute a criminal offence or amount to  
17 misconduct or gross misconduct."

18 So three opposites there: misconduct, gross  
19 misconduct, or potentially a criminal offence.

20 A. Yes.

21 Q. And again, there's a reference to that phrase, "From  
22 which it can reasonably be inferred". So is there some  
23 sort of assessment carried out by Police Scotland under  
24 Regulation 8 with regard to suspension?

25 A. Yes.

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1 Q. And who carries that out?

2 A. A member of the senior management team within the Senior  
3 Standards Department, albeit with if we were to -- or  
4 when Police Scotland would take or when Police Scotland  
5 took the step of suspending a member of police staff or  
6 indeed a police officer but particularly a police  
7 officer given these recommendations, that  
8 recommendations would be put to the ACC Professionalism  
9 and the ACC Professionalism would take the final  
10 decision because this is a really significant issue for  
11 the officer concerned, the ACC Professionalism would  
12 take the final decision on whether or not to suspend.

13 Q. And when you say he would take the final decision, would  
14 that be something that would be part of the discussions  
15 with the DCC to approve it or disagree with it, would  
16 you have the authority to disagree or approve of that  
17 decision?

18 A. So what would generally happen is non-contentious  
19 suspensions, and there were a number of non-contentious  
20 suspensions, the ACC Professionalism would spend that  
21 officer. If there was any -- if the circumstances were  
22 such that he wanted a second opinion or wanted the  
23 benefit of additional experience, then he and I would  
24 discuss those matters and ultimately come to a decision.  
25 What I asked for on a regular basis was an understanding

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1 of who had been suspended and why, again, counsel, to  
2 understand whether there were any themes or trends  
3 emerging in the conduct of officers within  
4 Police Scotland that necessitated some more strategic  
5 intervention around training or the like but largely  
6 sits with the ACC Professionalism.

7 Q. And in a case such as this involving the death of  
8 Mr Bayoh, is that the type of situation, serious  
9 situation, where you would expect some sort of  
10 conversation with the ACC Professionalism?

11 A. Yes.

12 Q. And whatever decision was being recommended by him or  
13 taken by him, is that something you could interfere  
14 with?

15 A. If I felt that the ACC was making the wrong decision,  
16 then I would certainly have that conversation with him  
17 and put the other -- my concerns or considerations to  
18 them, to say, "Look, actually, I think the threshold for  
19 suspension is met here" or indeed "I don't think the  
20 threshold for suspension is met", you know, a particular  
21 set of restrictions on a subject officer will serve the  
22 same effect.

23 Q. What does it mean when you say "the threshold for  
24 suspension", explain to us what that would be?

25 A. So very much sits within the Regulation 8, counsel,

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1           constitute a criminal offence or amount to misconduct or  
2           gross misconduct. Gross misconduct, the threshold was  
3           generally was -- there was no concern or consideration  
4           given to if an officer was reasonably inferred to have  
5           committed gross misconduct, then suspension is very  
6           likely under the circumstances going to be the right  
7           approach. However, if it was more -- if it was simple  
8           misconduct which might not lead to an officer losing his  
9           or her job, their job, then there would probably under  
10          those circumstances be a conversation around whether  
11          suspension was appropriate or not, so again at the  
12          higher end of the scale highly unlikely to be any -- any  
13          disagreement if you like or any deep conversation  
14          needing to be had, but if it was, you know, simple  
15          misconduct, then there would have to be a very good case  
16          made for that to constitute a behaviour that was -- that  
17          was subject to suspension bearing in mind the impact  
18          that suspension has on an officer so it's that balancing  
19          exercise.

20          Q. Okay. So the phrase "reasonably be inferred", is that  
21          on the basis of likelihood or reasonable suspicion or  
22          can you explain?

23          A. Or the circumstances which are provided to the  
24          investigating officers in DPS in terms of the behaviour  
25          that the officer is alleged to have committed.

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1 Q. And when you're assessing whether it's reasonable, that  
2 it can reasonably be inferred, how is that assessed, is  
3 it on the basis of likelihood, balance of probabilities,  
4 is it a reasonable suspicion?

5 A. So again, counsel, in terms of an absolute up-to-date  
6 understanding of how that assessment is made, I would  
7 refer you to colleagues in PSD who deal with this -- who  
8 make these assessments on an ongoing basis, day in and  
9 day out, who then bring them to the ACC Professionalism  
10 so they would be better placed than me to give you go a  
11 firsthand account of how that officer carries out that  
12 balancing exercise.

13 Q. But if there are occasions where you are asked to  
14 comment on suspension and you know the Regulations say  
15 and use this phrase "reasonably be inferred", so you're  
16 looking at whether it can reasonably be inferred that  
17 conduct constitutes misconduct, gross misconduct or  
18 criminal offence, how do you assess that when you're  
19 saying, well, your decision is wrong or I think you're  
20 right?

21 A. So the ACC would describe to me the circumstances that  
22 pertain to the particular officer or group of officers,  
23 the seriousness of the conduct that which is alleged,  
24 but then also as I say the balancing exercise around our  
25 duty of care to that officer and their personal

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1           circumstances and whether actually suspension may be an  
2           option but because of their personal circumstances it  
3           may be better to keep them in the workplace in order  
4           that they can be supervised, be supported, be provided  
5           with the opportunity to carry out restricted duties  
6           which would mean that whilst they weren't suspended,  
7           they weren't able to interfere with any ongoing  
8           investigation but their welfare and well-being needs  
9           could also be attended to because that is something  
10          which is, you know, incredibly important for us, it is  
11          balancing the needs of the officer and the requirement  
12          of Police Scotland to maintain public confidence in the  
13          discipline processes.

14        Q.   I'm focusing on the question of whether something can be  
15              reasonably inferred to be say for example misconduct.  
16              Is there a part of that assessment where you look at the  
17              weight of evidence, the quality of evidence, and assess  
18              to what extent that is probable, likely, whether it's --  
19              gives rise to a reasonable suspicion, was there any  
20              element of the assessment that focuses on that?

21        A.   That would be part of the assessment but as I say, in  
22              terms of understanding, you know, the practicalities and  
23              the delivery of that assessment on a day-to-day basis,  
24              as I say, I would speak to ACC Spiers as was then about  
25              not even necessary -- he would make me aware of the



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1 more, you know, serious matters which required an  
2 officer to be suspended. The conversations that I would  
3 have with Alan would often be in the space of, "well, is  
4 it right, is it proportionate to spend or is there  
5 another option in terms of how we manage this officer  
6 while the investigation moves forward". Now, again,  
7 counsel, we may choose to restrict an officer in the  
8 first instance because there's a reasonable inference  
9 that the conduct that they have engaged in amounts to  
10 simple misconduct but as the investigation goes forward,  
11 we might actually uncover more evidence that suggests  
12 that actually this is gross misconduct potentially  
13 that's being committed by this officer, therefore  
14 actually the grounds for suspension are met.

15 Q. Can that be reviewed in an ongoing basis?

16 A. So -- now, statutory in England and Wales, I believe  
17 it's statutory in Scotland but it's certainly good  
18 practice in Scotland and there is a review of every  
19 suspended officer carried out by ACC Professionalism  
20 every 28 days.

21 Q. And what if an officer isn't suspended but further  
22 information and evidence is becoming available, is there  
23 also a review?

24 A. There would be a review if, for arguments sake, we have  
25 an officer who's restricted, there is an investigation

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1 ongoing into that officer, the staff in the PSD uncover  
2 more -- more evidence, for argument's sake, if we have  
3 an officer who is suspected of domestic abuse and in the  
4 first instance, you know, it's -- there isn't a direct  
5 report but there is a suspicion that this officer has  
6 been involved in domestic abuse, for argument's sake,  
7 and then we have a direct complaint for -- but it's  
8 probably a bad example but it's just to say the officers  
9 in PSD, they would go, they would speak to the  
10 witnesses, they would speak to complainants, they would  
11 understand the gravity and nature of offences or  
12 allegations against a particular officer and that would  
13 feed back into any review process around whether an  
14 officer should be if you like escalated from restriction  
15 to suspension.

16 Q. But if there's a PIRC investigation, that process isn't  
17 carried out?

18 A. So again that's not necessarily always the case. I  
19 referred earlier this morning to a set of circumstances  
20 where there was an initial investigation by  
21 Police Scotland, it was clear to us that the situation  
22 was a pretty grave situation, there was a referral, I  
23 can't remember if it was crown-directed or from the  
24 chief to PIRC to take the investigation on, but the  
25 officer who was at the centre of that investigation was

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1           suspended.

2           Q. Right. I'm conscious of the time. Perhaps that would  
3           be ...?

4           LORD BRACADALE: We'll stop for lunch now and sit at  
5           2 o'clock.

6           (1.02 pm)

7                                 (Luncheon adjournment)

8           (2.04 pm)

9           LORD BRACADALE: Ms Grahame.

10          MS GRAHAME: Thank you. We had just turned to look at  
11          Regulation 8 of the 2014 Regulations and I would like to  
12          go back to that, please. And we were talking about a  
13          Constable may be suspended if an allegation comes to the  
14          attention of Police Scotland from which it can  
15          reasonably be inferred that the conduct may be  
16          misconduct, gross misconduct or a criminal offence. So  
17          some consideration again required, but the constable may  
18          be suspended --

19          A. Yes.

20          Q. -- for any of those reasons.

21                         Subparagraph 2:

22                         "But a Senior constable must not suspend another  
23                         constable unless at least one of the conditions  
24                         mentioned in paragraph 3 is satisfied."

25                         So the officer must not be suspended if at least one

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1           of the conditions is satisfied; is that correct?

2       A. Yes, one of the conditions must be satisfied in order

3           for the grounds for --

4       Q. One must be satisfied?

5       A. At least one for the grounds for suspension to be

6           satisfied.

7       Q. So he cannot be suspended unless at least one of these

8           two conditions exists and is satisfied?

9       A. They should not be suspended, yes.

10      Q. And it does say "must not be suspended."

11           So the suspension conditions are:

12           "(a) an effective criminal or misconduct

13           investigation may be prejudiced if the Constable is not

14           suspended."

15           (b) if we can move up the screen:

16           "Having regard to the nature of the allegation and

17           any other relevant considerations, the public interest

18           requires the Constable's suspension."

19           And I'm interested in your experience of how

20           consideration is given to whether either of these

21           conditions exists, is satisfied, and if we can maybe go

22           back to (a):

23           "So an effective criminal or misconduct

24           investigation may be prejudiced if the Constable is not

25           suspended."

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1           Now, clearly, if there is no criminal investigation  
2           underway or misconduct investigation, that cannot be  
3           prejudiced, so if that has concluded matters, have  
4           resolved, that cannot apply, but in relation to --

5           Lost my train of thought there, sorry.

6           Can we move on to (b), first of all:

7           "Having regard to the nature of the allegation and  
8           any other relevant considerations, the public interest  
9           requires the Constable's suspension."

10          I have just remembered what I was going to say,  
11          sorry. Could we go back to (a), sorry about that.  
12          I was going to ask you about we said if the criminal  
13          investigation has come to an end, that's obviously not a  
14          condition that can be satisfied. It could not be  
15          prejudiced once it's concluded. But in a situation  
16          where there's a criminal investigation ongoing, how do  
17          Police Scotland satisfy themselves, and in particular  
18          you or one of your delegated officers, satisfy  
19          themselves that there may be prejudice to the criminal  
20          investigation, do you contact PIRC, do you contact  
21          crown, what do you do?

