

Transcript of the Sheku Bayoh Inquiry

Thursday, 20 June 2024.

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(10.00 am)

LORD BRACADALE: Good morning, Ms Taylor. Ms Grahame.

MS GRAHAME: Thank you. Good morning.

A. Good morning.

Evidence of RETIRED DCC FIONA TAYLOR (continued)

Examination-in-chief MS GRAHAME (continued)

MS GRAHAME: I would like to return, first of all, to some matters regarding the 2014 Conduct Regulations again.

Let's look at your statement, SBPI 00546, please.

This is your response to the Rule 8 request and I would like to look at paragraph 4. And you'll see here you're talking about in 2019 and 2020?

A. Yes.

Q. And yesterday you explained you joined Police Scotland in 2018?

A. Yes.

Q. And then you were appointed shortly after to the position of Designate DCC?

A. Yes.

Q. And so this is you describing the steps you were taking the year after you joined and the year after that?

A. Yes.

Q. And you say:

"[You] spoke with many black and Asian colleagues

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1 through focus groups set up by SEMPER Scotland.
2 Police Scotland created an action plan to address issues
3 they raised, which included support through the training
4 and probationary period, access to training courses,
5 recognising their exposure to micro-aggression, issues
6 that were not necessarily conduct or discipline related,
7 more often around organisational culture."

8 And I'm interested in that phrase there about
9 "exposure to microaggression, issues that were not
10 necessarily conduct or discipline related". Are you
11 suggesting there that microaggression would not
12 necessarily be treated as a conduct or discipline matter
13 at that stage?

14 A. So I think if we take that sentence in its entirety,
15 we're also talking about the experiences that, not
16 exclusively, but often younger black and Asian
17 colleagues were experiencing in Police Scotland and that
18 sat for me very much in the space of institutional
19 racism sort of declaration that Sir Iain made and our
20 determination to be an antiracist organisation, because,
21 for instance, an example would be younger black and
22 Asian colleagues weren't always having or getting access
23 to the training courses and the support that white
24 colleagues were taking for granted at the very start of
25 their career.

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1 Now, on an individual basis, that might just be one
2 Sergeant making a decision about the career progression
3 of one member of their team. However, on an
4 organisational basis, there was a theme emerging. So
5 from an institutional perspective what were we doing in
6 Police Scotland to aggregate all of these instances of
7 individual police officers and members of police staff
8 not receiving the grounding and the foundation that they
9 required within our organisation to ensure that they had
10 equity of opportunity progressing their careers with
11 their white colleagues. So that for me is an
12 institutional issue because actually what I needed was
13 to ensure that divisional people boards were actually
14 checking up on the distribution and dissemination of
15 locally-controlled training courses.

16 Now, when we get into the issues of microaggression,
17 as you asked, counsel, those can span anything from not
18 sitting beside somebody in a canteen and that was a set
19 of circumstances which was described to me on a number
20 of occasions: a black or Asian officer would go and they
21 would have their lunch and they would find they were
22 sitting on their own. There were issues described to me
23 of colleagues saying "Where are you from? Well, I'm
24 from Scotland. Yeah, but where are you from, because
25 you're black." So those are the type of

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1 microaggressions actually.

2 Anything more significant than that, racially
3 abusive language, and again there were experiences
4 brought to my attention around religious and
5 racially-aggravated hatred being evinced towards our
6 colleagues and that is absolutely in the disciplinary
7 space. The issue for me in terms of potentially conduct
8 or organisational culture and we have heard and we have
9 heard and indeed counsel referenced in her interim
10 submission that one of the kind of key, you know, almost
11 lightbulb moments for me from being at the Inquiry
12 previously was the fact that the equality, diversity and
13 training that we were giving our colleagues wasn't
14 always sticking. It was almost a sort of tick-box
15 exercise.

16 So this for me is about actually doing a number of
17 things. First of all, it's ensuring -- in terms of
18 dealing with microaggressions, it's ensuring that every
19 colleague within Police Scotland understands what their
20 responsibilities are both in terms of the Equalities
21 Act, but also in terms of our core values, the code of
22 ethics and indeed, as we discussed yesterday, the
23 standard of behaviour and we did that through an EDI
24 training module which was absolutely mandatory for
25 everybody in Police Scotland and I think, when I

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1 retired, about 96 per cent of the organisation had
2 completed that training module.

3 Now, again in terms of intervening to, first of all,
4 recognise and this is an issue again that many black and
5 Asian colleagues raised with me, that their colleagues
6 didn't recognise the effect that their behaviours were
7 having on black and minority ethnic colleagues. Now,
8 from my perspective, it's not about effect, it's about
9 impact and there was clearly an impact being had on
10 numbers of my black and ethnic minority colleagues,
11 because of the unwitting behaviours that were being
12 evidenced towards them by some and certainly not all and
13 certainly not the majority, but by some of their white
14 colleagues.

15 So when I'm talking about micro aggressions, I am
16 talking those day-to-day occurrences which -- and this
17 is where Professional Standards needed to have that
18 additional training to understand implicit bias better,
19 to understand the necessity to aggregate sets of
20 circumstances, as opposed to taking one to a white
21 police officer probably relatively innocuous incident on
22 its own. So there was a suite of activity taken
23 forward, counsel, to ensure that we organisationally
24 understood the impact that these seemingly minor actions
25 towards black and minority colleagues were actually

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1 having on our colleagues. You might take them
2 individually and say, well, actually they don't meet the
3 threshold for any conduct, because not sitting beside
4 somebody that's very hard to determine why that should
5 be, but the person who is not being sat beside knows.
6 So actually it's about impacting on the culture of the
7 organisation.

8 The other aspect of that as well then is the
9 training that we need to provide to first and second
10 line managers who are the individuals who are going to
11 be in the briefing room, they're going to be in the
12 canteen, they're going to be speaking to their team or
13 their shift to ensure that those leaders and the first
14 and second line managers, I can't stress strongly enough
15 how important the leadership demonstrated by first and
16 second line managers in policing is, because they are
17 actually the people who set the culture. But unless and
18 until we make it clear to those leaders what we expect
19 from them and then, just as importantly, provide them
20 with the skills, the training, the educational and the
21 tools to enable them to live up to the organisation's
22 determination to become genuinely antiracist, that makes
23 it more difficult to hold them to account. Once that
24 training, that educational, that upskilling has been
25 delivered, we can then really start to impact on the

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1 culture of the organisation.

2 LORD BRACADALE: Ms Taylor, could I remind you that the
3 proceedings are being transcribed by a stenographer
4 remotely. Could I ask you just to take things a little
5 more slowly in your answers.

6 A. Apologies, Chair. It's something I do tend to get quite
7 passionate about.

8 LORD BRACADALE: Appreciate that.

9 MS GRAHAME: Thank you.

10 So if I can take that answer and sum up what I
11 particularly want to ask you about, microaggressions
12 could include matters pertaining to racial
13 discrimination, but it would not just be interpersonal,
14 it could also potentially by institutional matters?

15 A. Yes.

16 Q. Now, we heard yesterday from you that Police Scotland
17 seeks to have a zero tolerance attitude to any
18 discrimination and particularly we're interested in
19 racial discrimination. Would a microaggression
20 understood by a person, a colleague, an officer as
21 racial discrimination be dealt with through the
22 2014 Regulations?

23 A. So again, counsel, that -- I can't give you a binary
24 answer to that, because what we have to accept and
25 acknowledge is that there is an organisational

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1 responsibility to ensure that our colleagues understand
2 that the behaviours that they are evincing could
3 potentially be seen to be racist and discriminatory, but
4 if an individual has come through the schooling system
5 in Scotland, the schooling system anywhere else in the
6 rest of the United Kingdom, for example, gone through
7 university potentially and then come into policing, they
8 may not have any understanding that that behaviour is
9 potentially racist. And it's our responsibility to
10 educate those officers, to educate those first and
11 second line managers, to help them to understand that
12 those behaviours are not acceptable.

13 Now, if there is then a recurring pattern of
14 behaviour, then that is when my anticipation would be
15 that, yes, this does start to get into the conduct space
16 and, equally, counsel, my anticipation would be that if
17 those behaviours were evidenced towards a police
18 constable but a more senior colleague, by a sergeant or
19 an inspector, then again tolerance levels from my
20 perspective would come down.

21 Q. So is it possible that an assessment could be carried
22 out under the 2014 Regulations under Regulation 10 that
23 a decision is taken that this is perhaps at the lower
24 level? You talked yesterday about honest mistakes or
25 lack of awareness or the need for educational and then

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- 1 that will be diverted away from the Regulations and
2 dealt with through educational means?
- 3 A. That is very possible, yes.
- 4 Q. Right.
- 5 A. Yes, that is very possible, but, again, just to follow
6 on to your question, if that -- if those were the
7 circumstances which occurred, then clearly there would
8 be records kept of that and if we find somebody who, you
9 know, is recidivist, for want of a better term, then,
10 again, where Professional Standards need to be is to
11 look at that behaviour in the round over time.
- 12 Q. Right. So if someone is incapable or unwilling to be
13 educated and to learn and to have regard to that
14 increased awareness?
- 15 A. So I take you back to the statement that was made by
16 Sir Iain which said that if you hold values which are
17 incompatible with the values of Police Scotland in terms
18 of fairness, integrity, respect, commitment to upholding
19 human rights and you evidence racist behaviour, then you
20 are not welcome in Police Scotland.
- 21 Q. Right. And part of ensuring not only that those
22 officers feel not welcome, but ensuring that they do not
23 continue with Police Scotland would be the 2014
24 Regulations would be one of the mechanisms?
- 25 A. It would be one of the mechanisms absolutely. However,

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1 you'll no doubt have recognised from the statement, if I
2 have expressed myself properly within it, that actually
3 the Policing Together Programme which we embarked upon
4 in Police Scotland was a long-term and from my
5 perspective has to be sustained programme of cultural
6 change within the organisation, which actually minimises
7 the opportunity for anybody who has gone through the
8 probationary training regime in Scotland moving forward
9 or indeed has partaken in any other training within
10 Scotland to continue to claim that they are oblivious to
11 the fact that they are causing offence and that might be
12 racist offence.

13 Q. Thank you. Can I move on and ask you questions about a
14 statement we have, Deborah Coles, SBPI 00607, and I'm
15 interested in paragraph 100.

16 Now, this is an Inquiry statement that's been
17 provided to the Chair and it's been signed by Ms Coles
18 and we're hoping at some stage to hear further evidence
19 from her although we haven't yet. So if we look at
20 paragraph 100, it says:

21 "I'm asked whether the approach I described of
22 deaths being investigated with a starting assumption
23 that there is no potential criminality and wrongdoing is
24 a common theme among cases I've seen. Absolutely. It's
25 almost like they have a narrative in their minds and

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1 they're working towards justifying that narrative and
2 explaining that narrative, rather than approaching it
3 independently and with a very open mind. It's also the
4 way in which we see time and again State denial,
5 defensiveness and a lack of candour from public
6 authorities and police officers, more concerned with
7 reputation management than a properly conducted full and
8 fearless investigation and the pursuit of the truth.
9 There isn't that political concern in the way that I
10 think that there should be, because at the end of the
11 day somebody's died at the hands of the State."

12 Now, we will hear that Deborah Coles is a director
13 of Inquest and we will hear more from her, but
14 I understand you are aware of who Deborah Coles is?

15 A. Yes.

16 Q. Now, looking at that and we can bring that back up the
17 top of that paragraph, I would like to ask you for your
18 comments on this. She describes this as a starting
19 assumption that there's no potential criminality and
20 wrongdoing and that's a common theme that she's seen in
21 cases and a narrative that they're justifying and
22 explaining that, rather than approaching things with an
23 open mind. I wonder whether you can express to us
24 whether you agree with that comment or whether that's a
25 surprise to you?

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1 A. So I'm very aware of the work that Ms Coles does, I'm
2 aware of Inquest, I am aware of the incredible work that
3 they are doing, particularly in England and Wales,
4 predominantly in England and Wales. If that is
5 Deborah's perception then that's absolutely the
6 circumstances that Deborah Coles has experienced.

7 From my perspective, and I think we did touch on
8 this yesterday, the investigation of any death in
9 custody, the death of an individual at the hands of the
10 state absolutely should be approached with an open mind
11 with due regard to any and all circumstances that may be
12 relevant to the death of that individual and should be
13 investigated independently, rigorously and certainly
14 without ruling anything out at the start of the
15 investigation.

16 Q. And when she -- if we move down the page, we'll go back
17 to the passage where she says time again she sees:

18 "Denial, defensiveness and a lack of candour from
19 public authorities and police officers more concerned
20 with reputation management than a properly conducted
21 full and fearless investigation"

22 Do you have any comments to make about that?

23 A. So again, what I would say and forgive me, counsel, but
24 I will contextualise this into a Police Scotland sort of
25 context as opposed to perhaps the context that Ms Coles

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1 is more familiar with. I would argue that our previous
2 Chief Constable's declaration that our organisation is
3 institutionally discriminatory is absolutely not about
4 defensiveness, it's not about a lack of candour or
5 transparency, it's about an absolute commitment from a
6 Police Scotland perspective moving forward to get things
7 right for every member of every community in our
8 country.

9 Q. Has there been a change between 2018 and the statement
10 made by Sir Iain Livingstone last year?

11 A. There is a -- Police Scotland is in an ongoing, sort of,
12 developmental phase. Culture change, as you know,
13 counsel, is not quick in an organisation of 23,000
14 people, which is as diverse as Police Scotland is. As
15 you know, people -- anybody can become a police officer
16 and that is the strength of the organisation in many
17 ways, but it also means that we do have to create this
18 kind of understanding of how we expect our colleagues to
19 behave towards one another, but also towards members of
20 the public for whom we are -- it's our responsibility to
21 provide them with a service. So, yes, I think the
22 organisation is developing.

23 If I look back on my career in Police Scotland, the
24 one thing I really regret not doing was having those
25 conversation with my colleagues from black and minority

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1 ethnic officers within Scotland throughout the auspices
2 of SEMPER Scotland in 2018 rather than 2019. If I look
3 back and say could I have done anything? Well, one of
4 the many things I could have done differently or better
5 would have been to have really understood the
6 experiences and the environment that those colleagues
7 were, you know, struggling with and trying to deliver a
8 service within and perhaps I should have been more
9 effective earlier in my tenure at starting to pull the
10 Policing Together Programme together.

11 Q. Right. Do you recognise that the description that's
12 given by Deborah Coles that at least at one time there
13 was a denial -- there was denial, defensiveness and a
14 lack of candour and more concern with reputation
15 management?

16 A. So I wouldn't want to speak about the events of 2015 in
17 that context, because I wasn't here, it's not fair for
18 me to do that. I can reflect on experiences in England
19 and Wales and the Metropolitan Police, for example, and,
20 yes, some of those behaviours were evident, yes, and
21 that was because I was there at the time and witnessed
22 them.