22          A. So to give you an example there and clearly it's only  
23          one example, the prejudice may occur if, for argument's  
24          sake, the officer remains in the workplace, they are  
25          restricted rather than suspended, they still have access

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1 to force systems they may delete material from force  
2 systems or they may go back into aspects of, I don't  
3 know, reports or policies or proformas that they  
4 shouldn't have access to. There's something about if an  
5 officer is suspended then generally their access to  
6 force systems are removed so there is no opportunity for  
7 them, if you like to tamper, and I use that word  
8 advisedly, with any of the evidence or the material  
9 which may form part of the conduct or criminal  
10 proceedings.

11 The other issue or the other aspect of prejudice if  
12 the Constable is not suspended is whether that Constable  
13 would bring undue pressure to bear if they were still in  
14 the workplace, potentially on other colleagues who may  
15 be witnesses. So there is the -- there is, again, a  
16 rationale for suspension and you will get this, counsel,  
17 in much more detail for those who are doing this on a  
18 day-to-day basis, but there is also a rationale around  
19 if that individual officer were to remain in the  
20 workplace, would they -- would they have the opportunity  
21 to attempt to put pressure on any of their colleagues to  
22 change what they might say in the course of the  
23 investigation.

24 Q. How common is it to suspended an officer if the view is  
25 taken that there has been misconduct, gross misconduct

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1 or a criminal offence?

2 A. So suspension is not common. I'm just trying to and,  
3 forgive me, I can't remember the number of officers who  
4 were suspended when I retired from Police Scotland. I  
5 have a feeling it might have -- I genuinely can't  
6 remember. There's a figure in my mind, but I'm not sure  
7 whether it's right, but it's a very, very small subset  
8 of police officers within Police Scotland. I think it's  
9 around about the very, very low three figures, but,  
10 please, don't take that as the actual situation with  
11 officers who are suspended. We would need to check the  
12 figures for you, which we can do, but it is a small  
13 number who are suspend. But if the situation and the  
14 circumstances warrant the suspension of an officer, then  
15 they will be suspended but the numbers are small. There  
16 are far more officers who are under investigation who  
17 are restricted, on restricted duties, remaining in the  
18 workplace than there are suspended.

19 Q. But someone would be applying their minds to the  
20 question of whether an effective criminal or misconduct  
21 investigation may be prejudiced and their mind would be  
22 applied to that, they would give consideration to that,  
23 before a decision is taken regarding any suspension or  
24 restriction of duties?

25 A. That's right, in terms of any suspension, yes.

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1 Q. And is a report prepared, is there a document prepared  
2 which sets out the reasoning?

3 A. So, yes, there is. As we discussed I think just before  
4 lunch, my recollection is that there is a document which  
5 is completed by colleagues in PSD. Again, I think from  
6 memory and this may have changed since I retired from  
7 Police Scotland, that document is then presented to one  
8 of the Superintendents within PSD setting out the  
9 rationale for a decision to spend, that will then go to  
10 the ACC Professionalism, again to the best of my  
11 recollection, and the ACC Professionalism is the  
12 ultimate decision-maker and weighs the evidence that has  
13 been provided to him. It was a him at that point in  
14 time.

15 Q. And if the question is asked, consideration is given,  
16 and a decision is taken not to suspend, but that process  
17 has been followed, is that also something that's noted  
18 in a report or a document of some kind?

19 A. That would be -- again, because I haven't filled these  
20 documents in myself, I'm slightly wary about describing  
21 them to you, but what I would anticipate would happen is  
22 there will be the rationale for agreeing suspension or  
23 actually saying, no, I don't think this meets the  
24 threshold for suspension, but it may well meet the  
25 threshold for restriction, either on the same document



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1           or on a document which is attached for the overview for  
2           the ACC to take a decision on suspension.

3           Q. And did you ever see those documents as part of a  
4           discussion, a wider discussion, with you as DCC?

5           A. I don't recall ever seeing the documents, no. I don't  
6           recall ever seeing the documents.

7           Q. In your role would that have been information shared  
8           through a conversation with the ACC?

9           A. Yes.

10          Q. But if that question has been considered and an  
11          assessment has been made, then there will be some  
12          document of some description that we can recover?

13          A. Yes.

14          Q. And let's look at (b), please. So this is the second  
15          condition:

16                 "Having regard to the nature of the allegation and  
17                 any other relevant considerations, the public interest  
18                 requires the Constable's suspension."

19          And again, is this something that is assessed to see  
20          whether that condition can be satisfied?

21          A. Yes.

22          Q. And is the same process carried out?

23          A. Yes.

24          Q. And a document prepared?

25          A. Yes.

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1 Q. And recommending suspension or restriction or nothing?

2 A. Yes, yes, that's absolute right and those documents and,  
3 again, I am talking to you slightly at arm's length  
4 here, because, as I say, that's the role of the  
5 Assistant Chief Constable rather than myself, but those  
6 documents will be reviewed relating to individual  
7 officers on a 28-day repeating cycle to ensure the  
8 conditions for that officer's suspension remain valid.

9 Q. How is the public interest assessed?

10 A. So that will be predominantly around public confidence  
11 in policing in Scotland and what a reasonable person  
12 might expect the police service to do should an officer  
13 engage in a particular type of conduct.

14 Q. Right. And is there a particular source used to assess  
15 what the public interest is or whether public confidence  
16 is high or low or --

17 A. So again, that's quite a complex question, because,  
18 again, I think public interest may actually vary  
19 dependent on the circumstances that the individual  
20 officer is suspected of. For example, if an officer has  
21 engaged in racist conduct towards members of the public  
22 or towards their colleagues, if the officer has been  
23 involved in acts of domestic abuse or domestic violence  
24 or violence against women and girls, because of the  
25 sensitivities, because of the nature of the public

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1 interest in issues, rightly so, in issues such as those,  
2 the public interest test for certain types of behaviours  
3 may be slightly different to the public interest test  
4 for others.

5 For argument's sake, if an officer had been found to  
6 have been drink driving, for example, the public  
7 interest in suspending that officer as a consequence of  
8 their having been drink driving might be different to  
9 the public interest test if an officer was suspected of  
10 being racially discriminatory towards members of the  
11 public.

12 Q. How would you describe the public interest in a  
13 situation where a black man has died after having come  
14 into contact with the police?

15 A. Yes, I think that's acute is.

16 Q. Acute. So in relation to Mr Bayoh, you would say that  
17 was acute?

18 A. Absolutely.

19 Q. If the Regulation requires one of these conditions to be  
20 satisfied, are you able to help us understand why this  
21 condition about public interest requiring the  
22 Constable's suspension was not satisfied in this case?

23 A. So again, it's difficult for me to talk to the situation  
24 back in 2015. As I have explained in terms of the  
25 period of time where I was in Police Scotland, there

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1           were still other sort of process ongoing. The officers  
2           were still in the workplace. I can't remember, counsel,  
3           whether any of them were restricted or were potentially  
4           away from the workplace.

5       Q. I'll be corrected if I'm wrong, but I'm not aware of any  
6           suspensions.

7       A. I don't think there were any suspensions.

8       Q. I am not aware of any restrictions. I'm aware that two  
9           officers at least were off sick.

10      A. Yes, and officers have subsequently retired.

11      Q. Yes, but I'm not aware of any restrictions on their  
12           duties or suspensions.

13      A. Yes.

14      Q. No one is shouting out that I have got that wrong.

15      A. No.

16      Q. So I think that's probably correct.

17      A. Yes, I think that's correct.

18      Q. So bearing that in mind, clearly they weren't suspended  
19           here, they weren't put on restricted duties, but public  
20           interest was as you've said acute --

21      A. [Yes --

22      Q. -- can you explain?

23      A. That public interest and the confidence of communities  
24           I think has to be supported by a rigorous, an  
25           independent and a thorough investigation into the

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1           circumstances of any incident or event, so certainly the  
2           public interest would be, I think, absolutely engaged in  
3           the death of a young black man at the hands of police  
4           officers, but also I do think it's important that a  
5           thorough investigation is carried out to understand the  
6           circumstances that pertain to that tragic -- that tragic  
7           sequence of events.

8           Q. And where that public interest is strong, acute, as you  
9           put it, and there is also at the same time going to be  
10          an investigation, is there a view -- when you were in  
11          the role, was there a view that if the investigation is  
12          rigorous, independent and thorough, that that is a  
13          counterbalance to the public interest in having the  
14          Constable suspended?

15          A. I think it can be, yes. I think it can be but, again,  
16          referring back to the set of circumstances this morning,  
17          that I described this morning, I think both of those  
18          conditions were met in terms of that particular  
19          suspension involvement, potential interaction with an  
20          ongoing investigation, but also because of the nature of  
21          the allegations the suspension was required to maintain  
22          public confidence notwithstanding the fact there was an  
23          independent investigation being carried on by the PIRC  
24          at that time. So again every set of circumstances,  
25          I think, should be regarded on its own -- taken on its

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1           own merits.

2           Q. Right. And in what -- can you help us understand where  
3           the range lies where you have a very strong acute public  
4           interest, perhaps in favour of suspending the officer,  
5           but an independent investigation being carried out.

6                     Now, you have talked about one example where the  
7           balance was that that officer should be suspended and  
8           you've talked about the public interest in that case  
9           being so strong, to what extent was the public interest  
10          in that case -- I appreciate you don't want to give us  
11          the circumstances, but to what extent was the public  
12          interest in that case even more significant or even less  
13          significant than in relation to the death of a black  
14          man?

15          A. Very different, very different and that's I suppose the  
16          point I probably clumsily tried to make about public  
17          interest isn't homogenous. There's -- there are a  
18          number of -- any number of sets of circumstances  
19          potentially that could engage the public interest,  
20          they're not all the same, they can be very different and  
21          of course there's a huge difference between what the  
22          public is interested in and a series of events which  
23          actually, you know, it is in the public interest as a  
24          consequence to suspend an individual officer. So that  
25          contrast I think doesn't necessarily -- that contrast

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1           between sets of circumstances doesn't necessarily  
2           mitigate against suspension in one case and not  
3           suspending in another. I think every set of  
4           circumstances should be taken on its merits.

5           And of course what I should say is that PIRC  
6           investigation, you know, rigorous, robust, independent,  
7           you know, the officers as well, you know, need to be  
8           sort of considered, their welfare and their well-being  
9           in all of this.

10          Q. In assessing condition (b) or assessing either of those  
11          conditions?

12          A. So I think back to the point of, well, we could suspend  
13          but is it better to keep an officer in the workplace  
14          because one or other of those conditions may not apply,  
15          counsel.

16          Q. Right. Obviously the family are members of the public.

17          A. Of course.

18          Q. Was there any other part of that process regarding  
19          public interest -- did any part of that involve finding  
20          out the family's views?

21          A. Back in 2015, I'm not sure. I don't know at that stage,  
22          but certainly by the time I was a DCC within  
23          Police Scotland, and there were various processes in  
24          train in respect of the subject officers in the  
25          investigation of Mr Bayoh's death, I don't recall

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1 speaking to the family -- speaking to the family  
2 specifically in respect of -- or the family having the  
3 opportunity to speak to Police Scotland specifically in  
4 the context of, you know, will Police Scotland suspend  
5 the officers.

6 Q. When you were in the role, obviously at a later stage,  
7 2015 onwards, was that something that you would have  
8 considered to be a relevant consideration in the  
9 assessment of condition (b)?

10 A. Had I been in the role in 2015?

11 Q. No, if when you were in the role in 2018 onwards, did  
12 you consider taking accounts of the family's views when  
13 you were assessing condition (b) about public interest?

14 A. I would hope always to take account of the family's  
15 views, yes.

16 Q. Right. So there would be nothing to prevent  
17 Police Scotland from taking account of the family's  
18 views if they wished to?

19 A. That's right, through their proper sort of legal  
20 representatives.

21 Q. Legal representatives?

22 A. Yes.

23 Q. Thank you.

24 Can I move on in the Regulations to part 2,  
25 "Misconduct Investigations", and I'm particularly



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1 interested in Regulation 10, so this is Part 2, and this  
2 is "Preliminary Assessment".

3 Now, I'm going to read this out, but I will be  
4 asking you some questions about some of the evidence you  
5 gave earlier today. So this is an assessment within the  
6 terms of the Regulations. It's called "A Preliminary  
7 Assessments", and it says:

8 "This Regulation applies if a misconduct allegation  
9 comes to the attention of the Deputy Chief Constable.  
10 The Deputy Chief Constable must assess whether the  
11 conduct which is the subject matter of the misconduct  
12 allegation would, if that conduct were proved, amount to  
13 misconduct, gross misconduct or neither."

14 Now earlier today we talked about an initial  
15 assessment carried out by the Professional Standards  
16 Department?

17 A. Yes.

18 Q. And that was separate from the Regulations. I made a  
19 point saying I want to know. This was an assessment  
20 carried out within the body of the Regulations. Having  
21 looked at that now, can you tell me, this initial  
22 assessment you were talking about, was this completely  
23 separate from the Regulations or was it under  
24 Regulation 10?

25 A. So sorry. Just help me out here, counsel, the initial

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1 assessment?

2 Q. Do you remember your evidence this morning about --

3 I was asking about an assessment being carried out and

4 we started talking about the initial assessment being

5 carried out as to whether or not there was any

6 misconduct and you had talked about an honest mistake,

7 so an assessment was carried out after which the

8 decision maybe taken that this will be rerouted or

9 diverted away from the regulation -- regulatory

10 framework. And we talked about that at some length and

11 then what we see here is an initial assessment about

12 misconduct, but this is within the regulatory framework.

13 A. Yes.

14 Q. And I want to just be quite clear if I have completely

15 understood your evidence on this.

16 A. So, yes, that initial assessment if an issue surrounding

17 the conduct of an officer comes to the attention of a

18 Senior Constable should be done within the confines

19 of -- or should be carried out within the confines of

20 Regulation 10.

21 Q. Right. So it's not as if there's an informal,

22 non-regulatory assessment being carried out, it would be

23 an assessment under Regulation 10?

24 A. It would be an assessment under Regulation 10 and there

25 are various routes then off of that initial assessment

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1 under Regulation 10.

2 Again, what I would say, counsel, is I am right at  
3 the right-hand side of my personal experience, because  
4 it was not -- I did not carry out these assessments  
5 myself, they were delegated to the ACC and then clearly  
6 carried out by individuals within the Professional  
7 Standards Department, but Regulation 10 was the -- is  
8 the assessment, if you like, process for conduct.

9 Q. It comes to the police attention that there's an issue  
10 about someone's conduct, that awareness then triggers an  
11 assessment under Regulation 10.

12 A. If the conduct rules are engaged.

13 Q. And --

14 A. Or conduct regulations are engaged.

15 Q. If it is a failing of the standard, professional  
16 standard, and an assessment will be carried out and that  
17 assessment will cover the question of whether this could  
18 be misconduct, gross misconduct or neither. So it could  
19 be an honest mistake, a genuine error, and it will then  
20 be diverted away from the Regulations if that's the  
21 case, but there will be that assessment carried out.

22 A. Yes.

23 Q. And some will be diverted and some will remain within  
24 the Regulations and then follow whatever route is  
25 required depending on the conduct.

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1 A. Yes.

2 Q. Right.

3 A. But that I have to say, counsel, is very high level from  
4 a DCC's perspective.

5 Q. Right.

6 A. I say the granularity that you would get around that  
7 process from speaking to a practitioners would be much  
8 greater than that that which I can furnish.

9 Q. That's absolutely -- thank you. Thank you for clearing  
10 that up.

11 I would like to move on now to some events that took  
12 place in 2019 and still under reference to the  
13 Regulations and one of the things I'm interested in is  
14 an opinion of Lord Woolman in relation to a petitions  
15 for judicial review and you have talked about people  
16 retiring?

17 A. Yes.

18 Q. And this is in connection -- it's a public document --  
19 it's in connection with the applications for judicial  
20 review by PC Paton and PC Short. Now, we have heard  
21 both of them were un-- absent from work through ill  
22 health for a period and we're aware that they sought to  
23 retire on the grounds of ill health and that petition  
24 was lodged in relation to that, because I think there  
25 was resistance from the Scottish Police Authority for

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1           their retirement. And I'm interested in exploring this  
2           issue about the retirement and the misconduct  
3           proceedings.

4           Perhaps we should look, first of all, at the opinion  
5           which I understand is available on the screen, although,  
6           as I say, this is a publicly available document and it's  
7           from 2019 and you'll see there "Opinion of Lord Woolman"  
8           and the date is April 2018, if we move down the screen.  
9           There we are. And it relates to the circumstances  
10          surrounding Mr Bayoh's death and, as I have said, both  
11          of these officers wished to retire, that was declined  
12          and they then sought judicial review of that matter.

13          Can we look, first of all, paragraph 4, please. So  
14          you'll see the officers challenged the decision of the  
15          SPA, advanced arguments in relation to why they felt  
16          they should be permitted to retire and in relation to  
17          the judicial review against the decision by the SPA that  
18          they should not be permitted to retire. And I'm  
19          interested in looking at C. So it says:

20                 "The decision is irrational having regard to ... "

21                 And there's three categories, three lines of  
22          argument presented, and C says.

23                 "The absence of any intimation to them that they  
24          will face either prosecution or internal disciplinary  
25          proceedings in respect to Mr Bayoh's death."

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1           And then if we look at paragraph 8, it's noted in  
2           the opinion at the very last sentence:

3           "They have not received any intimation that they  
4           face misconduct proceedings in connection with the  
5           incident."

6           And so it would appear that at this stage, by  
7           April 2019, none of the officers who attended  
8           Hayfield Road had received any intimation at any time  
9           that they faced or may face misconduct proceedings; was  
10          that your understanding of the position at that time?

11         A. Yes.

12         Q. Yes. And when you came into your role in 2018, did you  
13          ever have a discussion about whether misconduct  
14          proceedings should be commenced or initiated against the  
15          officers?

16         A. So I think there was always an anticipation, counsel, at  
17          a point in time where we were in possession of the --  
18          and this of course, you know, precludes the setting up  
19          of a public inquiry, but there was always -- there was  
20          an anticipation at some point when we received the  
21          relevant documentation from the PIRC, then that would be  
22          assessed by colleagues within the Professional Standards  
23          Department and determinations around whether there  
24          should or should not be any conducts processes taken  
25          forward, as we discussed before lunch, would be made.

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1 Q. So that would be at the point you had documentation --

2 A. Yes.

3 Q. -- that allowed the police to carry out an assessment?

4 A. Yes.

5 Q. In terms of the Regulations and it would trigger the  
6 process --

7 A. Yes.

8 Q. -- at that stage?

9 So for officers who -- obviously, in this case, two  
10 officers wished to retire and we've heard ultimately  
11 they did. Now, what can Police Scotland do -- where  
12 officers ultimately do retire, what can Police Scotland  
13 do in relation to misconduct proceedings?

14 A. So that's a very good point and this is clearly -- this  
15 is medical retirement which is in the gift of the  
16 Scottish Police Authority. At the moment, and this may  
17 change as the Conduct and Ethics Bill goes through  
18 Parliament, at the moment if an officer decides to  
19 resign or retire whilst they are facing misconduct or  
20 indeed gross misconduct investigation within  
21 Police Scotland, we can't prevent them from doing that.

22 Q. And once they have resigned or retired is there anything  
23 that Police Scotland can do in terms of assessing  
24 misconduct, perhaps sanctioning an officer if they are  
25 found to have acted contrary to their professional

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1 standards?

2 A. So at the moment in Scotland once an officer retires,  
3 they are no longer an officer, therefore, they are not  
4 subject to Police Scotland discipline in any way, shape  
5 or form.

6 Now, if an officer who is facing a criminal  
7 investigation resigns or retires, then of course that  
8 criminal investigation can continue to its ultimate  
9 conclusion, but when an officer resigns or retires and  
10 you know it is -- in policing in Scotland, very often an  
11 officer will resign before they are put through any  
12 conduct process. The conduct process at this point in  
13 time falls at that stage.

14 Q. And that's due to change?

15 A. That may change depending on the legislation which is  
16 making its way through Scottish Parliament at the  
17 moment.

18 Q. But in the situation where they resign or they retire,  
19 they are no longer subject to any misconduct  
20 proceedings?

21 A. No.

22 Q. They cannot be sanctioned by Police Scotland and they  
23 cannot impose any penalties or anything of that sort?

24 A. No, that's exactly right and, you know, I don't know  
25 where the bill which is currently working its way



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1 through parliament where that will end up, but where I  
2 am very clear in my mind is that if an officer resigns  
3 or retires in advance of facing gross -- particularly  
4 gross misconduct investigations, then there should be  
5 consideration given to whether that officer should go on  
6 what we knew in England and Wales as a "disbarred  
7 officers' list", which would bring some sanction into  
8 play, counsel.

9 Now, that that is not an option that's available to  
10 us at the moment, but I know it or believe that is  
11 something that the bill making its way through  
12 parliament is addressing; whether if somebody does  
13 resign or retire in advance of facing gross misconduct  
14 process, then is it possible to put some kind of  
15 sanction on that individual subsequently which means  
16 that they wouldn't work in policing at any point in the  
17 future.

18 Q. I believe it's public knowledge that officers may retire  
19 in their fifties and then go on to have a second career,  
20 we have had a number of witnesses talk about that in  
21 this hearing and they may go on and do jobs working in  
22 the field of security or some other area. At the  
23 moment, there's nothing to prevent them doing that, even  
24 if they were subject to quite serious, potentially  
25 serious, misconduct proceedings. Could they become PIRC

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1           investigators?

2           A. That's a question for PIRC.

3           Q. All right. But they could have jobs in other areas,  
4           including security, including investigations, where they  
5           would not be sanctioned as things presently stand today?

6           A. So again, quite a complex environment. Obviously,  
7           the -- whoever an individual officer's new employer  
8           would be one would anticipate they would do some vetting  
9           of their own right. The difficulty of course is that  
10          when an officer resigns or retires from Police Scotland,  
11          when we are asked about the status of that officer, then  
12          we will say they have resigned or they have retired so  
13          there is a lacuna there, there is no doubt about it.

14          Again, I do draw a distinction between, if you like,  
15          statutory agencies, other police agencies, whether  
16          that's NCA, the Ministry of Defence, police or the  
17          police service in England or Wales, as opposed to an  
18          officer taking up employment within the private sector.

19          Q. Before you retired, if an officer, a former officer,  
20          requested a reference and that officer had been subject  
21          to misconduct proceedings, which were brought to a halt  
22          by their resignation or their retirement, was it part of  
23          the reference that that would be raised with the person  
24          seeking the reference?

25          A. So I would need to check that. I think that the

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1           circumstances would be related simply that the officer  
2           had resigned or retired from Police Scotland. I don't  
3           know whether we would include the fact that they had  
4           resigned or retired whilst they were facing misconduct  
5           or gross -- I genuinely don't know the answer to that.