23 Q. Thank you. Could we look at paragraph 153:

24 "Shamefully as well families rarely are informed as
25 to changes have actually happened as a result of an

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1 investigation. It's a complete disservice and insult to
2 bereaved families. What families tell us time and again
3 is that nothing can bring their loved one back, but they
4 want systemic and meaningful change so that nobody else
5 goes through a similar experience. We've seen a lack of
6 candour and that culture of defensiveness from State
7 bodies towards change and learning during investigations
8 more concerned about reputation management and
9 protecting their policies and practices than learning
10 and improvement. Often you will find that State lawyers
11 will argue against recommendations being made or they'll
12 dismiss the need for recommendations because of the
13 passage of time, rather than seeing the scrutiny
14 afforded by an in-depth look at how and why somebody
15 dies as an opportunity to avoid another death taking
16 place."

17 And I think from what you've said earlier today and
18 yesterday is it fair to say that the Policing Together
19 Programme is designed to facilitate that change over a
20 long-term period?

21 A. Yes, counsel.

22 Q. Right. And we'll come on to that again later. Can I
23 move back to something else that you mentioned yesterday
24 and that was the gold group and you said it wasn't a
25 critical incident gold group, it was a different type of

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1 gold group and it existed for a number of years.

2 A. Yes.

3 Q. But it was related to Mr Bayoh's death. And yesterday
4 we looked at paragraph 8 of your Inquiry statement. Can
5 we just have that on the screen so that you can refresh
6 your memory on that. You have a hard copy.

7 So we touched on this yesterday and you said:

8 "That had been formed prior to your appointment with
9 Police Scotland and it was concerned with issues
10 including community engagement, the overview of ongoing
11 legal matters, the overview of any internal
12 investigations and processes, situational awareness of
13 ongoing media coverage, and the welfare of the officers
14 involved."

15 We've heard evidence about the gold group as it was
16 originally and the terms of reference of that gold group
17 and I wonder if I could refer you to those for a moment
18 if we could look at PS 06491 and this will be the gold
19 group meeting minutes from 3 May 2015, so that was the
20 day that Mr Bayoh died, and at 11.30 in the morning at
21 Kirkcaldy police station. You'll see that a number of
22 officers were present. ACC Nicholson was the gold
23 commander and then there were others. You may recognise
24 those names. If we could look at item 1, the terms of
25 reference, you'll see at the final in black print in

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1 italics it says:

2 "Ensure the integrity, interest and reputation of
3 the Police Service of Scotland and its staff is
4 maintained and safeguarded."

5 And you'll see in these minutes underneath in red it
6 says:

7 "Agreed that the wording of the terms of reference
8 would be considered and amended for future meetings to
9 provide terminology specific to circumstances of
10 incident."

11 But I asked a number of witnesses about the
12 inclusion within the terms of reference about "the
13 integrity, interest and reputation of Police Scotland"
14 being included as one of the terms of reference of that
15 gold group at that time and we've taken evidence from a
16 number of witnesses regarding that.

17 And can I ask you, looking at the group that you
18 chaired -- perhaps we should look at the minutes of
19 that, PS 05673 and this is from January 2020,
20 24 January, and you'll see this is the Police Scotland
21 Sheku Bayoh Gold Group, 18 September 2018, chair was
22 DCC Fiona Taylor.

23 Move down, and if we look at the proposed terms of
24 reference which are -- keep going -- there we are.
25 There's a reference to:

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1 "Ensuring the police service provides an effective
2 and professional response to all aspects of this inquiry
3 and to any associated events ... engage with and support
4 PIRC -- provide reassurance to the community ...
5 maintain appropriate levels of support to staff ...
6 develop and implement a strategic internal and external
7 communications strategy and identify priorities for
8 improvement to ensure any organisational learning."

9 And I appreciate that the wording is different here,
10 but was there any lingering sense that really what was
11 being maintained here was the reputation of
12 Police Scotland?

13 A. So from my perspective the reputation of Police Scotland
14 stands on the effectiveness of the investigation, our
15 candour, our openness, our transparency and I think
16 those terms of reference reflect that that actually
17 public confidence in policing in Scotland is not going
18 to be maintained if we come across as a defensive closed
19 organisation which lacks transparency.

20 So this is very much it's important, of course it's
21 important. A young black man has died at the hands or
22 in the course of contact with police officers. It's
23 absolutely fundamental that we maintain the confidence
24 of every community in Scotland about the service that
25 they will receive from the Police Service of Scotland.

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1 So I think it's really important that the maintenance of
2 public confidence in policing in Scotland, you know,
3 remains uppermost in the minds of those who attend such
4 gold groups, but the important thing is that that public
5 confidence will be -- this isn't about the status of the
6 organisation or the organisation trying to be defensive.
7 It's a genuine understanding that public confidence can
8 only be maintained if we are open and we are transparent
9 and, as the Chief Constable has said on a number of
10 occasions, if we make mistakes, we acknowledge those
11 mistakes and we learn from them and we move forward.

12 Q. Can I go back to the top of the minutes, please, and
13 you'll see that the attendance is given at the
14 beginning, as is the norm with minutes, and if we move
15 down -- sorry, I have gone too far. Can we see there
16 that David Kennedy is dialling in and he's from the SPF.

17 We've heard evidence across the Inquiry that by some
18 witnesses, not all, who have expressed concerns about a
19 narrative in the media which some witnesses have
20 suggested was at the instigation of SPF. We have heard
21 that SPF is a membership organisation and there has been
22 concerns about advice given to members, officers, at the
23 outset. So some concerns have been voiced.

24 And I wondered why the decision was taken to include
25 SPF in the attendees of this gold group meeting?

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1 A. So this was a gold group which I think if I recall from
2 the date at the top of those minutes, counsel, took
3 place relatively soon after I joined Police Scotland so
4 I'm, if you like, inheriting a legacy gold group at this
5 stage.

6 The SPF clearly and we have said that one of our
7 responsibilities is that the ongoing duty of the care to
8 the officers who were involved in the incident on 3 May
9 and that's the SPF's locus, counsel, in terms of helping
10 us to understand how we support our officers, subject
11 officers in this case.

12 The membership of the gold group did develop and
13 change over time. I'm sure we can provide you with
14 updates to how those gold groups evolved, if you don't
15 have them, and certainly in -- now, again, I'm going
16 slightly on memory here, I would need to see the minutes
17 to refresh my memory, but certainly in that last couple
18 of years I don't think there was any membership and
19 that's not casting any aspersions on the SPF at all, but
20 the gold group evolved and I don't think the SPF
21 continued its membership of that gold group. But I can
22 understand why they would have a locus and that, as I
23 say, is because of their responsibility to ensure that
24 the organisation lives up to its obligations to their
25 members, to subject officers.

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1 Q. So if the locus or the interest of the SPF is welfare of
2 officers, why did there come a point where the SPF
3 stepped away from the gold group?

4 A. Because I asked that a chief officer, an ACC, take
5 responsibility for the welfare of those officers. That
6 was the realignment of responsibility that came about as
7 the gold group developed, my understanding of the events
8 of 3 May 2015 developed. So we had an ACC along with
9 the Divisional Commander ACC, Tim Mairs, who was
10 responsible for welfare and well-being and had a
11 subordinate group to look at the issues around welfare
12 and well-being which answered -- provided updates into
13 the gold group which I chaired.

14 Q. In your view was that more appropriate that
15 Police Scotland have regard to welfare of their
16 officers?

17 A. Absolutely, I think there is a duty of care on the part
18 of Police Scotland, it shouldn't just be about the SPF.

19 Q. Right. And was there any concerns about the SPF being
20 included, they having taken that role until then or was
21 there a reason why you changed?

22 A. Gold groups evolve over time and clearly there was
23 significant evolution when we understood that we were
24 likely to be supporting or be a core participant in a
25 public inquiry and the gold group evolved to ensure that

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1 Police Scotland could properly discharge our
2 responsibilities towards the public inquiry. That's one
3 example that I would give you.

4 I can't speak to why the SPF had been on the gold
5 group previously. I do know the individual concerned
6 who I think is absolutely -- he is an ethical individual
7 and has -- you know, would have the best interests of
8 the officers at heart. I don't think there would be any
9 desire or determination on the part of that particular
10 individual to do anything other than provide that
11 support to the officers.

12 Q. Right. Can I ask you again about the oversight board,
13 we touched on this yesterday afternoon, and that was set
14 up in 2021.

15 A. Yes.

16 Q. And you talked about Dame Elish's 2020 report at that
17 time.

18 A. Yes.

19 Q. And that being one of the elements that fed into the
20 decision to set up the oversight board. Can I ask you
21 having received the report from Dame Elish, as she then
22 was, regarding the 2022 report, what steps were taken by
23 you in relation to implementing any of her
24 recommendations?

25 A. So we took those recommendations incredibly seriously,

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1 not least because the experiences that colleagues
2 related to Dame Elish were absolutely the experiences
3 that those colleagues had related to myself through the
4 auspices of SEMPER and the prospect of losing, you know,
5 black and minority ethnic colleagues between three and
6 five years of service, you know, was just inimicable
7 quite honestly, counsel. So the recommendations that
8 Dame Elish made in the round were incredibly important
9 so we set up, within Police Scotland, a team to look up
10 the -- the recommendations for Police Scotland fell
11 generally into two categories, one category was in the
12 P & D, the people space, and another category was in
13 the -- were those which pertained to professional
14 standards and the way that the PSD as an entity went
15 about its business.

16 So we took all of those recommendations incredibly
17 seriously. Each recommendations was given an action
18 owner. There were organisation structures pulled
19 together within Police Scotland and, as you will be
20 aware, counsel, I suspect, multiagency sort of working
21 groups to look at the discharge of Dame Elish's
22 recommendations, along with a ministerial group which
23 exercised very strategic oversight of the
24 recommendations and upon which I sat deputising for the
25 Chief Constable. So there was a multilayered approach

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1 at a very high level within our organisation and indeed
2 Scotland to ensure that Dame Elish's recommendations
3 were given effect to and were discharged.

4 Again, within Police Scotland, counsel, the
5 recommendations that sat within the gift of
6 Police Scotland to discharge without the need for
7 external legislation, and we talked yesterday about the
8 bill that is wending its way through parliament, before
9 we discharged those recommendations, each of those
10 recommendations, with the associated action sitting
11 alongside them, were provided to HMICS so that then Her
12 now His Majesty's Inspector of Constabulary could
13 quality assure the work which we had done to discharge
14 the recommendations which Dame Elish made for
15 Police Scotland.

16 Q. By the time you retired, without looking at any
17 recommendations that required legislation, had steps
18 been put in place to implement those recommendations?

19 A. Yes, and there is a very detailed action plan, sorry,
20 action tracker, I should say, which outlines exactly the
21 work which has been done to discharge those
22 recommendations. We have that internally and I am sure
23 we can furnish you with it, but that also sits on the
24 Scottish Government's website because the
25 Scottish Government reported I think it was quarterly or

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1 six monthly on progress towards discharging the
2 recommendations from Dame Elish's review.

3 There are I think, I think, certainly when I retired
4 three recommendations for PSD which had not been
5 discharged and that was because those recommendations
6 required an IT upgrade to the Centurian Professional --
7 the computer system, the IT system that sits within
8 Professional Standards that basically collates all of
9 the material which goes in Professional Standards. It
10 was not -- it's an old system, it's an elderly system,
11 it didn't, to the best of my knowledge, have the ability
12 to differentiate as effectively as we could around the
13 ethnicities of those who were making complaints into
14 Professional Standards.

15 So the Professional Standards team are in the
16 process at the moment of upgrading the Centurian ICT,
17 the computer system that manages all of their
18 recordkeeping.

19 Q. Did you have a timescale for that being upgraded?

20 A. It's really complex, and I am not an ICT specialist at
21 all. Again, I can get you detail on that one. But
22 because it's a national system and I think -- I might be
23 wrong here, but I think Police Scotland had potentially
24 missed a couple of upgrades, so there needed to be
25 preliminary upgrades for the Centurian system before we

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1 could bring it bang up to date. I think that's ongoing.
2 I couldn't speak to what the timescale is.

3 Q. Thank you. Could we go back to Deborah Coles'
4 statement, please, SBPI 00607 -- sorry, 152. Paragraph
5 152. Here we are:

6 "Inquest have identified a real accountability gap.
7 It is difficult to find out what has happened to the
8 countless recommendations that have come out of
9 investigations. Official responses to recommendations
10 often lack detail and are a cut and paste or formulaic
11 response to some of these reports. There's a complete
12 lack of transparency on the extent to which public
13 bodies are actually implementing recommendations. Quite
14 often recommendations are not analysed, there's no
15 central location where the public can view the progress
16 of any of these recommendations."

17 So I'm interested in two aspects of this. First of
18 all, whether the public can view progress of the
19 recommendations within -- the progress you're making in
20 Police Scotland and whether there is to some extent a
21 lack of detail or a formulaic response to some of the
22 recommendations? Can we deal with the public's ability
23 to access this information first?

24 A. Certainly. Well, we've talked about Dame Elish and the
25 recommendations from Dame Elish's review which are

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1 posted on the Scottish Government's website and there is
2 absolute transparency around those. We report to the
3 Scottish Police Authority. The Scottish Police
4 Authority has a bespoke scrutiny group which oversees
5 the Policing Together Programme, and reports back to the
6 public SPA board on the progress which has been made by
7 Policing Together against the action plan that sits.

8 So there's the EDI strategy has four outcomes, those
9 four outcomes have a number of actions which sit behind
10 them. There is no point having a strategy if you don't
11 have an action plan. We have an action plan which sits
12 behind the strategy and the Scottish Police Authority
13 take a very close interest in our progress to discharge
14 the actions from the EDI strategy and that is reported
15 upon publicly through the Scottish Police Authority main
16 board.

17 Q. In terms of public access that could either be through
18 the Scottish Government website or through SPA?

19 A. Yes.

20 Q. And then the other point that I was interested in was
21 the criticism by Deborah Coles that responses often lack
22 detail, they're cut and paste or formulaic responses to
23 some of these reports and the recommendations contained
24 within them. Can I ask for your comment about that, to
25 what extent are the responses to these recommendations,

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1 primarily the 2020 recommendations by Lady Elish, to
2 what extent are there detailed responses and not cut and
3 paste formulaic or lacking in detail?

4 A. So a couple of issues there, counsel. In the first
5 instance, I would not have tolerated cut and paste or,
6 you know, if you like rehashed responses to the
7 recommendations. We will provide -- I'm quite sure
8 through counsel we can provide that action tracker to
9 you and you will see that each of the recommendations
10 has a bespoke response beside it.

11 Now, if I take, for example, Dame Elish spoke about
12 the culture within PSD. We have introduced a new very,
13 very detailed -- I think it's a five-day training
14 programme for officers who are coming into our
15 Professional Standards Department. We have introduced
16 implicit bias training for officers who work within
17 Professional Standards. That's just one example.