6           Q. We can perhaps find that out?

7           A. Yes, absolutely.

8           Q. It's possible that someone who resigns to avoid the  
9           questions being asked in misconduct proceedings, that he  
10          could go on or she could go on to have other -- another  
11          career and for that not to be something the new  
12          employers were aware of?

13          A. Potentially, potentially. As I say, I would need to  
14          check the current situation with colleagues in P & D, or  
15          HR Department and PSD about how that set of  
16          circumstances would be dealt with in 2024 if a request  
17          for a reference came in regarding an officer who had  
18          resigned or retired in those circumstances.

19          Q. And if an officer retires in this situation, their  
20          pension would be unaffected?

21          A. So if -- again, if an officer resigns and it's early in  
22          their service, then there will be a financial detriment,  
23          there is no doubt about that, the police pension  
24          wouldn't be paid when it might normally be paid if you  
25          retired under the normal scheme of things. If however

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1           an officer has reached retirement age and chooses to  
2           retire, then you're absolute right, they would  
3           potentially be able to crystallise their pension with  
4           the service that they had at the point at which they  
5           retired.

6           Q. And if they are medically retired, does that encompass  
7           an enhanced pension taking account of medical reasons?

8           A. It can encompass an enhanced pension, yes.

9           Q. Right. Let's look at paragraph 18. This is -- on the  
10          screen we still have the opinion of Lord Woolman:

11                 "On 22 November 2018, the SPA wrote to ask the PIRC  
12          whether it had found potential grounds of misconduct on  
13          the part of the officers."

14                 So this was the November prior to this opinion, this  
15          opinion was April '19.

16          A. Yes.

17          Q. This is the proceeding November and it's, as you say,  
18          the question of whether the person should be allowed to  
19          retire, medically retire, is within the gift of the SPA  
20          and they have written to ask PIRC whether it had found  
21          potential grounds of misconduct on the part of the  
22          officers and the PIRC gave this inquiry short. It  
23          replied that it was not part of its role to report on  
24          questions of misconduct.

25                 So certainly in November 2018 it would appear that

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1           PIRC, is it fair to say, did not consider questions of  
2           misconduct to be part of their role if they were  
3           involved in an investigation?

4           A. So again, counsel, I would need to check my recollection  
5           of this, but I don't know if PIRC were actually even  
6           able to consider misconduct on the part of officers up  
7           to the rank of Chief Superintendent. I think the  
8           conduct space for PIRC was engaged with -- with PIRC  
9           would potentially be engaged with investigations into  
10          chief officers, but, again, that's my recollection.  
11          I would need --

12          Q. I think that may be correct. We have heard evidence  
13          about that.

14          A. Yes, I would need to check that.

15          Q. In terms of even asking, even in 2018, asking PIRC for  
16          assistance to consider potential misconduct, it's  
17          described here as them giving short shrift to that type  
18          of request, so unlikely that PIRC would assist at that  
19          stage or prior to that?

20          A. That seems to be the case.

21          Q. And then can we look at paragraph 21:

22                         "Here the DCC has not told the officers that they  
23                         face any proceedings or that any such proceedings have  
24                         been postponed."

25                         I think that's correct, isn't it?

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1 A. That's my recollection, yes.

2 Q. And then 27, Lord Woolman asks two questions. Can we go  
3 to just above that, please, just so we can see the  
4 section that we're -- if we can keep going up. This is  
5 to do with the decision on irrationality regarding the  
6 judicial review proceedings, so if we can turn to  
7 paragraph 27, again, please:

8 "No one has suggested that the officers are culpable  
9 to any degree in respect of the incident. The SPA  
10 itself relies on an unspecified involvement. One may  
11 ask two questions. How could they now be charged, given  
12 that they have been questioned at length without being  
13 cautioned and how could the DCC institute misconduct  
14 proceedings, given the lapse of time and absence of any  
15 intimation?"

16 And I'm interested in the comments by Lord Woolman  
17 about, how could the DCC institute misconduct  
18 proceedings, given the lapse of time and absence of any  
19 intimation. Is that something that you were having  
20 regard to when you were considering if you ever  
21 considered proceedings under 2014 -- the 2014  
22 Regulations, the delay which is being caused by the  
23 involvement of PIRC, the involvement of other matters,  
24 the lack of disclosure of the PIRC report, given the  
25 lapse of time. I mean we're talking about events in

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1           2015. This is a decision from 2019, almost four years  
2           later.

3           A. Yes.

4           Q. And the absence of any intimation of misconduct  
5           proceedings under the 2014 Regs?

6           A. I think there is no disagreement that the length of time  
7           that these matters have been working through various  
8           processes is far from satisfactory for the family and,  
9           you know, that is very, very suboptimal.

10          Q. And certainly with the Regulations it would appear that  
11          it's not that they're being worked through, it's that  
12          any question or any consideration is being deferred?

13          A. So again, there's the piece that we discussed this  
14          morning about having disclosure from the PIRC,  
15          understanding from the statements they've taken, from  
16          the evidence they've gathered, from, you know,  
17          everything that they have accrued and distilled from the  
18          events in 2015, if there is no criminality, then what  
19          does that mean in terms of, you know, let's go through  
20          that conduct assessment and then, as you say, the more  
21          time that elapses the less satisfactory the  
22          circumstances are for all concerned, counsel.

23          Q. And can we look at paragraph 31. I'm interested in the  
24          part that starts "Specifically, there was no foundation"  
25          there in the middle. "Specifically" in brackets, do you

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1 say that in the middle of the paragraph?

2 A. Yes.

3 Q. "(Specifically, there was no foundation for inferring  
4 that either officer might be criticised for their  
5 conduct that day)."

6 And that relates to former PC Paton?

7 A. Yes.

8 Q. And former PC Short. And so the Lord Ordinary took the  
9 view there was no foundation for inferring that either  
10 officer might even be criticised, never mind any  
11 suggestion of misconduct, gross misconduct or criminal  
12 proceedings at that stage. Yes. And that will be  
13 correct. As I understand it, there was no basis for  
14 making that inference.

15 A. At that point in time, that's absolutely correct.

16 Q. We talked about the period of time that that has taken  
17 and at this stage four years from the date of Mr Bayoh's  
18 death. The Inquiry understands that that was in  
19 April 2019, and then, as I understand the position, in  
20 the month after this, there was some contact with the  
21 family and they wrote to Iain Livingstone the Chief  
22 Constable about this formally asking that criminal  
23 complaint be brought to the attention of the Chief  
24 Constable and commenting specifically in relation to  
25 this opinion and talking about the public perception and



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1 concerns that they had, wide-ranging concerns about the  
2 public perception, criminality, race, issues along those  
3 lines.

4 And after this decision by Lord Woolman and then in  
5 light of the letter from the family to the Chief  
6 Constable, were you aware at that time as to the extreme  
7 concerns that were being expressed by the family?

8 A. So I can't -- I haven't seen that letter, certainly not  
9 recently, so I'm unfamiliarity with the content of it or  
10 certainly not familiar with the content of it, but I  
11 have been aware, counsel, of the family's concerns  
12 throughout.

13 Q. Right. During that period, say from April 2019 after  
14 this decision, May 2019, when the family were in  
15 contacts with Chief Constable and the November of that  
16 year, so between April and November of 2019, the public  
17 inquiry was announced in the November, what did  
18 Police Scotland do in that period of time after this  
19 decision from Lord Woolman and prior to the announcement  
20 of the public inquiry about making progress in relation  
21 to the possible conduct issues under the  
22 2014 Regulations?

23 A. So I would need to go back and refresh my memory,  
24 because I don't know what happened with the complaint  
25 which came in to which you refer, counsel. I have no --

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1 I don't recall what happened to that. The letter would  
2 have been directed by the Chief Constable --

3 Q. We hope to hear from the former Chief Constable. We can  
4 ask him.

5 A. Fine, that's absolutely fine. I -- whilst the public  
6 inquiry was intimated formally in November 2019 --

7 Q. Yes, an announcement was made?

8 A. The announcement was made, I think in advance of that  
9 announcement and, again, I would have to go back and  
10 just check the dateline here, counsel, I think there was  
11 intimation to potential core participants that a public  
12 inquiry was going to be held before that public  
13 announcement was made, so I think we would have  
14 understood at some point -- now, again, I can't be  
15 specific, because I don't have the letters from  
16 Mr Yousaf, then the Justice Secretary to the Chief  
17 Constable, in front of me, but I think we were aware  
18 before November that there would be a public inquiry  
19 held into the death of Mr Bayoh.

20 Q. And how long before?

21 A. I can't remember. I can't remember.

22 Q. This decision from Lord Woolman was April, the family  
23 were in touch with the Chief Constable in May, how long  
24 before November would --

25 A. So I genuinely can't remember and of course there are

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1 two issues. There are the issues that the family  
2 rightly raised about ex-Constables Paton and Short and  
3 then there is that broader piece around crown and  
4 victim's right to review and the other subject officers  
5 so I genuinely -- I find it difficult to answer that  
6 question, because there were a number of issues in train  
7 at that point in time.

8 What I would say is the organisation was still very  
9 seized with the fact that Mr Bayoh had died, there were  
10 still gold groups going on, the circumstances were being  
11 considered, but I can't remember what happened. I can't  
12 remember what happened with that letter.

13 Q. Right. And do you remember if any steps were being  
14 taken before the announcement about the public inquiry  
15 or before you became aware of that in relation to  
16 progressing matters under the 2014 Regulations?

17 A. So I can't remember whether we were requesting PIRC at  
18 that point in time or asking PIRC at that specific  
19 period post the victim's right to review, as we  
20 discussed this morning, whether we could have access to  
21 the file or not. I genuinely can't remember. I don't  
22 know whether there was enough time to enable that to  
23 happen, but, again, I couldn't define that timeline for  
24 you this afternoon.

25 Q. Right. Now, in 2020 -- I should say the Inquiry

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1           officially commenced on 20 November 2020.

2           A. Yes.

3           Q. We started to seek documentation at that stage and the  
4           first documents we received were the following year,  
5           2021. So that was what was happening with the public  
6           inquiry.

7           In 2021, on 14 October, volumes 1 and 2 of the PIRC  
8           report were disclosed to Police Scotland via the Inquiry  
9           and on 14 December 2021 volume 3 of the PIRC report was  
10          disclosed to Police Scotland via the Inquiry.

11          At the point at which you received disclosure of  
12          these documents, what steps, if any, did you take in  
13          relation to the 2014 Regulations and any assessment to  
14          be carried out?

15          A. So I don't think we did at that stage, counsel.

16          Q. You don't think you got disclosure on those dates?

17          A. No, no, I think we got disclosure, but I don't think we  
18          went back to the 2014 Regs and carried out an  
19          assessment. Again, if you -- you will be aware that in  
20          the run in to a public inquiry, we would be taking as an  
21          organisation some significant and, you know, very  
22          thoughtful legal advice around what steps we should  
23          take, very, very clear that we did not want in any way  
24          to undermine the public inquiry, but to the best of my  
25          knowledge and recollection over that period -- to the

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1           best of my knowledge and recollection, over that period  
2           there wasn't an assessment carried out on the volumes of  
3           material that PIRC released to us. Now, I may be wrong,  
4           but that's my recollection.

5           Q. Thank you. And then can we look at your Inquiry  
6           statement, the relate response. That is SBPI 05046, and  
7           I would like to look at paragraph 10. It's on the  
8           screen:

9                        "I made the decision that an undertaking would not  
10           be provided to the Inquiry that officers giving evidence  
11           would not face conduct proceedings. The rationale for  
12           my decision is set out in my letter dated  
13           25 March 2022."

14                       I would like to look at that letter, please,  
15           SBPI 00634. And you'll see that this is a letter from  
16           Police Scotland to the Chair of the Inquiry and the date  
17           is actually at the very top of the letter, which  
18           25 March 2002, and a request had been made in relation  
19           to undertakings.

20                       I don't know if you recollect the circumstances.

21           A. Yes.

22           Q. And you had been requested to provide an undertaking in  
23           relation to disciplinary proceedings against individual  
24           officers?

25           A. Yes.

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1 Q. Or individual serving officers, because, as I understand  
2 the position at this time, both PC Paton and PC Short  
3 had retired, medically retired?

4 A. Yes.

5 Q. Of the remaining serving officers who remained within  
6 Police Scotland. And I think no undertakings were given  
7 and I think if we look at page 2 of the letter, please,  
8 and in particular paragraph 2, you point out that:

9 "It was a matter of consensus that the privilege  
10 against self-incrimination does not apply in  
11 disciplinary proceedings."

12 And I'm interested in this aspect. We've obviously  
13 and as part of this process we looked at the privilege  
14 against self-incrimination and that was very much a live  
15 issue in relation to possible criminal proceedings.

16 A. Yes.

17 Q. And also in relation to evidence given under oath to the  
18 Inquiry. And you've pointed out in your letter that the  
19 privilege against self-incrimination doesn't apply in  
20 disciplinary proceedings and I'm interested in that  
21 aspect of your consideration of misconduct proceedings  
22 and if there is a tension where there's a criminal  
23 investigation ongoing, but you know they have a right to  
24 the privilege -- to exercise a privilege in that  
25 situation, but not in relation to misconduct

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1 proceedings?

2 A. So I think that and, again, you know, I go back and look  
3 at the legal advice that I received, counsel, in terms  
4 of drafting that letter to the Chair, but my  
5 understanding was that case law suggested that there was  
6 not a right not to -- I know that's a very clumsy way of  
7 putting it -- a right not self-incriminate within a  
8 discipline environment in the way that there would be  
9 within a criminal environment.

10 Q. In a criminal environment the officers should be  
11 entitled to say "I have the right not to criminate  
12 myself" and they can rely on that.

13 A. Yes.

14 Q. "And because of that right I'm going to exercise that  
15 right and I'm not going to answer any questions."

16 A. Yes.

17 Q. And they don't have that right in misconduct  
18 proceedings, I think that's what you're saying there?

19 A. That's my understanding. Again, I would go back and  
20 check the legal advice that I received in preparing that  
21 letter to come to the Chair.

22 Q. I'm interested in how Police Scotland resolve that issue  
23 where you have or you have the possibility of  
24 considering misconduct proceedings, you know there are  
25 potentially criminal proceedings and there's the right

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1 not to incriminate oneself, but that doesn't exist in  
2 misconduct proceedings. Can you help us understand do  
3 have regard to the right of privilege against  
4 self-incrimination?

5 A. So I think it's also important just to highlight that a  
6 number of the officers weren't looking for any  
7 undertaking from myself, they didn't need an undertaking  
8 from myself to, if you like, protect them from any  
9 possibility of self-incrimination as far as conduct was  
10 going, because actually they -- we talked about our  
11 standards of professional behaviour earlier, they felt  
12 that it was -- they felt that it was absolutely the  
13 right thing to do to come to this Inquiry and to be  
14 absolutely candid with the Inquiry and not require  
15 any -- not require any guarantees, if you like, from  
16 myself around anything that they may have provided in  
17 evidence potentially being self-incriminatory as far as  
18 any future conduct proceeding is concerned.

19 Q. And in relation to the undertakings, and you declined to  
20 provide undertakings, was that because you took the view  
21 you may wish to initiate, consider, commence misconduct  
22 proceedings against the officers?

23 A. I think that was always -- that was always the case and  
24 certainly, again, just reflecting on some of the legal  
25 advice that I think I was provided at the time, very



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- 1           careful about the issue of privilege obviously.
- 2           Q. Obviously, I don't want to encroach on that.
- 3           A. No, and there is case law in terms of other public
- 4           inquiries, as I recall, which suggest that even if there
- 5           was any comfort given by the discipline authority, as
- 6           opposed to any criminal authority, it would
- 7           predominantly cover simple misconduct as opposed to
- 8           gross misconduct. So there was also that
- 9           differentiation in my mind around simple misconduct and
- 10          gross misconduct, which might ultimately lead to a
- 11          serving officer, if it was proven, losing their job.
- 12          Q. But in terms of your position in 2022 at least, did you
- 13          still take the view that it would have been open to you
- 14          at that stage, regardless of the delay in initiating or
- 15          considering or commencing misconduct proceedings under
- 16          the 2014 Regulations?
- 17          A. At the conclusion of the Inquiry, absolutely.
- 18          Q. The position was you would defer consideration or
- 19          assessment until the conclusion of the Inquiry?
- 20          A. Yes, given that there were two aspects to that, the
- 21          first is the material that was collated by PIRC in the
- 22          context of the PIRC inquiry and then, secondly, there
- 23          would be the issue of the evidence which was provided by
- 24          those officers around the circumstances in May 2015 to
- 25          the Chair of the Inquiry.

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1 Q. And at the time you left, at the time you retired, was  
2 it -- did it remain your position that consideration of  
3 proceedings under the 2014 Regulation would be given at  
4 the conclusion of this public inquiry?

5 A. That was my anticipation, yes. As I say, both in terms  
6 of the initial incidents back in 2015, but also the  
7 conduct of the officers over the course of the public  
8 inquiry itself, should that become an issue, and I'm not  
9 suggesting for a minute that it has, but should that  
10 become an issue.

11 Q. If you could give me a moment. I'm conscious that we're  
12 just after 3.

13 LORD BRACADALE: We'll take a 15-minute break.

14 (3.02 pm)

15 (A short break)

16 (3.21 am)

17 LORD BRACADALE: Ms Grahame.

18 MS GRAHAME: Thank you. I would like to remain with the  
19 letter for the moment, 25 March 2022, and I would like  
20 to look at page 2 and paragraph 5. Here we are and it  
21 starts:

22 "The rights of the bereaved family of Sheku Bayoh  
23 are at the centre of the Inquiry. As stated in the  
24 submission on behalf of the Chief Constable, their  
25 Article 2 rights encompass not only the carrying out of

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1 thorough, diligent and comprehensive inquiry, but the  
2 duty also requires there to be appropriate provision for  
3 disciplinary action."

4 And I think you have mentioned earlier that you take  
5 the view that in carrying out -- where there has been a  
6 death at the hands of the state in this case after  
7 contact with the police, that Article 2 rights will be  
8 engaged and I've asked a number of witnesses about this,  
9 and you said that as part of carrying out this thorough,  
10 diligent and comprehensive inquiry, there is a duty that  
11 also requires there to be appropriate provision for  
12 disciplinary action. And that would be what is the  
13 framework at least is in existence in the 2014  
14 Regulations?

15 A. Yes.

16 Q. And I would like to ask you a little bit more about  
17 that. We've heard about Article 2 and, as part of the  
18 investigation, we've ever heard evidence from PIRC, from  
19 Crown Office, from police officers about the  
20 investigation that was carried out after Mr Bayoh died.  
21 And as part of that picture there is the  
22 2014 Regulations and we're hearing from you in  
23 connection with that.

24 We've heard that there are five procedural  
25 obligations under Article 2 and you may have heard some

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1 evidence in relation to this, but if I can put it  
2 shortly, independence, adequacy, reasonably prompt,  
3 public scrutiny and next of kin and I would like to just  
4 ask you some questions about those five obligations.

5 In relation to the question, first of all, of  
6 independence, you've talked -- two things I would like  
7 to cover in this aspect. First of all, under the  
8 Regulations it is a DCC who is responsible for  
9 considering, assessing, categorising, instigating,  
10 commencing possible conduct proceedings. It is a fellow  
11 police officer from Police Scotland. Do you have any  
12 concerns about the question of misconduct and the  
13 application of the Regulations to any given situation,  
14 do you have any concerns about fellow officers carrying  
15 out these tasks in relation to other officers who are  
16 also within Police Scotland?

17 A. So Police Scotland is a very large organisation, some  
18 23,000, I think at last count some 23,000 police  
19 officers and police staff, so I do think that there is  
20 sufficient distance between the officers who will carry  
21 out that conduct assessment that we have spoken about  
22 this morning who sit within a very specialised team in  
23 the department -- in the Professional Standards  
24 Department and officers who may be geographically  
25 deployed anywhere else across the country. So I think

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1           the structures and the systems that we have in place are  
2           sufficiently robust to ensure that there is proper  
3           independence and no unnecessary -- no, unnecessary  
4           pressure or influence brought to bear on  
5           investigating -- those police officers who investigate  
6           other police officers.

7           We have recently and, again, I would need to go  
8           back, counsel, and just check my recollection on this,  
9           but we have recently put further safeguards in place, as  
10          I recall, to ensure that there is proper independence  
11          and a lack of any, as I say, likelihood of undue  
12          influence being brought to bear, not just in terms of  
13          the investigation into a death like this, but  
14          investigations which take place up and down the country  
15          on a day-in, day-out basis.

16          Again, counsel, you will have been aware of  
17          comments, conversations, concerns about officers who  
18          have been -- who have been -- who are suspected of  
19          committing a domestic abuse offence being investigated  
20          by colleagues, the victim if you like, the complainant,  
21          therefore, potentially doesn't get the quality of  
22          service in terms of the investigation they should get  
23          because a suggestion that there's an all boys club, if  
24          you like.

25          So certainly in Police Scotland we are very, very

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1           aware of the optics of having a discrete, an independent  
2           Professional Standards Department carrying out these  
3           conduct assessments and indeed, on occasion,  
4           investigation into other officers within  
5           Police Scotland.

6           And of course the regulatory framework, as we  
7           discussed at the moment and we discussed this earlier,  
8           means that actually it does fall -- again, the best of  
9           my recollection -- on police officers to carry forward  
10          those misconduct investigations. There isn't another  
11          organisation that will do that for us.

12         Q. Certainly in terms of the 2014 Regulations, as they  
13          apply, we can see that obligations, responsibilities  
14          fall on Police Scotland's officers?

15         A. Yes.

16         Q. I appreciate there's a recognition you want to avoid any  
17          potential conflicts, bias of some description.

18         A. Yes.

19         Q. We've also heard Police Scotland is a hierarchical  
20          organisation, people feel loyalty to their colleagues,  
21          they can be facing very stressful and difficult  
22          situations, sometimes on a daily basis, and there may be  
23          a sense of collegiality, connections made. On that  
24          level, is there any sense that Police Scotland take a  
25          protective or a defensive approach when it comes to

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1 issues of misconduct, gross misconduct?

2 A. No.

3 Q. You seem -- can you elaborate on that?

4 A. So I think -- back to the point about having an  
5 effective complaints and conduct and discipline system  
6 is absolutely fundamental to maintaining and upholding  
7 public confidence in policing and certainly in my time  
8 in Police Scotland, yes, we have got things wrong  
9 historically, quite clearly we have got things wrong  
10 historically, but there have been a number of -- there  
11 has been a lot of progress made within the organisation  
12 in terms of the quality of officers who are in the  
13 Professional Standards Department, the training that  
14 they get, the understanding they have about their core  
15 responsibility to protect public confidence in policing  
16 in Scotland, and also their own responsibilities as far  
17 as our values, fairness, integrity, respect, a  
18 commitment to upholding human rights, the code of ethics  
19 and indeed the standards of behaviour are concerned.