18 We are looking at the grievance process, because the
19 grievance process has been identified by us and was
20 identified by Dame Elish as a point of potential
21 failure. It didn't satisfy anybody, timelines, outcomes
22 and the like. So colleagues and people in development
23 have basically gone back to first principles with our
24 grievance process to ensure that actually it works for
25 everybody who has reason to use it.

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1 So I would argue that the recommendations, our
2 response to those recommendations and again remember
3 that second layer of, if you like, assessment of the
4 quality of those recommendations was by an independent
5 body was by Her Majesty now His Majesty's Inspectorate
6 of Constabulary in Scotland before they got to
7 Scottish Government. I would argue that we took those
8 recommendations incredibly seriously. I had an overview
9 of them in my time in Police Scotland and I think the
10 responses to them are bespoke, they are tailored and
11 they are dovetailed with that broader Policing Together
12 cultural change programme.

13 Q. Thank you. Could we look at paragraph 161. This is
14 again Deborah Coles' statement:

15 "To then see that those recommendation have still
16 not been enacted is really frustrating and actually
17 makes me really angry. What is the point of all these
18 processes if the State can just dismiss them and not be
19 held accountable for that. My view is that in reality
20 that report is sitting on a shelf somewhere, every now
21 and then the dust is removed and somebody has a little
22 look because they have been asked a difficult question
23 about what's happened to some of the recommendations."

24 From your previous answer, I can guess that's not
25 how you would describe the Police Scotland response to

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1 the 2020 report by Dame Elish?

2 A. Counsel, that's absolutely correct. It is Dame Elish,
3 but it's also broader. Our approach to cultural change
4 is broader than the very helpful recommendations we
5 received from Dame Elish. Policing Together isn't
6 sitting on a shelf. Policing Together is a living
7 entity -- was when I retired -- within the body of
8 Police Scotland which aims to drive cultural change
9 within an incredibly important public body for the
10 better and for good.

11 Q. Thank you. Can I ask if we can go back to your
12 statement, please, to paragraph 13, so move away from
13 the statement by Deborah Coles:

14 "Discipline and Professional Standards have always
15 had a place within the police service. Within PSD there
16 was a real focus on organisational learning and feeding
17 good practice back into divisions and the wider
18 organisation. In terms of any PSD investigation there
19 was an absolute commitment to a transparent, independent
20 and highly competent investigation. PSD was
21 restructured to ensure this was the case."

22 Now, a PSD investigation, does that relate to when a
23 complaint about conduct, for example, has been received
24 or is that something else that's been described there?

25 A. No, that could very well reflect of that could very well

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1 relate to a complaint about conduct. It could also
2 relate to a complaint from a member of the public.
3 Rather than internal conduct of one police officer
4 saying I don't think this colleague is treating me
5 appropriately from the conduct perspective, also relates
6 to complaints against the police service or against
7 individuals within the police service from the public
8 and that restructuring in terms of complaints from the
9 public was to ensure that the front-line resolution
10 piece, if it was a relatively minor complaint, could be
11 resolved by means of an explanation or an apology was
12 done by colleagues -- was carried out by colleagues from
13 Professional Standards, as opposed to a member of the
14 local -- the local team in the area that the complaint
15 may have arisen.

16 Q. Right. And in terms of a PSD investigation, was there
17 one after the death of Mr Bayoh?

18 A. So again, that goes back to -- going back to 2015,
19 counsel. I think that takes us back into the -- back
20 into the realms of the conversation that we had
21 yesterday that the investigation, the Article 2
22 investigation, was carried out by the PIRC. I don't
23 know whether there was any Professional Standards sort
24 of involvement back in 2015. I apologise for that.

25 Q. And after the -- we talked briefly yesterday about

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1 correspondence that was sent by the legal
2 representatives of the Bayoh family direct to the Chief
3 Constable Sir Iain.

4 A. Yes.

5 Q. And after that formal complaint was sent in, that was at
6 a time in 2019 after Lord Woolman's opinion when you
7 were the DCC, was there any PSD investigation at that
8 time?

9 A. Counsel, I genuinely -- I'm not avoiding the question.
10 I genuinely can't remember. There were no circumstances
11 under which a letter of that nature would have come into
12 the Chief Constable and not been actioned, but exactly
13 what action was taken and what stage it reached, I would
14 need to ask colleagues to refresh my memory or ask you
15 to ask the Chief himself around the --

16 Q. We hope to hear from Sir Iain Livingstone and we could
17 perhaps explore that with him.

18 Can I ask you about the independent review group?

19 A. Yes.

20 Q. You make reference to this group in paragraph 18 of your
21 statement, and you'll see towards the bottom that final
22 paragraph there. It's just at the bottom of the screen:

23 "In addition, there should be independent external
24 evaluation and oversight, such as that provided by the
25 Independent Review Group (IRG) set up following the

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1 Dame Elish review and the SPA to ensure that the
2 outcomes described in the EDI strategy and associated
3 documents and implementation plan are delivered and
4 their effectiveness assessed."

5 Now, we've heard about the gold group, we have heard
6 about the oversight board and now this paragraph refers
7 to the Independent Review Group or the IRG. We have
8 also heard mention on the Professional Reference Group,
9 the PRG, and I wonder if you could help us understand
10 who the IRG and the PRG are?

11 A. Of course. So one of Dame Elish's -- start with the
12 IRG, counsel?

13 Q. That would be helpful?

14 A. One of Dame Elish's recommendations she said she was so
15 shocked by the situation within Police Scotland in terms
16 of our care or lack of care for minority ethnic
17 colleagues that there should be a root and branch review
18 of equality, diversity and inclusion within
19 Police Scotland. That's one of Dame Elish's
20 recommendations.

21 We thought long and hard about how we could
22 accomplish or how we could discharge that recommendation
23 and we considered a number of options, counsel. We
24 considered an academic evaluation of equality, diversity
25 and inclusion within Police Scotland, but we actually

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1 discounted that because what I wanted, agreed with the
2 Chief Constable and indeed with the then Cabinet
3 Secretary for Justice, Mr Yusuf, was that it would be
4 far better to ask a group of individuals not connected
5 with Police Scotland, but who were exemplars and either
6 advocates or with lived experience or academics in the
7 field of equality, diversity and inclusion to come
8 together as a group to be invited into Police Scotland
9 to be given access, to use that cliché, access all areas
10 within Police Scotland and to get into our organisation
11 and to help us understand where we could and should do
12 better, but, equally, I was really optimistic that by
13 bringing together a group, a highly powered group of
14 individuals who really understand how you change the
15 culture of an organisation, they could also point
16 Police Scotland in the direction of exemplars.

17 You know, where as an organisation which really
18 understands its culture, understands how to change its
19 culture, how can you help us align with an organisation
20 such as that so we can accelerate and enhance our own
21 learning? So that was the IRG, counsel, a group of
22 experts, academics, lived experience, community
23 advocates across all protected characteristics, not just
24 in the area of race, because we thought it was important
25 that, you know, we become properly antidiscriminatory.

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1 Those individuals were kind enough and generous enough
2 to come together to set an IRG up. It was independently
3 chaired. I suggested in working together with
4 colleagues and indeed the SPA, the Chair of the SPA
5 suggested an initial membership for that group. It made
6 it very clear to that group that, you are independent,
7 please do go out and bring any expertise into that group
8 that you think will enhance its ability to deliver on
9 its term of reference.

10 That group has delivered at least one -- I'm not
11 sure I think it was due to deliver a second
12 recommendations to the Scottish -- sorry, a second
13 report containing recommendations to the Scottish Police
14 Authority. That's post my retirement, so I'm not sure
15 whether that second report has been delivered. The
16 first report coincidentally was delivered to the Scottish
17 Police Authority in May 2023 on the same day that
18 Sir Iain spoke about the organisation in relation to
19 institutional discrimination between Scotland. So
20 that's the IRG, an independent group, set apart from
21 Police Scotland, but that can come in, go anywhere it
22 wants in the organisation, request any documentation and
23 then basically give us recommendations on how we
24 improve.

25 Q. Right.

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1 A. That's the IRG.

2 Q. And who are the PRG?

3 A. So the Professional Reference Group is different. I
4 need to be very careful here, because counsel,
5 Police Scotland counsel, attend the Professional
6 Reference Group so I don't want to trample into the area
7 of privilege. However, the concept for the Professional
8 Reference Group was actually something I had seen in the
9 Met. When I was in the Met the undercover -- the public
10 inquiry into undercover policing was just being set up.
11 The Metropolitan Police Service brought a number of
12 experts in issues such as communications, surveillance,
13 all of those kind of issues that were pertinent to the
14 undercover policing investigation, into the organisation
15 to support them with their thinking and their
16 understanding and their development towards supporting
17 the UCPI.

18 When I came into Police Scotland, when the public
19 inquiry was announced, quite frankly, I looked around at
20 my colleagues and thought, well, I'm a police officer,
21 28 years' service at that point time, but I'm a white
22 middle class female. How can I possibly understand what
23 it feels like to be a black citizen in Scotland in 2019
24 or 2020? So the PRG, again, not a dissimilar sort of
25 concept to the IRG, was about bringing advocates,

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1 academics and the reason I'm stuttering slightly is one
2 absolutely -- any number of outstanding academics into
3 the PRG, but also people from minority ethnic
4 backgrounds so they could talk to us about what it feels
5 like to be black or to be Asian in Scotland in 2019 and
6 so, counsel, they could really -- this was about really
7 challenging our thinking.

8 This group of individuals have access to myself, had
9 address to the Chief Constable. They were -- they had
10 access to our counsel team and, my goodness, they told
11 us what they thought about Police Scotland in terms of
12 its ability to discharge its obligations both to people
13 within our organisation, but also to broader communities
14 within Scotland. So it was a smaller group, it was more
15 focused, focused on the public inquiry and, again,
16 brought lived experience, but a wealth of academic
17 understanding of the concepts of racism, antiracism,
18 institutional discrimination and the like that we have
19 used to help understand how we should respond to the
20 issues which have arisen across the public inquiry.

21 Q. Who is on the PRG?

22 A. So again I might just -- I will, if you don't mind, just
23 check with counsel on that if -- we do have a list of
24 members obviously, but that may have changed. I can see
25 counsel nodding at me. So I can provide you or we can

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1 provide you with those -- with that membership list,
2 counsel. I'm just very conscious I don't know whether
3 the individuals who are on the PRG since I have been
4 away from Police Scotland have any anticipation that
5 they may be named in a public forum, so there may be
6 another way of providing you with that information.

7 Q. Well, that would be very helpful, but we will -- I'm
8 sure the team can liaise with counsel in regard to
9 identifying who is on it.

10 A. Absolutely, well do that.

11 Q. Thank you. We can do that another time.

12 Do the PRG prepare reports or recommendations which
13 can then be implemented by Police Scotland?

14 A. They certainly prepare reports, yes, to assist and
15 challenge our thinking.

16 Q. And what happens to those reports?

17 A. They are integrated into -- I'm certainly thinking, you
18 know, one report in particular around what it means to
19 be a genuinely antiracist organisation, that was
20 integrated into counsel's sort of opening statement and
21 also integrated into the thinking of the Chief Constable
22 when he talked about his understanding of institutional
23 discrimination and what it actually means.

24 Q. And how does that then -- I think we have heard the word
25 "cascaded" used by other witnesses. How is that

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1 information cascaded to officers who are constables in
2 response teams and doing their daily business?
3 A. Multiple channels, multiple channels. So the Policing
4 Together Programme has its own dedicated website. We
5 decided from a very early stage that that website should
6 be a portal into equality, diversity and inclusion
7 within Police Scotland. So within that portal are, for
8 argument's sake, the Chief Constable's statement to the
9 Scottish Police Authority in May 2023. There is
10 additional material within that portal about, well, what
11 does institutional discrimination actually mean, what is
12 it, what isn't it, how do you explain that to your team,
13 how do you make it very clear to your team what that the
14 Chief Constable is saying is not that you are a racist?
15 It's actually that the systems, structures and processes
16 within Police Scotland might be amenable to being
17 unwittingly racist and we need to accept that before we
18 can be properly antiracist.

19 So all of that material sits within the Policing
20 Together portal, counsel. It's also amplified through
21 the educational and training programs that were
22 taking -- we were taking forward in Police Scotland
23 prior to my retirement. You'll see mentioned in the
24 statement "Your Leadership Matters", which is -- it's
25 basically -- it's kind of a watershed moment, I think,

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1 for Police Scotland. That is training and education for
2 every single line manager in Police Scotland, or
3 certainly it was when I retired, educational and
4 training for every single line manager in
5 Police Scotland, the golden thread of which is how to
6 lead inclusively. It is about how to lead courageously,
7 how to lead collaboratively, but also how to lead
8 inclusively.

9 So again, that is a method for cascading to first
10 and second line managers and indeed every line manager
11 in Police Scotland up to and including the force
12 executive what it means to be antidiscriminatory and
13 what the standards of behaviour are that are expected
14 from them. So there's that training and educational
15 programme ongoing.

16 There is also, and again I think we have referenced
17 it, there was also an online package around EDI and, you
18 know, how you become -- how you basically fulfil your
19 obligations towards your colleagues and towards members
20 of the public from an EDI. So there was that online
21 training for every member of Police Scotland.

22 My ambition before I retired was that online package
23 would simply get the organisation to a common base
24 point, an understanding, of qualities legislation of the
25 aspiration of Police Scotland, the requirements on

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1 individuals within Police Scotland. That would then be
2 followed up by face-to-face high quality EDI training
3 for every single person within Police Scotland. Along
4 with that there were local divisional initiatives
5 ongoing where, again, all of the issues that we've
6 discussed this morning were discussed with local
7 divisional command teams and indeed with a broader
8 cross-section of divisional colleagues as well.

9 So as I say, statements from the chief, statements
10 from the Chair of the IRG, if you like, resource sitting
11 within the Policing Together portal and ongoing
12 training, development and educational for every single
13 person in Police Scotland integrates all of the learning
14 that the organisation has accrued.

15 Q. Thank you. Can I ask you some questions about
16 statistics. If we look at paragraph 5 of your
17 statement:

18 "On joining Police Scotland one of the first actions
19 I gave ACC Spiers, who was ACC Professionalism and
20 assurance, was to review conduct statistics to identify
21 whether there was disproportionality so far as officers
22 from black and minority ethnic background were
23 concerned. I was reassured to find there were not.
24 However, I am aware that individual officers from a
25 minority background could and did feel that their

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1 treatment by and relationship with
2 Professional Standards was not always as informed and
3 empathetic as it might have been. This is why we
4 introduced enhanced implicit bias training into PSD
5 around 2020."