20 Q. Thank you. And then earlier today you talked about --  
21 when I was asking you about the Regulations, you talked  
22 about a matter in 2022 where there was a PIRC  
23 investigation and you talked about collaboration and of  
24 sort of working relationship that had developed?

25 A. Yes.

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1 Q. I'm interested in your views on that from the  
2 perspective of Article 2 and independence, if there's  
3 this increased collaboration envisaged when PIRC are  
4 carrying out an investigation?

5 A. So that was not an Article 2 investigation and I do  
6 think Article 2 investigations are very different.  
7 Clearly, if the PIRC were to ask us for something, if  
8 they required something of us, then we would do our  
9 utmost to fulfil and discharge those obligations, but  
10 I don't want to speak for the PIRC, I'm sure she will  
11 speak for herself, but I do think Article 2  
12 investigations should be investigated entirely  
13 independently by the PIRC.

14 The collaborative approach is if there is an offence  
15 or a series of offences committed potentially by a  
16 police officer which are not in the Article 2 space, but  
17 which, for example, require, you know, proper --  
18 different premises to be searched, property to show  
19 seized, we can support the PIRC to do that, under the  
20 guidance and auspices of the PIRC and the understanding  
21 that the investigation is their investigation, but we  
22 can assist in ensuring that is carried out.

23 You spoke about, you know, the benefits of a prompt  
24 investigation. There are occasions where we can support  
25 the PIRC to deliver those, but that is not in the



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1 Article 2 space.

2 Q. Sticking with Article 2 matters --

3 A. Yes.

4 Q. -- which give rise to a requirement that there be an  
5 Article 2 compliant investigation, so sticking within  
6 that and that alone, where misconduct issues fall within  
7 that, within the wider Article 2 incident, for example,  
8 do you think in that situation that it should be the  
9 role of an independent body of some description to deal  
10 with issues of conduct as well as maybe the wider  
11 criminal investigation?

12 A. I certainly have no issues with that approach. So I  
13 have no issues with that approach in its -- in and of  
14 itself own right. However, I would go back to -- and  
15 it's important -- this is so important in terms of  
16 maintaining public confidence, but, again, what I would  
17 go back to is, you know, the competence of and the  
18 independence of the teams who investigate or carry  
19 forward conduct investigations within the Professional  
20 Standards Department. I have absolutely no concerns  
21 about their impartiality or their independence.

22 If in the context of an Article 2 investigation, and  
23 of course this is a conversation to have with the PIRC  
24 or potentially Scottish Government, could there be seen  
25 to be benefit in having a wholly independent assessment

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1 of any conduct which might come out of that inquiry,  
2 I would certainly -- I would not be averse to that  
3 happening. My consideration would be, given that this  
4 is potentially a conduct investigation following the  
5 gravest, the gravest set of circumstances that could  
6 ever happen when somebody has lost their life, the  
7 assurance that I would want is whoever is carrying out  
8 that conduct investigation is properly trained, is  
9 skilled, is equipped and is experienced to do that so  
10 that there isn't a suboptimal outcome at the end of it,  
11 particularly for the family, but also of course for the  
12 officers as well and then, by definition, public  
13 confidence.

14 Q. And you think if there was an independent consideration,  
15 an independent body, say, who considered all the  
16 Regulations and considered all the issues under the  
17 Regulations that that independence would enhance public  
18 confidence?

19 A. I think independence -- I mean -- you described the five  
20 facets of an Article 2-compliant investigation, counsel.  
21 From my perspective, you know, the more independence  
22 that can be brought into that environment, I can't  
23 find -- I wouldn't want to argue with that.

24 My concern would be that whoever -- PIRC are skilled  
25 investigators. We would need to -- if it were to be

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1           PIRC and I need to be absolutely certain that those  
2           individuals tasked with any consequent misconduct  
3           investigation were as skilled in that environment.

4       Q.   And if they were that skilled you would have no  
5           objection to that?

6       A.   It's about the best outcome for the family of the  
7           deceased, it's about upholding public confidence, and of  
8           course there is also the fact that we would not want  
9           officers to be then challenging the conduct process,  
10          which is back to my point about, you know, skilled,  
11          experienced and well -- whoever does it, skilled,  
12          experienced and well trained.

13      Q.   Although the possibility of a challenge exists even for  
14          Professional Standards Department --

15      A.   Of course it does.

16      Q.   -- officers.

17                 In relation to the second procedural obligation  
18                 under Article 2, that relates to the adequacy of the  
19                 investigation. Now, given what you've explained to us  
20                 today about the issues under the Regulations being  
21                 deferred at various stages for various reasons and  
22                 potentially until the end of this Inquiry. With regard  
23                 to adequacy, can you help me understand how you took the  
24                 view that this aspect of Article 2, the aspect of the  
25                 Regulations, was going to be adequate, if there was

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1            simply no assessment and no consideration being given?

2            A. So my -- I mean, as I mentioned we have had a -- this  
3            isn't about no kind of regard for the circumstance. You  
4            know, we have had a gold group, as I have explained to  
5            you, set up for years now with that overview of the  
6            circumstances of all of the different elements that have  
7            led us to the public inquiry.

8            My overarching ambition, however, was that the  
9            criminal proceedings -- that all of the circumstances  
10           around the criminal proceedings, crown's consideration,  
11           all of those, you know, really significant issues which  
12           have to properly be carried forward when there is a  
13           death at the hands of the state, a death in police  
14           custody or a death following police contact, those are  
15           all able to run forward and to reach a conclusion and  
16           that took some time as we know. The adequacy of any  
17           sort of conduct Regulations in terms of any conduct that  
18           may or may not arise as a consequence of the  
19           circumstances in 2015, I do think it's appropriate, as I  
20           say, that the criminal investigation is allowed to  
21           complete and now the public inquiry is allowed to  
22           complete.

23           At the end of that public inquiry, counsel, we will  
24           then have a -- we will then have a, you know, an  
25           understanding of the entirety of the landscape that

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1           pertains to the events of 2015.

2           Q. And in terms of adequacy, obviously the Regulations  
3           will, on what you have said, I appreciate you're now  
4           retired, but you'll consider matters -- Police Scotland  
5           will consider matters under Regulations potentially up  
6           to 9 or ten -- well, it's already nine, perhaps ten  
7           years after the event?

8           A. So I think that's right. I think a lot of that timeline  
9           is absolutely outside of the gift of Police Scotland.  
10          That has been as a consequence of the way matters have  
11          unfolded since 2015, highly regrettable I think, but I'm  
12          also very conscious that had we, for argument's sake,  
13          been engaged with disciplinary procedures or conduct  
14          procedures with the subject officers at the same time as  
15          they were being called to a public inquiry to give  
16          evidence to the Chair, then I think that could actually  
17          have had a deleterious impact on the quality of the  
18          evidence that they provided to the public inquiry, which  
19          I think is incredibly important to support Mr Bayoh's  
20          family understanding the truth in the entirety of the  
21          events of May 2015.

22          Q. So certainly from the moment in time that the  
23          announcement was made about the public inquiry that  
24          could be one factor, that would be from 2019. Prior to  
25          the public inquiry being announced, what were your

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1           concerns about conducting contemporaneous parallel  
2           misconduct proceedings between 2015 and 2019?

3           A. So again, I think we go back to, and please do correct  
4           me if I'm wrong here, counsel, the fact that PIRC had  
5           carried out that contemporaneous investigation. We talk  
6           about the adequacy of any investigation into a death,  
7           but also the adequacy of any further or follow-on  
8           conduct procedures. We hadn't had disclosure of that  
9           contemporaneous material from the PIRC. We didn't get  
10          that until a relatively recently, as you know. I do  
11          think it's suboptimal to go back and to try to take  
12          statements, as I you have rightly said, some five, six  
13          years after a series of events and try to work through a  
14          misconduct process based on those. I do think that  
15          would undermine the adequacy and the professionalism of  
16          any conduct investigation. So I think there are a  
17          series of -- just in terms of the timeline around all of  
18          these events there have been a series of issues,  
19          decisions taken, you know, by a number of actors that  
20          mean that there have not been discipline proceedings  
21          taken forward to date.

22                 As I said to you just before the break, and it's  
23                 quite clear from the letter that I sent on behalf of the  
24                 Deputy Chief Constable to the Chair of the Inquiry, we  
25                 are not ruling anything out at the conclusion of the

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1 Inquiry or indeed at any point beyond that. Your point  
2 about timeline, again I'll come back to this, is  
3 absolutely correct, but that timeline does not  
4 necessarily sit within the gift of Police Scotland.

5 Q. The third procedural obligation is that the  
6 investigation should be reasonably prompt. Would you  
7 agree that taking up to nine, ten years is not what one  
8 could consider reasonably prompt?

9 A. Without a shadow of a doubt.

10 Q. Yes. Looking at matters now as they have panned out  
11 over this period of time, do you think there are ways  
12 that Police Scotland could have dealt with the conduct  
13 Regulations more efficiently, more quickly than has  
14 actually proved to be the case?

15 A. So again I think -- so I think we're going back,  
16 certainly from my perspective, to part of the  
17 conversation we had this morning, which is the  
18 preeminence of the independent Article 2 investigation,  
19 the determinations that might be made by senior  
20 Crown Counsel about whether there should be potentially  
21 any criminality or any charges brought in terms of any  
22 of the officers. I think conduct is very much in the  
23 foothills of that. I think, you know, the criminality,  
24 potential criminality, you know, whether or not crown  
25 determine that there is criminality, the potential for

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1           that criminality should take precedence, so we are  
2           talking about a relatively sort of small period. From  
3           my perspective, very, very difficult for the family and  
4           I absolutely empathise with that, but, again, over that  
5           period, there were a number of issues in terms of access  
6           to documentation and the like that was not -- that just  
7           were not available to us.

8           Q. Do you -- in your experience as a DCC, have you come  
9           across any other situation where officers have waited  
10          over nine years before proceedings are considered under  
11          the 2014 Regulations?

12          A. So I don't think I -- well, so I guess there are two  
13          issues there, Chair, in terms of a set of circumstances  
14          occurring and us being aware of those circumstances,  
15          then, no, I think this is quite unique. You know,  
16          colleagues will be aware of the fatal accident inquiry  
17          into the, you know -- recently resulted in terms of the  
18          M9. Again, that was around about 2015.

19                 Of course there are issues where there are historic  
20                 allegations made against police officers that, you know,  
21                 suggest that they may have offended before they joined  
22                 the police service and those don't come to light until a  
23                 number years later, potentially, and will then go  
24                 throughout the criminal and conduct processes. So that  
25                 timeline is not -- the circumstances surrounding, and



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1           you said it yourself, the circumstances surrounding the  
2           death of Mr Bayoh and the subsequent processes and  
3           procedures which have taken place, including the public  
4           inquiry, are quite unique and the timeline from my  
5           perspective is quite unique.

6           I am aware of circumstances in England and Wales  
7           where young black men have died in police custody at the  
8           hands of police officers and, again, those proceedings  
9           have been incredibly protracted, both for the families  
10          of the young men, and they are predominantly young men  
11          and they are predominantly young black men, who have  
12          died in police custody and, ultimately, an outcome  
13          either for the families concerned or indeed the officers  
14          concerned.

15         Q. For officers who have waited perhaps nine, potentially  
16         ten years, they may be looking at reaching retiral age.  
17         For those officers, as the law presently stands, if they  
18         retire or leave the service, there will never be any  
19         misconduct proceedings instigated under any  
20         circumstances against them?

21         A. So that's absolutely correct, counsel. Again, as we  
22         discussed this morning, let's assume that we are in an  
23         environment where potentially misconduct -- a misconduct  
24         investigation is extant, that would not stop and this is  
25         not saying that there is any conduct found against any

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1           officers, but even if a conduct investigation was  
2           ongoing, that would not -- that would not prevent  
3           officers, as we discussed this morning, resigning or  
4           retiring in any effect, but that is not to say that I am  
5           comfortable or content with the timeline because that is  
6           not the case.

7           Q. And if at the end of this Inquiry time is taken to  
8           prepare the report, as it obviously will need to be, and  
9           at the end when the report is published and the findings  
10          made known, if at that stage the crown then take a view  
11          that they wish to reflect on issues of criminality once  
12          more, would Police Scotland wait a further period until  
13          that assessment had been finished by the crown?

14          A. That's not a decision that would be taken by myself,  
15          counsel.

16          Q. No. Was that something that you were anticipating, that  
17          additional delay, depending on what the crown's view  
18          would be?

19          A. I hadn't actually got to that stage in my thinking.

20          Q. Right, okay. So the next procedural obligation under  
21          Article 2 is public scrutiny. Now, we're hoping to hear  
22          from Lady Angiolini later in this hearing and I wondered  
23          about whether you consider that there is sufficient  
24          public scrutiny embodied within these Regulations and I  
25          think, as I understand we may hear, that Lady Angiolini

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1           has made a recommendation about gross misconduct  
2           hearings should be in public. And I wonder whether that  
3           was something that you were considering before you left?

4           A. So again, when I was a Deputy Assistant Commissioner in  
5           the Metropolitan Police Service, that was at a point in  
6           time where police regulation changed in England and  
7           Wales and I was actually responsible for introducing  
8           gross misconduct hearings in public into the  
9           Metropolitan Police Service, all of which, you know, was  
10          done in England and Wales, similarly to Scotland, with  
11          the view of enhancing public confidence, trying to, if  
12          you like, do away with the veil of secrecy, particularly  
13          around gross misconduct hearings.

14          My experience in the Met was that actually unless  
15          the hearing was particularly iconic or something that --  
16          now, this I have to say was when I was a DAC in the Met,  
17          which was up to 2017. The approach that the  
18          Metropolitan Police Service has taken more recently to  
19          their conduct processes has obviously changed since the  
20          time I was in the Metropolitan Police Service. However,  
21          what we found was that bringing gross misconduct  
22          hearings in public into the Met didn't actually engender  
23          an awful lot of public interest, unless it was a  
24          particularly iconic gross misconduct hearing, so I have  
25          absolutely -- providing -- providing that we can get the

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1 proper safeguards in place for witnesses, particularly  
2 those witnesses in gross misconduct hearings who may be  
3 complainants, and particularly given that a significant  
4 number of the gross misconduct investigations which are  
5 ongoing in Police Scotland at the moment involve abuse  
6 of authority or abuse of power, power imbalance in some  
7 shape or form, it's absolutely -- it's absolutely  
8 fundamental that if we do hold gross misconduct hearings  
9 in public, which as I say I have no inherent  
10 disinclination to do, we provide the safeguards to those  
11 who are going to come and provide testimony, witness  
12 evidence, which potentially might mean that a subject  
13 officer is found guilty of gross misconduct and loses  
14 their job that we provide them with the environment  
15 where they feel safe and secure and confident and  
16 competent to do that, because actually I think it's a  
17 bit of an own goal if we're holding gross misconduct  
18 hearings in public, but we don't have that support for  
19 the key witnesses who we need to come and give evidence  
20 in order for the hearing to function appropriately.

21 Q. And in terms of the Regulations, we've touched upon in  
22 your evidence the involvement of the next of kin. We've  
23 talked about, but at the moment thinking about public  
24 scrutiny, obviously, next of kin are members of the  
25 public, to what extent do you feel, looking at these

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1 Regulations and knowing them as you do, do you feel that  
2 there was sufficient opportunity for the public to  
3 question, challenge, the family to question or challenge  
4 decisions that were taken in terms of the Regulations or  
5 where decisions are not being taken in terms of the  
6 Regulations?

7 A. So I mean I do think there is a lack of transparency  
8 around the conduct Regulations in Scotland at the  
9 moment. I also think the 2014 Regulations, it's  
10 personal view from a retired police officer, the 2014  
11 Regulations are better drafted than the 2013  
12 Regulations, which were drafted obviously to coincide  
13 with the inception of Police Scotland. However, at the  
14 moment, the issue for me is sort of confidentiality and  
15 the technicality around those Regulations, counsel, and  
16 to make them more accessible to help members of the  
17 public, family members, to understand how the process  
18 works, I think that can only be -- only be a good thing.

19 Again, what we have done recently in Scotland is  
20 publish the outcomes of gross misconduct hearings. Now,  
21 we haven't waited for any regulatory framework to enable  
22 us to do that. We have waited until the process is  
23 concluded. We have then anonymised the outcomes in  
24 terms of the officers they refer to, but we have put  
25 into policing and into the -- now, I don't know whether

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1           they are forward facing on the Police Scotland website,  
2           but what we have done is made -- is attempted to be much  
3           more transparent around gross misconduct outcomes in  
4           order that colleagues can learn from those.

5       Q.   Right.  And then finally, the final procedural  
6           obligation is in relation to involving the next of kin.  
7           And I have asked you a couple of times about whether  
8           approaches had been made to the family to find out what  
9           their views were.  You mentioned at one point you  
10          thought it was appropriate that the lawyers perhaps be  
11          approached.

12                 Again, thinking very much about an Article 2  
13          scenario, do you think looking at the Regulations that  
14          there would perhaps be more opportunities for the next  
15          of kin's views to be considered by Police Scotland,  
16          maybe on a more formal basis?

17       A.   I think on a formal basis, yes, because goodness knows  
18           in circumstances such as these, you know, people will be  
19           properly emotional, absolutely enveloped, if you like,  
20           by the tragedy which has overtaken them, so, yes, I  
21           certainly think there is opportunity for the legal  
22           advisors of, you know, bereaved families to put the --  
23           and back to let in a second -- but the legal advisors of  
24           bereaved families to put the concerns, the feelings, the  
25           desires of the family forward.  And in fact, I think the

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1 letter that we have discussed a couple of times this  
2 afternoon in terms of requests for undertakings actually  
3 does reference the views of the family through  
4 Ms Mitchell.

5 Q. Yes, yes.

6 A. Now, again, how that happens in practice in terms of the  
7 regulatory framework would obviously have to be worked  
8 through.

9 Q. Yes. I would like to move on away from Article 2 to  
10 some extent. We have heard evidence about Article 14,  
11 which is triggered in conjunction with Article 2, and I  
12 would like to talk to you about the issue of race.

13 Obviously when I spoke to you this morning, we look  
14 at the standards, we looked at equality and diversity  
15 and I specifically asked you if that included issues of  
16 racial discrimination, which you confirmed it would. So  
17 we know that that aspect of the standards of  
18 professional behaviour is very much part of what is  
19 Schedule 1 of the Regulations.

20 And could we look at paragraph 6 of your Inquiry  
21 statement. I think you've said at the very end of that  
22 paragraph and it sums it up:

23 "Police Scotland had a zero tolerance approach to  
24 racist behaviour."

25 Now, that's very straightforward and then if we

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1           could look at page 3 of the letter that we were looking  
2           at earlier, this is the letter to the Chair, from  
3           March 2002, and if we can look at page 3 of that --  
4           sorry, page 3 and I'm interested in paragraph 3:

5           "The Chief Constable has made it clear that racism  
6           or discrimination of any kind is deplorable and  
7           completely unacceptable. It should have no place in  
8           society and it has no place in policing. Any perceived  
9           failure to further the policy of zero tolerance within  
10          Police Scotland of racist views or discriminatory  
11          attitudes would seriously undermine the confidence of  
12          every community in Police Scotland. It would be highly  
13          damaging to the integrity of the service and the rigour  
14          with which that policy of zero tolerance is discharged  
15          between and among police officers and members of police  
16          staff. It would be antithetical to Police Scotland's  
17          values of integrity, fairness and respect and contrary  
18          to our commitment reflected in the police officer's  
19          declaration to upholding human rights and a shared  
20          mission to keep people safe."

21          I'm not sure I said that right, but anyway.

22          A. You did.

23          Q. We have also heard in the opening statement from the  
24          Chief Constable that Police Scotland wish to be  
25          antiracist. So these are very strong public statements



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1           made by and on behalf of Police Scotland and you  
2           indicated in opening statement through counsel that:

3                     "Holders of the public office of Constable are  
4           subject a strict regulatory framework, which is  
5           essential for the preservation of public confidence."

6           And you also said:

7                     "A rigorous adherence to legal duties will be  
8           continually assessed and evaluated for effect."

9           So again, very strong public comments about racial  
10          discrimination and how it's not acceptable to  
11          Police Scotland. Now, we have heard evidence about  
12          Article 14 and the impact of Article 14 in relation to  
13          PIRC and Crown Office. And we have heard and it's --  
14          witnesses have agreed that as part of the obligations  
15          under Article 14 that you must take all reasonable steps  
16          to unmask any racist motive, so racial motivation is a  
17          thing that has to be rooted out?

18          A. Absolutely.

19          Q. And that that aspect of any investigation of an  
20          Article 2 investigation must be pursued with vigour, and  
21          we've compared that description of Article 14 and the  
22          obligations of that in conjunction with Article 2 with  
23          the actions taken by PIRC and Crown Office and I would  
24          like to ask you, if you use -- if you take that  
25          statement of Article 14 in conjunction with Article 2

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1           from me, how you consider Police Scotland's approach to  
2           the 2014 Regulations may or may not comply with the  
3           Article 14 obligations?

4           A. So again -- I mean, again, I think when the events of  
5           2015 occurred, the issue of, you know, was race a factor  
6           in the death of Mr Bayoh should absolutely have been  
7           part of the considerations going forward at the time the  
8           incident -- the incident and tragic set of consequences  
9           from that incident occurred.

10          Q. So race should have been part of the investigation, if  
11          it was to be Article 2 and Article 14 compliant?

12          A. That's my -- again, I'm speaking -- I wasn't in  
13          Police Scotland at the time, but that would be my view  
14          that --

15          Q. That was the position then and it would have continued  
16          to be the position throughout the period to now?

17          A. Yes.

18          Q. And we know under the 2014 Regulations that racial  
19          discrimination is a feature. It's something that if  
20          that exists it would run foul of the Schedule 1  
21          standards of professional behaviour. In what way have  
22          Police Scotland -- insofar as they have control over  
23          these Regulations and the issue of misconduct, in what  
24          way have Police Scotland taken all reasonable steps to  
25          unmask any racist motive or to pursue these issues with

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1           vigour, given what you've said that no consideration  
2           will be given until the end of the Inquiry or perhaps  
3           beyond?

4        A.  So again, counsel, from my perspective, given that  
5           the Inquiry's terms of reference talk about, you know,  
6           was race a factor, I would not want anything -- we can  
7           go back over the availability of documentation, the  
8           timeline and the like that we have already discussed and  
9           described.  Given the terms of reference of the public  
10          inquiry itself, we certainly would not want to cut  
11          across those.  What we doing within Police Scotland is  
12          absolutely looking at what it means, and this is  
13          learning for us already and commitment for us already  
14          out of the public inquiry, leave the subject officers  
15          within the public inquiry to one side for the moment,  
16          but certainly the learning for us to date from the  
17          public inquiry and also from the work that we have done  
18          under the auspices of Policing Together and the EDI, the  
19          Equality, Diversity and Inclusion Strategy, within  
20          Police Scotland tells us very clearly that there is work  
21          to be done for us organisationally to become a truly  
22          anti-racist organisation, to understand what that means  
23          and to integrate our determination to become an  
24          anti-racist organisation into every element of policing  
25          activity.