6 I would like to ask you about the review you
7 requested from ACC Spiers regarding conduct statistics
8 to identify whether there was disproportionality so far
9 as officers from black and minority ethnic backgrounds
10 were concerned. We have heard some evidence about
11 statistics and there seems to be, if I can put it this
12 way, some uncertainty, some confusion about what is
13 available, what is provided. Could you help us with
14 that?

15 A. That was -- and that was very much the point I made
16 about the Centurian database not being as effective as
17 it should be or not being as up to date as it could and
18 should be in terms of helping us to understand the
19 ethnicity categorisation and protected characteristics
20 of those who have made a complaint or are subject to a
21 complaint. So it was very much a kind of manual
22 assessment that ACC Spiers did at the time.

23 There are, sadly, not that many black and minority
24 officers in Police Scotland, so in terms of
25 understanding pro rata whether black and minority ethnic

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1 colleagues were overrepresented in the discipline
2 process it was -- at that point in time, it was much
3 more of a piece of manual work that ACC Spiers' team
4 carried out for me.

5 Q. And if it was a piece of manual work, was it subject to
6 an individual's discretion or assessment of the
7 paperwork?

8 A. It would be subject to that, yes, but, as I say, I
9 took -- and again, this is -- if we want to go into this
10 more deeply then I'm sure we can, but I took confidence
11 from the fact that ACC Spiers assured me he had gone, he
12 had researched the circumstances of -- and this is
13 colleagues in the discipline process and that there was
14 not disproportionality, as is seen in some other police
15 services, within Police Scotland and certainly my
16 experience --

17 Now, again, you know, officers who make complaints
18 from minority ethnic groups and that's a point about not
19 necessarily -- they do not necessarily always feel that
20 Police Scotland has been as empathetic towards them as
21 they could and should have been and that's what we are
22 looking at upscaling our colleagues in PSD to try to
23 avoid happening in the future. But in terms of officers
24 within the conduct process in their own right being
25 investigated back in 2018, I was assured by the ACC, as

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1 a consequence of the work that he had done, that there
2 was not disproportionality.

3 Q. All right. So limitations within Centurian itself?

4 A. Yes.

5 Q. It was a manual review?

6 A. I think so. Again, we're going back to 2018. I think
7 it can only have been a kind of manual review, simply
8 because we could not trust force systems to provide us
9 with the detail.

10 Q. Right. There were a limited number of datasets or data
11 information and there were issues with the data
12 collected. I think is it fair to say that that sums it
13 up?

14 A. So I think the data collected would have been valid.
15 It's about how that data was then, if you like,
16 understood and processed and how effective our systems
17 were, and I suspect still are, in actually enabling us
18 to draw out trends and themes and understand the kind of
19 macro-elements of that data.

20 Q. Thank you. Can I ask you about some other evidence that
21 we have available from Sandra Deslandes-Clark, who I
22 understand you know?

23 A. Yes.

24 Q. Now, my understanding is she's the Chair of SEMPER?

25 A. Yes.

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1 Q. And we hope to hear evidence from Ms Deslandes-Clark in
2 due course in this hearing. Her statement is to
3 SBPI 00626, and I'm interested in paragraph 25, and I'll
4 read this out and then I'm also interested in one other
5 aspect of evidence that is along the same lines and I'll
6 also read that before I ask you any questions.

7 So 25:

8 "Do black and minority ethnic officers and staff
9 face being over-disciplined when they are the subject of
10 a complaint compared to a white colleague in an
11 equivalent position and has that changed over time and,
12 if so, how?"

13 And her response was:

14 "There is a widespread belief that like BME officers
15 and staff in England and Wales, BME employees in
16 Scotland are over-disciplined. However, as the
17 race/ethnicity of the subjects of complaints is not
18 recorded by PSD, we cannot validate or refute that
19 claim. However, we do know that because of their
20 visible ethnic difference, BME response officers do tend
21 to be the subjects of more malicious complaints from
22 members of the public. BME officers/staff also believe
23 that their ethnic difference does attract more scrutiny
24 from supervisors and colleagues. That could be due to
25 stereotyping, unfamiliarity, or ignorance. It's been

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1 likened to the proverbial O living in an X world, where
2 O is always under the spotlight and everything he or she
3 does is over-analysed. This can often lead to them
4 being reprimanded more frequently than their white
5 colleagues. With more training and an increase in the
6 recruitment of BME officers/staff, this perception has
7 been changing."

8 Now, just before I ask you about that, we have also
9 heard evidence from a Mr Paul Castledine, who's a former
10 officer, and he worked in Fife prior to the creation of
11 Police Scotland. In his statement to the Inquiry he
12 said:

13 "Historically, a statistic had been discussed that a
14 minority ethnic police officer was three times more
15 likely to be interviewed by their colleagues than a
16 white officer in connection with professional
17 standards."

18 And he then went on to say at paragraph 13 of his
19 statement that in his experience a white officer would
20 get a slap on the wrist, whereas an ethnic minority
21 officer, they would do it by the book. And so obviously
22 there's the two aspect of evidence that we've heard.

23 I'm interested in your thoughts about what's said.
24 Primarily, we have left on the screen what
25 Ms Deslandes-Clark has said, the idea of being

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1 overdisciplined, whereas Paul Castledine says:

2 "The white officer is dealt with as a quick slap on
3 the wrist, but with the ethnic minority officer it's by
4 the book."

5 By that, as I understood it, he meant through the
6 Regulations by the book.

7 A. So I have a huge amount of time and respect for Sandra,
8 who is an incredible advocate within Police Scotland as
9 the Chair of SEMPER Scotland. I think it is important
10 to say that.

11 I still stand by the work that ACC Spiers did on my
12 matter of in terms of the circumstances within
13 Police Scotland. Sandra deals and she deals incredibly
14 well day-in, day-out with officers from black and
15 minority ethnic backgrounds within Police Scotland and I
16 make -- I have been I hope quite open about the fact
17 that the experience those officers had or have is still
18 not -- wasn't and is still not what it should be. There
19 is a lot more what we need to do there.

20 Your point about or that kind of quite common
21 understanding of the fact that white officers are, you
22 know, if they're persistently late or whatever are
23 basically told to pull their socks up, get in on time,
24 whatever, but an officer from a black or ethnic minority
25 background, who potentially has a white supervisor,

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1 might go down a different route. That is again part of
2 the rationale for the Policing Together Programme for
3 first and second line managers to ensure that there is
4 equity in terms of the treatment of every single police
5 officer and member of police staff within
6 Police Scotland and how you are dealt with if a
7 particular set of circumstances comes to light is not a
8 question of, you know, your ethnicity.

9 There is something about upscaling first and second
10 line managers as well, counsel, and giving them the
11 confidence actually to have -- and we actually -- this
12 isn't confined -- certainly in my time wasn't confined
13 to black and Asian colleagues, black and minority ethnic
14 colleagues. Sometimes it was easier for first or second
15 line managers just to put stuff on paper rather than to
16 a deal with it themselves to keep minor matters within
17 the employment space. That's what Your Leadership
18 Matters Programme is designed to do. Part of its
19 rationale it's designed to give first and second line
20 managers the confidence actually to manage.

21 If the chief were here -- the last chief were here,
22 he would say there was a lot that was done really well
23 in the early days of Police Scotland, but there was a
24 lot perhaps which was not done in that first ten years
25 that could have been and that high quality leadership

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1 development activity that we are engaging in now was one
2 of the areas that we could and should have done better
3 in the first ten years of the organisation.

4 Q. In terms of what we've heard from Paul Castledine and
5 what we may hear further from Ms Deslandes-Clark, would
6 you accept that there is a difference or there has been
7 in the past at least a difference in the treatment of
8 white and black officers in relation to disciplinary
9 matters?

10 A. So again, I think I would never try to -- I would never
11 try to argue against that. You know, we know -- again,
12 we know and I know because I have spoken to my
13 colleagues through the auspices of SEMPER Scotland
14 listening to their experiences there has been -- there
15 are two elements to that.

16 The first is the element of an officer who is
17 subject to, you know, an interaction with their line
18 manager, but also there is then the behaviour of line
19 managers towards particular officers, which also needs
20 to be looked at properly and effectively, back to our
21 earlier point about initial assessment and the like, by
22 Professional Standards to understand if actually there
23 has been racially discriminatory behaviour or other
24 discriminatory behaviour evidenced towards the black or
25 minority officer, that in itself is also dealt with and

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1 that is also dealt with effectively. And I think it's
2 fair to say that's necessarily always been the case.

3 Q. Are there records now kept about line managers and how
4 they are dealing with disciplinary matters compared
5 to -- for a white officer compared to a black officer?

6 A. So again, my ask would be that that -- because of the
7 upgrades that are going on to Centurian, I'm not sure
8 quite sure what stage those have reached, but in terms
9 of that document set that is probably a question better
10 answered by somebody who is currently serving.

11 Q. Thank you. We can maybe look into that. Thank you very
12 much.

13 We have heard evidence from Kate Frame, who was
14 the Commissioner at the time of Mr Bayoh's death, and I
15 would like to ask you for your comments about some
16 evidence she has given us. In relation to at -- from
17 around September 2015 there was an instruction given by
18 the Crown Office to PIRC to investigate certain matters
19 to do with race and that was a specific introduction
20 given at that stage and one of those was to look or part
21 of that investigation was to consider statistics and to
22 look at complaints and she said in evidence that:

23 "As an initial step, the PIRC examined national
24 police complaints statistics in order to identify
25 whether those indicated a pattern of racist behaviour by

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1 officers in Fife Division."

2 And she said:

3 "Investigators focused on allegations recorded under
4 the category 'discriminatory behaviour' and that's one
5 of the complaint categories adopted nationally or it was
6 at that time by the Scottish police force. Such
7 behavior was defined as 'an allegation a member of a
8 police force engaged in a course of action interpreted
9 as discriminatory towards an individual or group on the
10 basis of race'."

11 And she said -- she was talking about her
12 investigation team undertaking that analysis:

13 "But it became clear that race was not going to be
14 able to be extracted from the overall data, so the only
15 inference that could be drawn from any analysis could be
16 in relation to overall discrimination across all
17 categories, rather than allowing PIRC to investigate the
18 category of race alone".

19 And I wonder, does that remain the position or is
20 this something that you're not able to help us with?

21 A. So again, I think that goes back to the database and,
22 again, I would -- there are people who are much more
23 comment than I am, counsel, to talk to that.

24 Q. And that's in connection with the Centurian database?

25 A. Yes.

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1 Q. All right. Thank you.

2 A. What I would say is if PSD receive, you know, a
3 complaint of racial discrimination from a member of the
4 public that an officer has been racially discriminatory
5 towards them, then I would absolutely expect, regardless
6 of how that's ultimately recorded, PSD absolutely should
7 be investigating that and they should be investigating
8 that from the perspective of the complainant.

9 Q. Thank you. We've heard evidence from Professor Meer,
10 that was last week, and he highlighted concerns that he
11 was asked to prepare a report for the Inquiry which he
12 spoke to last week. He said:

13 "There were concerns that there remained no central
14 reporting of deaths in custody in Scotland nor a
15 standardised reporting format utilised by individual
16 agencies and organisations."

17 He also highlighted that Police Scotland's responses
18 under freedom of information legislation was often
19 provided without elementary demographic data,
20 specifically the protected characteristics of the
21 deceased, and it was reported that Police Scotland have
22 noted in responses to FOI requests that they were not
23 required to collect or report ethnicity data.

24 Now, I appreciate in relation to what the database
25 can achieve, we could perhaps get information from

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1 others, but are you surprised to find that apparently
2 FOI requests and responses, the responses say they were
3 not required to collect or report ethnicity data?

4 A. It's -- I am surprised. It's difficult for me to give
5 you an informed response to that, counsel. I would have
6 to basically go and familiarise myself with exactly
7 which FOI responses, why that material -- why that data
8 wasn't being provided if it was available within the
9 police service. It might be something to do with the
10 intricacy of the FOI legislation. I genuinely don't
11 know, but I don't understand if there's a legitimate
12 rationale for us to provide data, why we wouldn't
13 provide it. So I'm not really able to competently
14 answer that question I don't think.

15 Q. All right. No, thank you. Moving on again to Policing
16 Together, which I understood launched on
17 30 September 2022; is that correct?

18 A. Yes, I think so.

19 Q. And if we look at your statement, please. And I think
20 you have already touched on this. I would like to look
21 at paragraphs 28 and 29. And I think this is where you
22 provide the Chair with some detail in connection with
23 the Policing Together strategy?

24 A. Yes.

25 Q. And if we look at 29, you say you were the -- and I

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1 think you have given the Chair quite a lot of detail
2 about this.

3 A. It is a -- this isn't a series of random initiatives,
4 this is a significant programme of work that we need to
5 embed within Police Scotland moving forward.

6 Q. Thank you. And as I say, you have given a lot of
7 detail, which is very helpful. And here we are, 29:

8 "I was the chief officer lead with strategic
9 oversight."

10 So essentially you were in charge of this project?

11 A. Yes, programme.

12 Q. Programme, sorry. You were involved in the creation of
13 the strategy, the creation of the different elements of
14 Policing Together and you advocated for:

15 "The creation of a bespoke ACC portfolio for
16 Policing Together to give operational effect to the
17 strategy and to the broader policing ambition, while
18 maintaining focus on delivery of the programme. I
19 continued with the strategic oversight until I became
20 the interim Chief Constable."

21 A. Yes.

22 Q. Which you told us about yesterday.

23 I am interested in the idea of a bespoke portfolio
24 and I wonder if you could help us understand that a
25 little better?

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1 A. Of course. Policing Together is a significant programme
2 of work, absolutely fundamental to effecting genuine and
3 lasting culture change within Police Scotland. The
4 strategy, which is hopefully accessible through my
5 statement by means of a hyperlink, as I say has four
6 outcomes and a number of actions sitting within the
7 strategy, all of which have outcomes which we need --
8 which the organisation needs to achieve in order to give
9 effect to the strategy.

10 There are also various different elements of
11 Policing Together that you will have seen within the
12 statement, one being training, communication, the
13 prevention strategy that's sort of alluded to as well,
14 and leadership. So this is a big piece of work, this is
15 fundamental to Police Scotland being able to achieve its
16 ambition to become a properly antiracist and
17 antidiscriminatory organisation and I was really anxious
18 that we didn't have one person to take responsibility
19 for delivery of that programme. So I spoke to the chief
20 about it and we created an additional -- at that point
21 in time, an additional ACC's post who's primary
22 responsibility was to drive progress of Policing
23 Together through Scotland and out through into partner
24 agencies where appropriate; for example, we have spoken
25 to crown about what we agreed.

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1 So it was actually -- this is going to sound
2 slightly melodramatic, counsel, but it was keeping me
3 awake at night not being confident that we could
4 actually deliver on our aspiration and our ambition and
5 I actually needed that tactical lead to come into post
6 to begin to deliver on the different but interrelated
7 elements of Policing Together.