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1           Now, I don't think that was the case in 2015,  
2           I wasn't here. Certainly the work that I have done or  
3           the work that I did in my tenure in Police Scotland very  
4           much focused on how do we become a different  
5           organisation, a better organisation, an organisation  
6           which actually understands what it means to be  
7           antiracist, and what that then means in terms of the  
8           discharge of those powers and responsibilities that are  
9           vested within police -- within police officers and also  
10          what that means in terms of the culture within the  
11          organisation to ensure that it nurtures, supports,  
12          values and progresses every single individual police  
13          officer or member of police staff within the  
14          organisation.

15        Q. And talking about learning from the Inquiry, you have  
16        said to us earlier today that you were really in charge  
17        of liaison with the Inquiry and handling the Inquiry,  
18        and I don't wish to explore any matters that may be  
19        privileged or confidential, but would you be able to  
20        share with us the process which you have adopted to  
21        learn from things that come out during this Inquiry?

22        A. Certainly. I think I'm looking at the Police Scotland  
23        legal team as I speak, counsel, but we --

24        Q. I don't want to encroach on anything that may be  
25        privileged. I don't believe this will.

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1       A. No, that process, and that was one of kind of the key  
2       responsibilities which I felt I had was to learn and to  
3       assist the organisation to learn from the public  
4       inquiry.

5               Now, I think there may be a colleague called to talk  
6       about organisational learning at some point, counsel,  
7       but, yes, certainly we can explain in some detail,  
8       because there was a significant amount of work ongoing  
9       in my tenure in Police Scotland that resulted in changes  
10      and upgrades to policies and practices, particularly  
11      those which were engaged around or which were engaged  
12      around 2015 and which have subsequently, as I say, been  
13      upgraded and improved. That is fundamental learning for  
14      us from the Inquiry and very happy to share that to  
15      date, from the Inquiry to date, very happy to share that  
16      with you.

17      Q. Thank you. And am I right in thinking that notes have  
18      been taken during the course of the Inquiry and  
19      improvements have been made on an ongoing basis and  
20      Police Scotland have not simply waited in terms of  
21      making improvements until the end of Inquiry?

22      A. I think that's right absolute right and if we were to  
23      look specifically, for example, at family liaison  
24      officer and how a family liaison officer is trained, how  
25      they're deployed, their understanding of cross-cultural

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1 communication, how they might engage with a member of a  
2 black or minority ethnic community who has lost a loved  
3 one, whatever circumstances, those policies have been  
4 actively worked upon over the course of the Inquiry.  
5 That's just one example.

6 The operational safety training, as I think you have  
7 heard, is constantly being upgraded, as is the Scottish  
8 police emergency life saving training as well. So there  
9 are a number of different policies, practices and  
10 procedures which are being reviewed over the course of  
11 the Inquiry.

12 What I would add to that is that one of the elements  
13 of the Equality, Diversion and Inclusion Strategy which  
14 was given effect in Police Scotland or given effect to  
15 in Police Scotland, I think it was in early 2022, talks  
16 about us constantly going back and reviewing policies,  
17 practices and procedures to ensure that they are  
18 antiracist and that they do not unwittingly discriminate  
19 against anybody who is from a different minority ethnic  
20 or black background and indeed that also refers to  
21 other, you know, people with other protected  
22 characteristics as well.

23 Q. Thank you. I would like to go back to one thing. I  
24 asked you previously about disclosure of the PIRC  
25 report?

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1 A. Yes.

2 Q. And when that took place and what steps, if any, had  
3 been taken after that. And it may be that if I ask you  
4 about this it will prompt a memory with you. Although  
5 much disclosure is given by the Inquiry, there is  
6 something known as a restriction order which precludes  
7 that information being disseminated publicly. Did you  
8 take a view that that restriction order would interfere  
9 in any way with your obligations under the Regulations?

10 A. I genuinely don't know. I can't answer that.

11 Q. That's fine. Now, we've talked about the gold group and  
12 I would like to move on to that.

13 Let's look at your Inquiry statement and if we could  
14 look at paragraph 8, please:

15 "This gold group had been formed prior to my  
16 appointment to Police Scotland. It was concerned with  
17 issues including community engagement; the overview of  
18 ongoing legal matters; overview of any internal  
19 investigations and processes; situational awareness of  
20 ongoing media coverage; and the welfare of the officers  
21 involved."

22 That seems to be a broad remit for a group. So we  
23 have heard about other gold group meetings that took  
24 place at a very early stage after 3 May 2015. Is this a  
25 different type of gold group?

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1       A. Yes, it is. The reason we still had gold group and that  
2       gold group matured and evolved again, counsel, with  
3       the -- as we understood that there would be a public  
4       inquiry in order that we could, as Police Scotland,  
5       commit to the Chief Constable's -- the then Chief  
6       Constable's aspiration to be as supportive and  
7       transparent with the public inquiry as Police Scotland  
8       possibly could be as a core participant, but that was  
9       not a -- so that was not a critical incident gold group  
10      if you like.

11             This was a gold group which was still set up which  
12      clearly had come about as a consequence to -- as  
13      a consequence of a critical incident, but we were now  
14      some number of years on, so this was really to ensure  
15      that we still had and we mentioned this earlier today  
16      that Police Scotland was still well aware and it was not  
17      forgetting, at the highest levels within the  
18      organisation, of the events of May 2015.

19      Q. Although the reference in your statement seems to  
20      suggest this was a very large remit, is this all to do  
21      with the death of Mr Bayoh?

22      A. Yes, it was. Yes, it was. Now, as I say that -- the  
23      gold group its terms of reference were expanded when we  
24      knew that the public inquiry was going to take place,  
25      but this was to do -- because we knew at some point we



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1           were either going to get the material back from the  
2           PIRC, there was going to be an assessment carried out or  
3           there was going to be a fatal accident inquiry or indeed  
4           a public inquiry, so it was very important that we  
5           maintained that overview from a Police Scotland  
6           perspective of the events and the circumstances of 2015.

7           Q.   When earlier I was asking about public concern and how  
8           that was being weighed and assessed and considered, and  
9           you talked about the group engaging with community  
10          engagement, this was done through this gold group?

11          A.   So the gold group took the product in.  The engagement  
12          would be done locally, as we said earlier, either by the  
13          divisional commander on the -- in -- responsible for the  
14          division that the event occurred in, but also we have a  
15          or certainly we had at the point in time when I was in  
16          Police Scotland a Preventions and Community Well-being  
17          Division as well, which would take a broader look across  
18          the country at any issues around community cohesion or  
19          community engagements, so locally and nationally, and  
20          the product fed into the gold group, which would enable  
21          me, if I wasn't happy with the product, to go back and  
22          ask for a bit more detail or a better understanding of  
23          what might be happening, you know, in Kirkcaldy or other  
24          parts of Fife, for example.

25          Q.   And you were the Chair of the gold group?

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1       A. I took responsibility on to become the Chair of the gold  
2       group when I moved into the organisation, yes.

3       Q. Who's involved in the gold group?

4       A. So it was an iterative process, as I say, the gold group  
5       and when I took it on to -- when I passed the Chair over  
6       to ACC now DCC Spiers when my responsibilities and  
7       portfolio changed. If we talk most recently, counsel,  
8       about that gold group, it would involve my deputy,  
9       ACC Spiers then, who's responsible for ensuring that  
10      sort of tactically we were preparing properly for the  
11      public inquiry. It would involve and did involve the  
12      ACC who was local to the division in which the events of  
13      2015 had occurred and, again, to ensure that the  
14      community cohesion, community tension, any issues that  
15      might be arising on that division, we had proper -- we  
16      had a proper oversight of and understanding of.

17             There would also be legal representation on that  
18      group to ensure that actually we were getting the proper  
19      advice and ensuring that any decisions that were taken  
20      were appropriate and lawful, and equally, just simply  
21      because of the length of time, and we have alluded to  
22      this already, that the gold group had been running for  
23      and the time that the various investigative process had  
24      been running for just to ensure that there was a  
25      consistency in approach throughout.

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1           We would have colleagues from corporate  
2           communications sitting within that group as well and  
3           very latterly we would have -- just look to have an  
4           understanding of finance and costs around the various  
5           different processes and inquiries that were ongoing.

6           Q. Thank you. Then can we look at paragraph 3 and you talk  
7           about, as she was then, Dame Angiolini's Independent  
8           Complaints Review in 2020 and you say paragraph 3:

9           "I set up the Equality, Diversity and Inclusion  
10          (EDI) oversight board in March 21 to bring together  
11          internal and external aspects of new and ongoing  
12          activity to counter discrimination and to focus on the  
13          issues of equality, diversity and inclusion."

14          And it says:

15          "The oversight board consisted of chief officers  
16          from across Police Scotland, as well as external  
17          interested parties: HMICS; the Scottish Police  
18          Authority, members of the independent review group that  
19          had been created following the Dame Elish Angiolini  
20          independent complaints review in 2020; statutory and  
21          non-statutory staff organisations; colleagues from  
22          People & Development (P&D); colleagues from PPCW, which  
23          was tasked with coordinating community facing EDI  
24          activity; the National Police Chiefs' Council chief  
25          officer responsible for creation of the England & Wales

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1 Race Action Plan was also invited to attend so we could  
2 learn and share good practice with colleagues and home  
3 office forces."

4 So the oversight board, am I right in saying that  
5 arose out of the Dame Elish Angiolini's complaints  
6 review in 2020?

7 A. No.

8 Q. Oh, no?

9 A. No.

10 Q. Right.

11 A. So the EDI oversight board we set up because the  
12 chief -- one of the key tasks that the then chief  
13 constable gave me, counsel, was to enhance  
14 organisationally our understanding of race and diversity  
15 inclusion matters and also to address a number of issues  
16 which were extant in Police Scotland at that time. So  
17 there were almost two train tracks running in parallel.  
18 Dame Elish was carrying out her investigation and at the  
19 same time I was in Police Scotland striving to  
20 understand what the culture of the organisation was and  
21 one of the ways I did that was by speaking to numbers of  
22 black and minority ethnic colleagues who started to give  
23 me an understanding of how the organisation felt for  
24 them and that was one of the key drivers of setting the  
25 EDI board up. One of the other key drivers was that

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1           actually at that point in time, and no disrespect  
2           whatsoever to my predecessors, I felt that EDI activity  
3           was scattered about the organisation and wasn't actually  
4           as coherent as it could be and as a consequence of that  
5           wasn't likely to deliver the effect that I felt needed  
6           to be delivered across the organisation in order to  
7           ensure that we could actually impact positively on the  
8           culture of Police Scotland so the -- when Dame Elish  
9           provided her sort of recommendations, actually the  
10          recommendations around the experiences of black and  
11          minority ethnic colleagues were absolutely aligned to  
12          what I had been told directly by black and minority  
13          ethnic colleagues in the focus groups that we had set up  
14          precursor activity to the EDI board which obviously then  
15          became the Policing Together oversight board, so as I  
16          say, there were a number of activities running in  
17          parallel in Police Scotland at that point in time.

18        Q.    So a number of parallel activities in relation to this  
19            issue of EDI, as a result of that, as a result of  
20            Dame Elish's report in 2020, a number of factors came  
21            together and culminated in the setting up of the  
22            oversight board --

23        A.    Yes.

24        Q.    -- in March 2021?

25        A.    That's absolutely correct, and you'll see from the



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