8 Q. We have heard some evidence from Professor Meer about
9 situations where there can be a lack of what he
10 described as "institutional memory". Now, we have a
11 statement from Sir Iain where he said:

12 "[He] appointed Assistant Chief Constable
13 David Duncan as a dedicated lead for Policing Together
14 to ensure that the importance of the changes we wished
15 to make regarding equality, diversity and inclusion
16 would be driven with visible and dedicated senior
17 officer commitment."

18 And so as I understood it, ACC David Duncan was in
19 place prior to Sir Iain's retirement with a view to
20 taking the lead on that role and moving it forward. Has
21 he now left Police Scotland?

22 A. Yes.

23 Q. Now, we've heard that there can be a lack of
24 institutional memory when individuals move on from
25 particular roles or they retire or leave for whatever

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1 reason and I'm interested if you are aware of what
2 arrangements are in place to ensure that there is not
3 that loss of institutional memory and that the progress
4 that has been made and directed by you will continue,
5 even though the individual has left the organisation?

6 A. Certainly. You remarked yesterday, counsel, on the
7 number of bodies, individuals and organisations which
8 participated in the Policing Together senior oversight
9 board.

10 You know, I came under some criticism for just how
11 sort of bureaucratic that process was, but I was firmly
12 of the opinion that actually you need to get the
13 structures in place, because structures will continue
14 potentially past individuals. If you build up that
15 momentum in organisation, if you get an organisation
16 into a routine and it continues to do things and
17 actually structurally with Policing Together that was
18 part of my ambition. So Policing Together -- so there
19 were the structures through the EDI oversight board and
20 the subordinate boards that we have that are noted in
21 the statement.

22 Policing Together whilst at that point in time it
23 was led by ACC Duncan there were other people sitting
24 within that portfolio as well, counsel. So there is
25 continuity in terms of the personnel that were sitting

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1 within the Policing Together portfolio. Other teams,
2 individuals, directors, ACCs, also had a part to play
3 and still have a part to play in delivering Policing
4 Together, people in development being foremost amongst
5 those. But I also understand and I'm incredibly pleased
6 that the organisation has recently identified a new ACC
7 to take over from ACC Duncan to lead Policing Together.

8 So the organisation now has ACC Cat Paton, who is
9 David Duncan's replacement and will lead Policing
10 Together going forward.

11 Q. I see you're looking. She's here today.

12 A. She is here today.

13 Q. I think she was here yesterday as well.

14 A. She was.

15 Q. Right, thank you. I would now like to move on to
16 another topic, duty of candour. Can you give me a
17 moment while I check what time it is. Would now be an
18 appropriate time?

19 THE ARBITRATOR: Yes, we'll stop for 20 minutes now.

20 (11.28 am)

21 (A short break)

22 (11.56 am)

23 LORD BRACADALE: Ms Grahame.

24 MS GRAHAME: Thank you. Before I move on from Policing
25 Together, can I ask you a couple of other things?

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1 A. Of course.

2 Q. How is the impact of Policing Together, I appreciate
3 it's relatively new, but how is the exact of all this
4 work being evaluated?

5 A. So the EDI strategy in its own rights, as we mentioned,
6 has an accompanying action plan and each of -- that
7 action plan, each of those actions have owners and the
8 relevant sort of ACC will be responsible for holding the
9 owners of the various actions that come out of the EDI
10 strategy to account for delivery. And that's everything
11 including, you know, are we managing to recruit and
12 retain more members of staff from minority ethnic
13 communities to what are the number of grievances that
14 are coming into the organisation, have we actually
15 accomplished some of the other elements of the strategy,
16 counsel, such a review of relevant processes to ensure
17 that there in no unwitting bias in them?

18 So the action plan sits behind the strategy and I
19 think the action plan implementation plan is really,
20 really important. And as we mentioned earlier, the SPA
21 has a bespoke oversight group set up to hold
22 Police Scotland to account against the delivery of the
23 various elements of the EDI strategy.

24 If he look at some other elements of the Policing
25 Together plan, for argument's sake the Your Leadership

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1 Matters Programme, that is rigorously or certainly in my
2 time in Police Scotland after every delivery of an
3 element of the Your Leadership Matters programme that
4 was rigorously evaluated with those who participated in
5 the training and educational programme to understand
6 whether actually it was having the outcomes that we
7 anticipated and hoped that it would and if not, then how
8 do we amend that programme to ensure that actually it is
9 more effective.

10 So again, there are a number of different avenues,
11 if you like, for evaluation and understanding impact,
12 but what I should say is the SPA are key to that because
13 they are the oversight body for Police Scotland and,
14 again, as we mentioned earlier, they report, you know,
15 the Scottish Police Authority reports publically and
16 Policing Together is one of the elements that they are
17 particularly interested in.

18 Q. And for those officers who have responsibility for the
19 individual actions on the action plan, is there a
20 programme for them to report to updates and reviews?

21 A. So again, I can only talk to the processes that were in
22 places when I retired from Police Scotland and that was
23 there was a strategic oversight board, which was chaired
24 by myself, and then there were a number of subordinate
25 boards, if you like, which sat underneath the strategic

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1 boards. So there was an initial input into the
2 strategic or sort of subgroups, if you like, and then
3 that reported up into the strategic oversight board.

4 Again, counsel, what I would say, because this
5 certainly was an absolutely fundamental programme of
6 work to Police Scotland, I was then responsible for
7 further updating the whole of the force executive,
8 including the then Chief Constable through the auspices
9 of our senior leadership board, with the progress that
10 the EDI programme was making.

11 Q. The actions are the responsibility of officers who are
12 allocated those actions, they then feed into different
13 strategic boards that then feed into the strategic
14 oversight board?

15 A. We do have schematics or we certainly did have
16 schematics around how the governance of Policing
17 Together was managed. Again, if it would be helpful
18 just to understand how all of these boards link
19 together, who is held to account, where, how, by whom,
20 and where the, you know, if you like, where the ultimate
21 sign off comes, I'm sure -- because it is a big
22 programme. I appreciate --

23 Q. That's helpful.

24 A. -- it's unwieldy. We'll get you those schematics.

25 Q. And as well as measuring that impact, how will that be

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1 evaluated in years to come? Is this in line with what
2 you said earlier about the structures in place and you
3 hope they will remain in place in the years to come?

4 A. Yes, and I think my ambition is that Police Scotland is
5 representative of all of the communities of Scotland, so
6 that is one of the kind of key indicators of whether or
7 not we have been successful. Are we an organisation
8 which people from all across every community in Scotland
9 aspires to be a part of?

10 So one element of the activity within Policing
11 Together is, you know, we are quite overt about wanting
12 to be -- wanting to have representation within the
13 organisation which is represented through the census in
14 society at large. So there are -- again, there are a
15 number of different ways of measuring our success.

16 And of course, you know, if we take the issue
17 about -- of black and minority ethnic officers and
18 members of police staff, there is the initial issue
19 around recruitment, but then of course there are the
20 issues around retention and progression and actually
21 creating a very senior officers from a black or minority
22 ethnic background. That's why this is -- and this is
23 just one aspect of Policing Together. That's why this
24 is such a long-term plan.

25 So there are a number of ways that we need to

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1 continue to hold ourselves to account moving forward.

2 Q. In the period between September 2022 when it was set up
3 and the period when you retired, had it made a
4 difference?

5 A. So I think it did make a difference. I don't want to
6 mark my own homework, to use that cliché. We had
7 brought a strategy in place. We didn't have an
8 equality, diversity and inclusion strategy within
9 Police Scotland. Bringing that strategy into existence,
10 that strategy was one of the most widely commented
11 upon -- there's a word I'm searching for that I am not
12 finding at the moment -- the engagement that we had
13 across the organisation and outside of the organisation
14 to agree on that strategy was as wide as anything that I
15 have seen in my policing career. I take that as a sign
16 of success that people were sufficiently interested
17 actually to want to contribute to the work of, you know,
18 to the work of bringing this EDI strategy together. I
19 take that as a success.

20 At the same time running alongside the creation of
21 the EDI strategy, I suspect you may be aware, counsel,
22 there was a lot of work going on around sex equality and
23 tackling misogyny, which was also a part of the Policing
24 Together Programme. I mentioned that because that
25 brought with it sort of a staff survey which encouraged

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1 members of Police Scotland to contribute to how the
2 organisation feels for them on a day-to-day basis. So
3 again we have some metrics in I think that might have
4 been 2022 or 2022, again, to hold ourselves to account
5 moving forward.

6 Again in terms of the progress that's been made in
7 my sort of time in office, setting up Your Leadership
8 Matters, that was the largest training programme I think
9 that Police Scotland had ever embarked on looking to
10 train, to upscale five-and-a-half thousands leaders.
11 When I left the organisation at the beginning of 2024,
12 we were starting to work through our cohort of sergeants
13 and inspector. So again, I see that as real progress.
14 You know, we were offering that high quality training
15 and educational that we hadn't been doing previously
16 and, similarly, with the EDI module, that hadn't existed
17 previously.

18 And I also think that the learning we have taken out
19 of the public inquiry to date and how that has had an
20 impact -- we talked yesterday about organisational
21 learning, how that has had an impact on processes and
22 policies within policing. Again, I take that as a
23 measure of the organisation's maturity in terms of
24 wanting to change and develop.

25 Q. And on a day-to-day level with individual officers who

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1 may be black or ethnic minority, have you -- or at the
2 time you were in Police Scotland, had you received any
3 feedback at all that it was actually making a difference
4 on the ground?

5 A. So I was really fortunate in as much as black and
6 minority ethnic colleagues would speak to me and they
7 would speak to me regularly and I would make a point of
8 speaking to them. It seems a small thing, but one of
9 the initiatives that we did sort of bring into
10 existence, and this again was with the existence of
11 SEMPER, was to put black and minority colleagues into
12 the training environment, because we hadn't necessarily
13 had black or minority ethnic colleagues in the training
14 environment and, you know, the thing about if you can
15 see it, you can be it, these are officers who are
16 successful, they have got through their probation and
17 they're now coming back into that training environment
18 to support all colleagues, but particularly those from a
19 minority background. The feedback I got from that was
20 at least one officer said:

21 "I wouldn't still be with Police Scotland were it
22 not for the fact that I had colleagues who I could speak
23 to about issues which were, you know, bespoke to myself
24 knowing that they would listen and be able to assist
25 me."

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1 Q. Thank you. So from what you've said was Policing
2 Together set-up in 2022 the first time Police Scotland
3 had this EDI strategy?

4 A. So, no, there has always certainly from my perspective
5 been EDI activity ongoing in Police Scotland, public
6 sector equality duties, for example, and there was work
7 inside of Police Scotland to look at culture from an
8 employee perspective, but also service delivery from an
9 external perspective. The piece for me about Policing
10 Together, counsel, was to bring all of that together, to
11 actually create that critical mass through the auspices
12 of Policing Together and also, as we said earlier, to
13 add that additionality by means of training, education,
14 development, the upscaling of our first second, third
15 line managers.

16 All of, you know, the review of processes, all of
17 that, was throughout auspices of the EDI strategy, but
18 there was certainly EDI activity ongoing in
19 Police Scotland prior to 2018, 2019. For argument's
20 sake, there was a positive action team in existence, you
21 know, well in advance of 2022.

22 Q. I would like to move on now to a duty of candour and I
23 wonder if we could look at SBPI 00638. Now, this a
24 joint committee report on human rights and in relation
25 to a proposal for something called Hillsborough Law?

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1 A. Hm-hmm.

2 Q. Now, this was published in May of this year, 24 May this
3 year, I appreciate you were retired at that stage, but
4 I'm interested in any thoughts you would have on a duty
5 of candour, which you did mention yesterday and you
6 talked about the bill that's currently going through
7 Scottish Parliament.

8 Can we look at the conclusions and recommendations
9 and this is towards the very end of the document, it's
10 paragraph 2 of the conclusions. So if you go the very
11 final paragraphs are actually a sort of appendix thing,
12 but it's just prior to the very final sort of pages. It
13 will be above that. Above the minutes. Keep going.
14 You're on the conclusions now.

15 That's it, "Conclusions and Recommendations" and
16 this summarises the entire report. The Chair will have
17 the report available to him, but you'll see here under
18 "A Duty of Candour" paragraph 2:

19 "Institutional defensiveness appears to remain a
20 problem for public authorities, particularly when they
21 are involved in public inquiries and inquests. This
22 hinders efforts to establish the truth when things go
23 wrong and stands in the way of fulfilling the State's
24 investigative obligations under Article 2 and Article 3
25 of ECHR. Introducing criminal sanctions for breach of a

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1 duty of candour may increase the prospect of the duty
2 being taken seriously, offering greater external
3 mechanisms to pursue public institutions that fail to
4 comply. However, including criminal offences on the
5 statute book is not alone sufficient to ensure
6 compliance. Effective enforcement in practice together
7 with wider efforts to support culture change within the
8 public sector are also needed if the transparency and
9 openness sought by the Hillsborough Law is to be
10 accomplished."

11 So I'm interested in this concept of institutional
12 defensiveness. Now, obviously, there's a specific
13 mention of public inquiries and you have been engaging
14 with this Inquiry. I'm interested if you recognise the
15 concept of institutional defensiveness which would
16 hinder the efforts to establish the truth when things go
17 wrong?

18 A. Within Police Scotland or more broadly? I mean there is
19 another public inquiry ongoing at the moment, as you'll
20 be aware, counsel, where institutional defensiveness is
21 a key element and is very, very obvious I would argue.

22 Q. I'm interested, obviously, in your perspective from
23 Police Scotland.

24 A. I think Police Scotland in 2024 as an organisation
25 endeavours to be entirely transparent and candid. The

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1 Chief Constable, the previous Chief Constable has said,
2 you know, time and time again that he expects the
3 organisation to be transparent and when it gets things
4 wrong, to apologise for what it's got wrong, to make
5 those wrongs right to the extent that we can, and then
6 to move forward.

7 So I don't deny that the issue of institutional
8 defensiveness is a very real issue. I would hope that
9 with Police Scotland in 2024 it would be something which
10 was largely, you know, an issue which may have
11 bedevilled the organisation retrospectively. There is
12 no reason for us to be defensive. If we get things
13 wrong, we need to acknowledge that we've got things
14 wrong, because actually that's how an organisation
15 learns and certainly that's the approach we have been
16 taking through that public inquiry to learn from some of
17 the issues that occurred on, you know, and after the
18 events of 3 May 2015.

19 Q. And when you say that things are different in 2024, is
20 this part of a, for want of a better word, a sort
21 journey of improvement? Is there still issues about
22 institutional defensiveness in Police Scotland?

23 A. I think it is a journey of improvement. I would never
24 say we are where we are ultimately want to be. I think
25 we have spoken and you know some of the questions that I

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1 was asked in terms of the relay talked about
2 organisational culture. We are a large organisation.
3 There is not one culture within Police Scotland. There
4 are many cultures within Police Scotland. So to say
5 that they are all at the same time place in terms of
6 transparency -- I'll come back to something else in a
7 second -- but to say that they are all in the same place
8 in terms of transparency and a desire to be absolutely
9 candid, I couldn't necessarily say that that was the
10 case for every aspect of the organisation.

11 However, what I certainly can say in my time in
12 Police Scotland, up until early 2024, was that the force
13 executive are absolutely committed to candour and the
14 work that we are doing to enhance the culture of the
15 organisation should impact on every element of policing
16 culture across Police Scotland in time.

17 Q. So at the time you left Police Scotland what were your
18 hopes in relation to long-term changes in
19 Police Scotland, specifically with regard to the duty of
20 candour?

21 A. My long-term ambition, counsel, is that we wouldn't
22 actually need a duty of candour, that, you know,
23 officers and the organisation are candid, you know,
24 acknowledge that in terms of maintaining public trust
25 and confidence against all communities candour is an

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1 absolute necessity, you know, so -- and goodness I
2 absolutely understand where the Hillsborough Inquiry is
3 coming from, but actually I would hope that this would
4 come would just be within the DNA of the organisation to
5 be candid about the events that it deals with and, you
6 know, how it deals with the aftermath of critical
7 instance and events.

8 Q. And do you agree with that phrase there that "effective
9 enforcement in practice, together with wider supports to
10 support culture change" is needed; would you agree with
11 that?

12 A. So we are going through that -- Police Scotland is going
13 through that culture change programme at the moment.
14 You asked what my long-term ambition would be, it
15 would be that there was no need for any sanction that
16 the carrot in its own right should be enough.

17 However, I was a police officer for close to 31
18 years, so I understand the reality of policing, if not
19 the reality of necessarily every other organisation, and
20 culture change is long-term and sometimes there is a
21 need for a bit of stick as well as the carrot, but
22 I would hope that, as you say, those sanctions within
23 the law are not necessary because the organisation's
24 culture is such that actually a duty of candour is just
25 part of, you know, our values and standards.

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1 Q. And in terms of wider supports and wider efforts, do you
2 see that you've talked about your hopes for the culture
3 of Police Scotland changing and continuing to change?

4 A. Yes.

5 Q. There's mention here of possible criminal offences being
6 attached to the duty of candour, would you also see a
7 role for the Conduct Regulations to ensure that officers
8 are complying with those standards of professional
9 behaviour?

10 A. I think that's an absolutely valid point. The piece for
11 me about the Conduct Regulations, as we discussed
12 yesterday, is I don't think they are nearly transparent
13 enough. I think more the public understands around
14 every aspect of policing then the more confident the
15 public can become in how we are actually carrying out
16 our business, so I would certainly like to see elements
17 of the Conduct Regulations dispense with the
18 confidentiality that sits within them and actually be
19 much more open to scrutiny and public awareness.

20 Q. How would you have liked to have seen that actioned?

21 A. So the bill is obviously going through parliament at the
22 moment. We talked yesterday about holding gross
23 misconduct hearing in public.

24 Q. Yes.

25 A. And we talked the benefits and potential disbenefits of

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1 doing that. We also -- the bill I believe still it may
2 have fallen, but it may also contain the option of
3 legally-qualified chairs, particularly for chief
4 officers who are going throughout the misconduct
5 process. You know, again, bringing that knowledge, that
6 experience, that understanding from outside of policing
7 into the conduct space, along with, obviously, you know,
8 time served police officers as well, again, I think is a
9 way of enhancing public confidence, but actually
10 ensuring that the standards we are setting are fit for
11 purpose in 2024 for the behaviours and conduct,
12 particularly of our more senior colleagues.

13 Q. Thank you. Can I move on to the final sections of
14 recommendations, it relates to the body of an
15 independent public advocate, so if we can move down the
16 page it's section 3, "Independent Public Advocate":

17 "We welcome the creation of the roles of the
18 standing- and incident-specific advocates for victims of
19 major incidents. If implemented correctly, the
20 advocates who fulfil those roles will provide crucial
21 help to victims navigating the often daunting maze of
22 rules and procedures that follow major incidents."

23 And there's talk of this in this section. I'm
24 interested to what extent, if any, you had contemplated
25 the possibility of an independent public advocate

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1 assisting victims, families, from navigating a
2 significant or major incident?

3 A. So that's not something that I personally had given --
4 had really engaged with that concept, but I know how
5 labyrinthine the sort of legal system can be, how
6 difficult it can be to navigate if you're outside of it
7 rather than inside of it, so any independent advice and
8 support for families, individuals, who are working
9 through what can be, as we discussed yesterday, counsel,
10 very, very lengthy processes, I would be very, very
11 supportive of.

12 Q. Thank you. Can we move on to paper SBPI 00614 and this
13 is a document that's been prepared by the Equality and
14 Human Rights Commission, SBPI 00614. And it's headed up
15 "Submissions to the Sheku Bayoh Inquiry. The Equality
16 and Human Rights Commission".

17 While we wait for that to come on the screen, I have
18 a hard copy and I'll read this out. You have already
19 mentioned the public sector equality duty today and this
20 is also known as the general equality duty. So we've
21 heard reference to some of this being PSED or the
22 general equality duty and it was set out in the Equality
23 Act 2010 and you're familiar with this?

24 A. Yes.

25 Q. And it's:

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1 "The general duty requires public authorities in the
2 exercise of their functions to have due regard to the
3 need to eliminate unlawful discrimination, harassment
4 and victimisation and other prohibited conduct."

5 Here we are. If we look at page 6, please, and
6 we'll see some bulletpoints in bold. Yes, page 6,
7 "General Equality Duty". I have just read out what that
8 is and the bulletpoints I was going through.

9 So "eliminate unlawful discrimination", as I said:

10 "Advance equality of opportunity between people who
11 share a relevant protected characteristic and those who
12 do not share it, foster good relations between people
13 who share a protected characteristic and those who do
14 not."

15 And so there are other elements, but if we look at
16 those primarily and if I can turn to page 11, please.
17 And I would like to look at a bulletpoint at the bottom,
18 towards the bottom of that page:

19 "A public authority must take responsibility for
20 complying with the general equality duty in relation to
21 all functions to which the general equality duty
22 applies. Responsibility for the general equality duty
23 cannot be delegated to external organisations that are
24 carrying out functions on its behalf."

25 And then on page 12:

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1 "Although a public authority is not legally required
2 to keep records of its consideration of the needs of the
3 general equality duty in making decisions, it is good
4 practice to do so and it encourages transparency."

5 Now, and towards the bottom of that page:

6 "The duty applies to all of the decisions made in
7 the course of exercising public functions, not just to
8 policy development and high-level decision makes."

9 We've heard some evidence throughout the Inquiry
10 that there may be some, for example, PIRC there may have
11 been some confusion regarding the extent to which the
12 duties applied and the Chair has heard evidence about
13 that.

14 Now, I think from what you've said to us yesterday
15 and today you're very clear that this duty applies to
16 Police Scotland?

17 A. Yes.

18 Q. And it has done since 2010?

19 A. Yes.

20 Q. And are you satisfied at least during your tenure that
21 this public sector equality duty, the general equality
22 duty, was being observed in relation to decisions being
23 taken, policies being introduced, standard operating
24 procedures being taught, that that equality duty was
25 being observed by Police Scotland?

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1 A. To the best of my knowledge I think, yes, the general
2 equality duty was being observed by Police Scotland.
3 There has always been an awareness of the general
4 equalities duty, the equalities outcomes that
5 Police Scotland sign-up to, we have reported publicly on
6 the discharge of those qualities outcomes.

7 What I would say though, counsel, is that we're not
8 resting on our laurels at all here and that again is
9 part of our determination to become a properly
10 antiracist organisation is not to take any policy or
11 procedure for granted. And again, you will see within
12 the EDI strategy that one of the actions in the strategy
13 is actually to consistently to go back and to review
14 policies and processes and practices to ensure that they
15 remain fit for purpose, they don't unwittingly
16 discriminate against anybody with a protected
17 characteristic and that they remain fit for purpose in
18 2024.

19 Q. So if things have fallen throughout the net and they
20 haven't carried out equality impact assessments, for
21 example, is that the type of thing that's going to be
22 checked as part of the Policing Together Programme?

23 A. So Police Scotland -- I cannot give you an exact date,
24 but Police Scotland was amongst the forerunners in
25 introducing equality impact assessments into the review

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1 and the setting up any new policy or practice of force
2 procedure. Whether those equality impact assessments
3 have always been carried out as rigorously or in as much
4 as detail as they could or should have been, again, we
5 want to learn from that. We want to make sure, your
6 point, has anything slipped throughout net, then we
7 catch that, we review that, we go back through it and we
8 ensure that at equality impact assessment which is
9 aligned with every police practice or procedure is fit
10 for purpose in 2023, 2024, moving forward.

11 But what I would say is as an organisation we have
12 been aware of our responsibilities under the Equalities
13 Act and also we have been actively completing equality
14 impact assessments for a number of years now.

15 Q. And will that include what we've heard described as the
16 OST manual, so officer safety training manual, will that
17 be included in relation to a review of whether a full
18 and detailed equality impact assessment has been carried
19 out?

20 A. I'm sure it will be, counsel. Again, I'm sure we have
21 that, we have that documentation available, but my
22 understanding is that, yes, that should have been
23 carried out. Operational safety training, in
24 particular, you know, when officers potentially exercise
25 their coercive powers, it's more important in that

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1 environment probably than any other to ensure that an
2 equality impact assessment has been carried out.

3 Q. And that will presumably include the use of, force where
4 the force may include restraint, sprays, batons and look
5 at any elements of disproportionality?

6 A. That's absolutely correct and the other aspect there as
7 well, and certainly in my tenure in Police Scotland, we
8 have enhanced the Scottish police emergency lifesaving
9 training for our officers as well, we have overhauled
10 that training. And again, what have we achieved over
11 the last few years? That is one element again where I
12 feel the operational safety training has improved and
13 our emergency lifesaving has as well.

14 Q. And as with other things you have been very willing to
15 provide the Inquiry with further information,
16 specifically in regard to training and training in
17 relation to restraint, would you be willing to provide
18 us with further information about any equality impact
19 assessment on the issue of restraint?

20 A. So again, you will understand if I pass that question on
21 to colleagues who are currently serving, but,
22 personally, I can't see any problem at all in providing
23 that documentation to you. I think that's entirely
24 appropriate.

25 Q. Thank you. Then I would like to move on to the specific

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1 duties, because we have been talking about the general
2 duty. Could we look, same document, at page 14, please,
3 and if look at the top it says "The Specific the Duties"
4 and again:

5 "These were created by secondary legislation under
6 the Equality Act 2010 and the regulations were 2012,
7 coming into force on May 2012."

8 Do you see that?

9 A. Yes.

10 Q. And then if we can move down the page and again:

11 "Who is subject these specific duties?"

12 "Many of the authorities that are subject are also
13 covered by the specific duties."

14 And is it fair to say that Police Scotland is one of
15 the organisations that requires to comply with the
16 specific duties also?

17 A. I think so, counsel, but --

18 Q. That's what I have been told.

19 A. Yes.

20 Q. Thank you. Can we look at page 15:

21 "Each authority is required to comply with the
22 specific duties and these duties include the following:
23 to report on mainstreaming the equality duty, to publish
24 equality outcomes and report progress, to assess and
25 review policies and practices, to gather and use

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1 employee information and to publish in a manner that is
2 assessable."

3 And from your awareness of the specific duties is
4 this something that Police Scotland --

5 A. We do, we do.

6 Q. You're doing that?

7 A. Now, whether that report is required annually or
8 biannually, again, I can't quite remember, but we report
9 very regular. I suspect it might be annually or it
10 might actually be at the four-year stage. As I say, I'm
11 not hundred per cent clear in my own mind about the
12 reporting frequency, but we do report on exactly those
13 bulletpoints in terms of the specific duties. That
14 report I think may actually -- it certainly goes to the
15 SPA, it may also go to the Scottish Parliament, but we
16 will have those reports.

17 Q. Now, as I understand it, the Inquiry have been seeking
18 information from Police Scotland about employee
19 information, but there has been some sort of difficulty.
20 Are you aware of a difficulty in Police Scotland
21 regarding the specific duty to gather and use employee
22 information?

23 A. No, I'm not.

24 Q. No.

25 A. I'm not aware specifically of that, counsel.

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1 Q. Right, all right. And from what you've said, if you're
2 publishing in a manner that is accessible, I think you
3 said that's through the government?

4 A. I don't know. I know we have a statutory responsibility
5 to produce a report. Ultimately, you'll have to forgive
6 me, I am just not a hundred percent clear in my own mind
7 about where that report goes, but it is, I'm pretty
8 sure, a public-facing report. We can check all of that
9 detail.

10 Q. We can check.

11 A. Yes.

12 Q. Thank you. I would like to ask you about
13 whistleblowing. You mentioned and I referred you to
14 your Inquiry statement earlier this morning, we can take
15 that off the screen, that you had talked about
16 challenging poor and inappropriate behaviour and
17 encouraging officers --

18 A. Yes.

19 Q. -- to do so. And do you consider from your own
20 knowledge of barriers that exist to officers or people
21 reporting inappropriate or racist behaviour and is there
22 a policy or a standard operating procedure within
23 Police Scotland that would deal with that type of
24 scenario?

25 A. So in terms of whistleblowing, we have quite a mature

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1 sort of process for whistleblowers for those who want to
2 make protective disclosures and we use -- I say "we",
3 I'm getting my tense wrong, forgive me. There is a
4 third party involved in ensuring that Police Scotland's
5 whistleblowing procedures are effective and are
6 independent and are accessible. Again, that was one of
7 the recommendations made by Dame Elish, again, the
8 action tracker we discussed yesterday, counsel, will
9 give you a better understanding of exactly how we have
10 discharged our responsibilities in terms of
11 whistleblowing.

12 But in terms of the ability to report behaviour that
13 is inappropriate towards any colleague, we have tried to
14 ensure that there are, again, a number of opportunities,
15 a number of different ways of enabling colleagues to do
16 just that. The nonstatutory, the diversity staff
17 associations are a key aspect of that.

18 Colleagues can go to the LGBT+ Association or to
19 SEMPER or to the Disability and Carers' Association and
20 talk about the reaction they've received of the
21 behaviours they have been subject of, because, again,
22 one of the -- one of the things that I did do when I was
23 in service was ensure that each one of those
24 nonstatutory diversity staff associations had a named
25 chief officer aligned with it. So the nonstatutory

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1 staff association, such as SEMPER, such as the Muslim
2 Police Association, such as the LGBTI Police Association,
3 can go directly and without impediment to a chief
4 officer, generally in rank of ACC, although I took that
5 responsibility for race, to say, look, a colleague has
6 reported this to me and we need to do something about
7 it.

8 So those lines of reporting I think have been sort
9 of firmed up, if you like, over the last couple of years
10 to ensure that nobody has to suffer in silence.

11 Q. Right. And is there actually a policy that is
12 accessible to officers that could be obtained?

13 A. I'm sure.

14 Q. Again, I think there has been a request made, but we
15 have not been able to get a copy.

16 A. Again, if we're in the space of the whistleblowing
17 policy then, yes, I see no reason why that can't be
18 provided to you, counsel.

19 Q. All right. Thank you very much.

20 A. We'll make sure that happens.

21 Q. Okay. I would like to move on to sort of final element
22 in my questions, and this relates to the future for
23 Police Scotland. What are the challenges and
24 difficulties in effecting change in Police Scotland,
25 it's a large organisation with many thousands of

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1 officers and staff, so could you help the Chair
2 understand some of those challenges?
3 A. Yes, of course, and, you know, one has to consider the
4 external environment when you consider the internal
5 environment within an organisation such as
6 Police Scotland. You know, I would look particularly at
7 the financial settlement on Police Scotland. When I
8 spent those two, two and a half months as the interim
9 Chief Constable, I spent most of that time wrestling
10 with a £19.4 million projected overspend, so that
11 attempting to ambulance the books, officers number
12 across the piece, the demands on Police Scotland to step
13 into the space occupied potentially by or that should be
14 occupied potentially by other organisations and services
15 as consequence of austerity means that our policing
16 responses is being spread quite thinly, counsel.

17 So a real challenge actually is to maintain -- is to
18 provide our officers with the time and the space and
19 actually to ensure that they feel it is legitimate for
20 them to take the time to train, to take the time to
21 educate themselves, to take the time to understand how
22 they can comport themselves in the best possible way,
23 because actually our people -- Police Scotland's people
24 are under inordinate stress and inordinate pressure.

25 The Durham University Business School staff survey

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1 which was completed, I think, in 2021 spoke about the
2 incredibly high public service ethos that exists within
3 police officers and police staff in Scotland. It's a
4 study which enables us to compare police services across
5 the country, so there are benchmarks, and our people
6 come out incredibly well in terms of that public service
7 ethos, but what that means is they exhaust themselves.
8 They get very, very tired trying to provide the quality
9 of service the vast, vast majority of our people feel is
10 their responsibility to deliver to communities across
11 Scotland.

12 So there are issues around the funding settlement,
13 there are issues around officer numbers, there are
14 issues around the responsibilities that police officers
15 and members of police staff take on from potentially
16 other organisations and, again, I should probably have
17 mentioned when I said that, mental health being key
18 amongst those and we would never organisationally as
19 Police Scotland never walk away from somebody in their
20 moment of need. We just would not do that; section 32
21 of the Police and Fire Reform Act.

22 However, we do acknowledge that there is a
23 responsibility on other agencies and organisations who
24 can actually deal with people in crisis potentially
25 better than we can. So there are those external

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1 barriers as well. And just looking back into the
2 organisation, as I say, the general business of policing
3 in Scotland, the general day-to-day responsibilities and
4 demands on every single person within the organisation,
5 which is why it's so importance, I think, that the chief
6 officer team, from at the Chief Constable downwards, is
7 absolutely focused.

8 Sir Iain said, you know, legal moral operational
9 absolute responsibility to effect cultural change,
10 because, again, if you look at our organisation, it
11 makes absolute sense that we keep as many people
12 healthy, well, in the workforce and feeling valued and
13 able to deliver a service as we possibly can and that,
14 if we get the cultural change element of Policing
15 Together right, is what we should be able to do. So
16 actually, a healthy, fit, valued and performing
17 workforce will deliver the quality of service across our
18 communities that we would hope to deliver, but it's a
19 busy -- it's a really busy environment.

20 I am credibly grateful to the new Chief Constable
21 for ensuring that there is still a dedicated ACC to take
22 Policing Together forward, because I do think that is
23 the vehicle. It will change, it will develop, it will
24 evolve, it needs to be rigorously evaluated, but
25 Police Scotland needs to continue to progress the

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1 Policing Together Programme to ensure that that culture
2 change happens, you know, in days, weeks, months, years
3 moving forward.

4 Q. Picking up on one thing you've said there in relation to
5 mental health, and the police will not leave anyone in
6 need. There was some relatively recent publicity about
7 the situation in the Met. The Commissioner was talking
8 about financial restraints and concerns such that, and
9 I'm simply summarising news that I've read, that
10 officers in the Met would no longer respond to mental
11 health incidents and they would focus on policing rather
12 than mental health.

13 Now, as I understand it, that's not the position of
14 Police Scotland?

15 A. No, that's certainly. When I left -- when I retired
16 from Police Scotland that was absolutely not the
17 position of Police Scotland. We have section 32, as you
18 know, counsel, the Police and Fire Reform Act, which
19 puts upon us an obligation for the safety and well-being
20 of I think it is for people, places and communities in
21 Scotland and dealing with people who are in mental
22 health crisis is certainly part of our obligations under
23 section 32.

24 However, there is a difference between, you know,
25 responding to somebody who is in desperate straits in

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1 the middle of the night potentially when no other agency
2 is available to support them or their family and then
3 potentially a police officer having to sit for a number
4 of hours with that individual in an A&E environment
5 waiting for them to be seen. So certainly in terms of
6 back-end I think there is more that could be done, but
7 I know that other public sector organisations are also
8 dealing with their own sort of issues in Scotland and I
9 would never -- this isn't any kind of, oh, it's your
10 fault, it's not, that's just a statement of reality
11 I think. But there is certainly something about what
12 does the back-end of that support to a person in
13 extremis look like? But I don't think Police Scotland
14 would -- I hope Police Scotland would never walk away
15 from a person in that dire need.

16 Q. In terms of Police Scotland moving forward, there is no
17 expectation that there would be a refusal to deal with
18 someone who was in mental health crisis?

19 A. So I can only speak for my time in Police Scotland,
20 counsel, that again, I think is possibly a question
21 that's best put to somebody who is still serving and
22 will be able to give you an absolute up to the minute
23 sort of understanding of exactly where the organisation
24 sits in respect of mental health.

25 Q. All right. Thank you. One last thing that's been drawn

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1 to my attention. I wonder if we could have a look at a
2 memorandum of understanding, which is between the PIRC,
3 the Police Scotland and the Scottish Police Authority.
4 Here it is, PIRC 04436. Now, if we look at page 3 of
5 the PDF, we'll see that this is dated 31 July. Sorry,
6 it's maybe not the PDF number. Maybe that's -- dated
7 31 July 2020. So it was not -- it was not in place in
8 2015. This is the current, as I understand it,
9 memorandum of understanding.

10 Were you aware of this memorandum of understanding
11 when you were in post?

12 A. I may have been aware of it, counsel, but I can't claim
13 to have any, at this point in time, detailed
14 understanding of its -- or detailed recollection of its
15 content.

16 Q. I'm interested in appendix D, which in terms of the page
17 numbers on the hard copy I have been given that's 35, so
18 it will be round about that on the PDF. We can see the
19 page numbers at the bottom of the page as they go by.
20 That's C, so if we can move on to appendix D:

21 "Sharing of information between Police Scotland, the
22 authority, the PIRC and the Crown Office in conduct
23 matters."

24 So this would appear to relate to that sharing of
25 information between all of those organisations regarding

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1 conduct, which was a matter -- part of your portfolio:

2 "Information may be provided with the prosecutor's
3 consent to PSD or the authority for the purpose of
4 conduct or misconduct proceedings. Such information
5 will advise PSD or the authority of the nature of any
6 allegations at the outset, advise if there is likely to
7 be additional offences and of the evidence at the
8 conclusion of the investigation and following a decision
9 by the Crown Office to prosecute or not.

10 "During an investigation if there are any
11 significant developments that substantially weakens or
12 strengthens the case against the officer, members of
13 staff or member of authorities staff, the timing and
14 disclosure of such information will be discussed and
15 agreed with the Crown Office to ensure that the ongoing
16 investigation and any potential criminal proceedings are
17 not compromised. Such information will be provided on a
18 confidential basis, solely for the purpose of conduct
19 considerations and not for any other purpose such as
20 civil proceedings."

21 So having -- I have read that out to you.
22 Obviously, it was in place in 2020. Does that refresh
23 your memory now that you look at that? Was -- there was
24 obviously this memorandum of understanding. Do you --
25 can you think of any examples where there was this

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1 shared information?

2 A. No, I can't. I can't. That doesn't mean that they
3 weren't any and, again, that's possibly a question which
4 is better put to the ACC Professionalism who would be,
5 you know, kind of responsible.

6 Q. ACC Spiers?

7 A. It was ACC Spiers at the time, yes, but the kind of key,
8 I suppose, element of the first paragraph there is
9 "information may be provided with the prosecutor's
10 consent", so I can't off the top of my head, counsel,
11 think of any -- any examples of that, but that doesn't
12 mean that there haven't been any.

13 Q. All right. No recollection of that being relied on to
14 seek information as far as you're aware?

15 A. Honestly, I couldn't -- I'm not just -- but I just could
16 not speak to that because I don't know.

17 Q. All right. Thank you. Could you give me a moment,
18 please.

19 A. Certainly.

20 Q. Thank you very much. I have no further questions.

21 COURT: Thank you. Are there any Rule 9 applications?
22 Ms Mitchell. Nobody else.

23 Ms Taylor, would you mind withdrawing to the witness
24 room while I hear a submission.
25

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1 Submissions by MS MITCHELL

2 MS MITCHELL: There are three issues. The first is in
3 relation to the gold group membership and the witness in
4 her evidence stated that this gold group the first
5 meeting took place relatively soon after and so she was
6 inheriting a legacy gold and then in due course the SPF
7 did not attend. So of course that's correct she arrived
8 in July 2018 and September 2018 was that meeting.
9 However, some nine months later on 29 March 2019, two
10 members of the Scottish Police Federation attended,
11 David Kennedy who had attended before but also Amanda
12 Givan. Now, as the Inquiry will recall, Amanda Givan
13 gave evidence to this inquiry on day 18. She was
14 present on the day in question in the room when the
15 police officers were put together, she was the fed rep,
16 and heard discussions taking place and was interviewed
17 as a witness by PIRC. For reference that's 000237. And
18 the inquiry made a call she was the person to who whom
19 Nicole Short was said to have flagged up her mark on the
20 vest. What I would like to ask this witness is,
21 standing these factors, had she been aware of her
22 involvement, would she have been comfortable with her
23 presence in these meetings and if not why not.

24 In relation to the same document, in relation to
25 gold group, there is mention at page 11 of 26 that when

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1 a report is being made to Crown Office in respect of
2 possible criminality, there is an agreed template or
3 subject report and what I was wondering was if she knew
4 of that subject report, had she seen one, and whether or
5 not that document has any -- anything inside it that
6 might give any indication on, for example, staying
7 proceedings until outcome of Crown Office
8 investigations. I say that whilst there is a backlog of
9 race disclosure that we're going through but to date
10 I don't think I have seen any document which flags up
11 these agreed template or subject report between
12 Police Scotland and Crown Office.

13 The third issue that I would like to address is the
14 issue of risk in that same document. There is a report
15 by Lucy Adamson in relation to publicity and in that
16 context there is a heading number 7 which relates to
17 risk and in that Mr Anwar's solicitor for the family of
18 Mr Bayoh is identified as it would appear that risk.
19 Now, this inquiry knows and will no doubt hear in the
20 future if the media is covered as a particular issue
21 that there were other bodies that spoke in relation to
22 the police, namely PIRC, Kate Frame, and the Scottish
23 Police Federation. So what I would like to ask of this
24 witness who was chairing the meeting where this document
25 presented was why she thought that there was only the

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1 David Kennedy and he had phoned in.

2 A. Yes.

3 Q. I wonder if we can scroll down, please, to the next
4 meeting which is identified and I believe that's some
5 nine months after you joined, if we can continue down.
6 Here we go. This is 29 March 2019 and we see that
7 you're chairing that. There are two representatives
8 from the Scottish Police Federation: David Kennedy and
9 Amanda Givan. Now, this inquiry has heard that Amanda
10 Givan was in fact present on the day of the incident of
11 Sheku Bayoh back at the police station and the Inquiry
12 has heard of evidence that she's been able to provide in
13 respect of her recollections that day. And those
14 include providing information which could be of
15 evidential value such as whether or not Nicole Short
16 presented to her a vest, whether or not there was a mark
17 on that vest, the comings and goings in and out of the
18 room, who spoke to who, what their conversation was.
19 Now, were you aware at the time of that interview
20 firstly of 29 March 2019 that Amanda Givan was somebody
21 that at the PIRC had interviewed in relation to this
22 matter and had been present on the day?

23 A. So I -- I wasn't aware that the PIRC had interviewed
24 Amanda Givan. I do, counsel, think I do recollect that
25 Amanda was the SPF representative at the time but in

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1 terms of her status with PIRC, I couldn't -- I couldn't
2 say definitively whether I realised or recognised that
3 she had been interviewed or a statement taken from her
4 by the PIRC.

5 Q. Well, a statement had been taken from her by the PIRC.
6 If you had been aware of the fact that a statement had
7 been taken from her in relation to PIRC and given the
8 fact any questions of criminality in respect of police
9 officers had still been pending, would you have been
10 comfortable with her presence in these meetings?

11 A. I think that's a very fair question, counsel, and I
12 think certainly with the benefit of sitting where I am
13 now, the answer is, no.

14 Q. And can you explain why that is?

15 A. Well, I think what we would always want to do is to
16 eliminate any potential for conflict and if an
17 individual is personally involved in any kind of set of
18 circumstances or situation, then in terms of protecting
19 them as an individual but also in terms of protecting
20 the integrity of any conversation or conversations that
21 may take place, trying to eliminate any potential for
22 conflict, I think is good practice.

23 Q. And that potential would have been present because she
24 was present at these hearings?

25 A. Potentially, yes.

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1 Q. Moving on, please, can I move on to page 11 of 26 and my
2 PDF unfortunately these aren't -- if you can just scroll
3 down and stop there, please. I'm not going to ask you
4 in any detail about this meeting that took place on
5 18 February 2019 but I want to ask you about a certain
6 document that's said to be in place. Can you see here
7 that at line 3, it says:

8 "The Lord Advocate guidelines regarding complaints
9 about the police Regulation 9 of the Police Service of
10 Scotland (Conduct) Regulations 2014 and indeed the 2012
11 reform act all provide guidance/directions in relation
12 to allegations which amount to criminality.
13 Police Scotland are obliged to report such matters to
14 CAAPD at COPFS and do not 'record' a crime as such and
15 simply report by way of an agreed template or subject
16 report. This is to ensure we fulfill their expectations
17 of reporting allegations for their consideration."

18 Now, there is specific reference there to rule 9.
19 Are you aware of such an agreed template or subject
20 report being in place?

21 A. I genuinely am not, no.

22 Q. No. Would you expect to have known about such an item?

23 A. I am struggling a little bit just to contextualise this
24 at the moment. If it was a matter of absolute
25 significance, then, yes, I would have anticipated that I

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- 1 would have known about it, counsel, but I can't recall
2 whether such, as you say, a schedule was in place.
- 3 Q. Yes, I think this appears to speak in general terms
4 including Regulation 9 of the police service to indicate
5 that there should and such simply reported by way of an
6 agreed template or subject report but you're not aware
7 of such a document?
- 8 A. So if it existed within Police Scotland, it would have
9 existed in Police Scotland, I can't summon it to mind,
10 you know, I couldn't describe to you what that template
11 looked like.
- 12 Q. But you would have expected to see it if such a thing
13 existed?
- 14 A. I would have expected that if we said such a thing
15 existed then, yes, we certainly had it.
- 16 Q. Would you have expected to have seen it in your role?
- 17 A. Potentially. Potentially, I can't say definitively
18 whether I would have done or not. If there were action
19 owners assigned to or aligned with these particular
20 recommendations, it may have been the case that if the
21 action owner was sufficiently senior and that person
22 assured me that, yes, this schedule or this report or
23 template existed, then I would have taken them on their
24 word, so I can't say definitively that I would have
25 expected to see it.

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1 Q. Thank you. I wonder if we can move on to my next area
2 which is further on in this document if we can scroll
3 down, please. And continue to go over. What we're
4 looking for is the Lucy Adamson report in relation to
5 media. Here we are. Now, we see that this is a
6 document which is first created on 16 November but
7 there's an iterative process ongoing and it would appear
8 at this time it's being presented at a meeting which you
9 have chaired and appears to have been last updated
10 1 October 2018. As we can see at part 2 if we can
11 scroll down slightly:

12 "The terms of the reference for the gold group aim
13 to maintain confidence in Police Scotland."

14 And then it goes into specific terms of how to do
15 that. I wonder we can go down to paragraph 7, please.
16 If we can stop there that's fine thank you. Can we see
17 under the heading "Risks":

18 "The events of May 2015 and the ongoing PIRC/COPFS
19 investigation present a risk to maintaining public
20 confidence in policing. Clear and timely communication
21 will assist with mitigating the impact of this, however
22 this has been restricted by the ongoing investigations."

23 Now, in the next few paragraphs we see that the
24 person who is identified, the only individual who is
25 identified in relation to this what is described as

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1 risk, is the deceased family's lawyer and it indicates
2 that he also represents families of other people and it
3 also goes on to talk about terrorist attack, including
4 once again the deceased family lawyer. If you scroll
5 down, I think we can see in full the deceased family
6 lawyer again in the next paragraph has drawn comparison
7 to the lack of answers while the PIRC investigation
8 continues indeed after the death, questions have been
9 raised regarding the integrity of police officers, et
10 cetera, and the view taken by the writers, the issue
11 should be addressed through work with safer communities
12 to prepare for such a claim about integrity of police
13 officers and set of key messages prepared to respond to
14 any future criticisms. Were you aware at the time of
15 this second meeting, that would be in 2019, some nine
16 months after you had taken post, that there were other
17 people who had in public addressed matters which may be
18 considered either critical or call in questions about
19 Police Scotland? Can you remember any other bodies that
20 might have been involved in that?

21 A. In respect of the events --

22 Q. In respect of the events of Sheku Bayoh.

23 A. 2015. I can't recall at this point in time but that
24 doesn't mean that that -- that there weren't sort of
25 public criticism or public concerned aired, counsel.

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1 Q. If the Chair were to find that there are there were, for
2 example, press in relation to PIRC, in relation to
3 Kate Frame, in relation to the Scottish Police
4 Federation, and those raised issues which might be
5 considered inverted commas as risk to Police Scotland in
6 this way, ought they have been included in such a
7 report?

8 A. I understand your question now. Yes, absolutely they
9 should have been.

10 Q. Yes.

11 A. And that's -- it shouldn't have focused simply on one
12 individual and the responsibilities of that individual,
13 absolutely should have taken a much more holistic
14 approach to risk.

15 Q. And were you aware at the time of those criticisms --
16 I'm asking to go back and now ask in 2019 but ...?

17 A. Yes, I'm sure I would have been given that I was
18 chair -- I'm sure I would have been, given that I was
19 chairing the gold group. I can't remember them in
20 detail but I should have -- even if I wasn't aware, I
21 should have been aware.

22 Q. And on reflection that being the case, ought that to
23 have been --

24 A. We should have expanded or changed, you know, to ensure
25 that all of the risks potentially arising were recorded,

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1 no question.

2 MS MITCHELL: No further questions.

3 COURT: Thank you. Ms Taylor, thank you very much for
4 coming to give evidence to the Inquiry and for all the
5 work that you've done in connection with the Inquiry.
6 We're going to rise for lunch now and you'll then be
7 free to go. Sit again at 2 o'clock.

8 (1:02 pm)

9 (Luncheon adjournment)

10 LORD BRACADALE: Good afternoon, Ms Macleod, will you take
11 the oath.

12 Evidence of MICHELLE MACLEOD (sworn)

13 LORD BRACADALE: Ms Thomson.

14 MS THOMSON: Good afternoon. You are Michelle Macleod?

15 A. Yes.

16 Q. And you are the Police Investigations And Review
17 Commissioner?

18 A. Indeed.

19 Q. May I ask your age?

20 A. Yes, I'm 59.

21 Q. Before I ask you any further questions, can I invite you
22 to take a look in the blue folder that's in front of
23 you, I can see you have already opened it up, just so we
24 can have a look at the documents that are in it. I'm
25 aware that you have sat through a lot of the evidence

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1 before the Inquiry and so you will appreciate that we
2 will have a copy of your statement within the folder and
3 other documents that we think you might find it helpful
4 to refer to.

5 So we should find within the folder the Rule 8
6 request that the Inquiry sent to you on 5 April 2024.
7 We don't need that on the screen, but the reference is
8 SBPI 00617. Is that there in the folder, Ms Macleod?

9 A. It is yes.

10 Q. And we should also, hopefully, have in the folder the
11 response that you submitted to the Inquiry dated
12 25 October 2024. And this we will bring up on the
13 screen it's SBPI 00551. If we scroll through this
14 document, I think we'll see that it incorporates the
15 questions that you were asked along the way, but as we
16 scroll through, please, we will see that you are answers
17 to the questions you were asked are set out in full.

18 So if we pause here, we see, for example, the first
19 question that you were asked was in relation to your
20 professional experience before you became the PIRC and
21 we see that you have outlined there your experience in
22 the Crown Office. So although the first page appears to
23 be a letter sent to you by the solicitor to the Inquiry,
24 you have filled in --

25 A. Yes.

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1 Q. -- your answers to the questions that were asked of you.

2 Can we go to the very end of this document, please.

3 I think, sorry, there's an appendix on the very last
4 page or so. If we can go to the numbered paragraphs,
5 there we are. We can see that there are 39 paragraphs
6 to the Rule 8 response and paragraph 38 invited you to
7 include certain wording before you signed the statement
8 which you have done and that wording reads:

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

13 And although the signature, your signature has
14 been redacted on the screen, hopefully, your signature
15 will appear in the version that's in hard copy in your
16 folder?

17 A. Yes.

18 Q. And you signed the statement on 25 April of this year
19 and you did so in the knowledge that the statement may
20 form part of the evidence before the Inquiry and be
21 published on the inquiry's website. And when you
22 answered the questions that were asked of you, did you
23 do your best to answer the questions fully and
24 accurately?

25 A. Yes.

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1 Q. Now, technically, this is a response to a Rule 8
2 statement, but by way of shorthand I'll probably refer
3 to it -- sorry, a Rule 8 request, I'll refer to it as
4 your statement.

5 If you want to refer to your statement at any time,
6 Ms Macleod, you can do so. From time to time, I might
7 ask for passages to be put up on the screen and when
8 you're responding to questions, if there's any passage
9 that you would like me to bring up on the screen,
10 please, just say and we can arrange for that to be done.

11 A. Thank you.

12 Q. There should be a third document within the folder.

13 There should also be a set of guidelines --

14 A. Yes.

15 Q. -- issued by the PIRC and these are guidelines for
16 dealing with allegations of discrimination --

17 A. Yes.

18 Q. -- when undertaking investigations and
19 complaint-handling reviews. We will look at these in
20 detail later, so we don't need them on the screen just
21 now, but for completeness and for the benefit of those
22 behind me, those are PIRC 04724 and, again, I'll ask for
23 certain passages from those guidelines to be put on the
24 screen and if there's anything you would like to draw
25 to our attention, please, say and we can bring it up on

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1 the screen in front of us, but you can refer to these
2 documents at any time in time if you would find that to
3 be helpful.

4 A. Thank you.

5 Q. I want to begin by asking you a few questions about your
6 professional experience. Now, there's considerable
7 detail of your career in the statement which you have
8 prepared, which is of course available to the Chair, he
9 can consider your statement at his leisure and so I'm
10 going to move through your CV quite quickly. And I
11 think we can do this without the need to bring the
12 statement up on the screen, but I will give the
13 paragraph references for the benefit of those following
14 your evidence.

15 You've explained in the first paragraph of your
16 statement that you were employed by the Crown Office and
17 Procurator Fiscal Service for more than 20 years?

18 A. Yes.

19 Q. From 1992 until 2013. That you entered the service as a
20 trainee solicitor and that you remained in post as a
21 Procurator Fiscal Depute after you qualified and, as
22 your career developed, you held ultimately a number of
23 senior civil service positions within the Crown Office,
24 including being the Area Procurator Fiscal for
25 Edinburgh, the District Procurator Fiscal for Linlithgow

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1 and Interim District Procurator Fiscal for Edinburgh,
2 the Area Fiscal for Central, head of policy and,
3 laterally, the Procurator Fiscal for High Court East?

4 A. Yes.

5 Q. You also explain in the first paragraph of your
6 statement that in 2013 you moved away from the
7 Crown Office and you were appointed as Her Majesty's
8 Chief Inspector for the Inspectorate of the Prosecution
9 in Scotland and you held that post for six years from
10 2013 until 2019?

11 A. Indeed.

12 Q. And you explained too that it was your responsibility to
13 make -- to inspect Crown Office and to make
14 recommendations with a view to making the crown more
15 accountable and so to enhance public confidence?

16 A. Yes.

17 Q. In the second paragraph of your statement you've
18 explained that you were appointed as the PIRC, that is
19 the Commissioner, in 2019 and you set out the challenges
20 that you faced upon appointment. You explained that in
21 addition to familiarising yourself with the role, the
22 remit of the organisation and its staff, there were a
23 number of challenges, including the impact of the
24 pandemic, the need to respond positively to criticisms
25 of the PIRC in Lady Angiolini's preliminary reports on

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1 complaints handling and investigations and misconduct
2 and also the requirement on the PIRC to investigate the
3 fatal shooting of an asylum seeker in a Glasgow hotel,
4 which you describe as being a significant PIRC response
5 and a time-consuming and labour-intensive
6 investigation?

7 A. Indeed.

8 Q. Again, all of these challenges are set out in some
9 detail in your statement which is available to the
10 Chair. You explain that the impact of these challenges
11 was that you were two years into your tenure as
12 Commissioner before you could properly address the
13 priorities for the development of the organisation that
14 you might otherwise have turned to sooner?

15 A. Yes, in relation to that, one of our limitations was
16 that when the pandemic struck we had no
17 video-conferencing facilities. Whilst we got some,
18 I think it was Skype, the following month, it wasn't
19 until the end of 2020 we actually got MS Teams and were
20 able to then have proper video-conferencing facilities
21 which allowed us to have, again -- well, not
22 face-to-face, but meetings where we could actually
23 visibly see people. So there was obviously a lot of
24 time during that period of time, like leaders in most
25 organisations, was mainly around business continuity and

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1 making sure the staff were safe and staff wellbeing, so
2 there was obviously a considerable amount of work and
3 effort going on in that, but it was quite difficult
4 without the video conferencing. That made a huge
5 difference when we came to the end of 2020.

6 Q. Thank you. I would like to move away from your resume
7 and ask you some questions about the PIRC guidelines on
8 investigating allegations of discrimination. And you
9 explain in your statement, and this is at paragraph
10 10.2, that there is guidance available on investigating
11 discrimination allegations and that the requirement for
12 the PIRC to ensure that discrimination issues are
13 considered as an integral part of the work of PIRC was a
14 recommendation in Lady Angiolini's report.

15 I have read out that reference, but I see you
16 looking through that statement so let's bring it up on
17 the screen just to get our bearings. If we can turn to
18 paragraph 10.2, please, so this is on page 11. Here we
19 are. Thank you.

20 A. Yes.

21 Q. So you explain here that:

22 "There is guidance available on investigating
23 discriminatory allegations. The requirement for PIRC to
24 ensure that discrimination issues are considered as an
25 integral part of the work of PIRC was a recommendation

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1 of the Lady Angiolini report. The guidance on
2 investigating discriminatory allegations were prepared
3 taking account of similar guidelines in the IOPC. The
4 guidelines were issued in November 2021. Prior to
5 publication, the guidelines were shared with
6 Police Scotland professional standards departments,
7 equalities forums and the SPA for review and comment.
8 They were published on the PIRC intranet with a staff
9 message. An operational instruction was issued in April
10 reminding all investigators of the importance of
11 referring to the guidance when dealing with any
12 allegations of discrimination."

13 So you explain here that these guidelines were
14 published in response to one of Lady Angiolini's
15 recommendations and we'll look at that recommendation in
16 a moment, but to put it in context the report that you
17 refer to here was her independent review and police
18 complaints handling investigations and misconduct issues
19 from 2020 and I understand that the preliminary report
20 or preliminary report was published in June of 2019?

21 A. Yes.

22 Q. And the final report almost 18 months later in
23 November 2020?

24 A. Yes.

25 Q. And you explain, and this is in paragraph 14 of your

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1 statement, if we could perhaps scroll down to paragraph
2 14, you explain here that although you were not in post
3 during the early stages of Lady Angiolini's review, you
4 understand that several PIRC employees, including the
5 former Commissioner, that was Kate Frame, I believe,
6 were interviewed by Lady Angiolini and her team and once
7 in post you were interviewed on two occasions,
8 September 2019 and August 2020, and you provided written
9 submissions in relation to specific questions and areas
10 raised by Lady Angiolini's team regarding your views on
11 the initial findings and recommendations of her
12 preliminary report.

13 A. Yes.

14 Q. You also explain at paragraph 15 you were asked what was
15 the PIRC's response to the report. Reading this
16 paragraph short, you say that PIRC welcomed the reported
17 and you go on to draw attention to the praise that
18 Lady Angiolini gave to the PIRC in terms of the people,
19 the skills and the values of integrity and partiality
20 and respect and you say that was a confidence and morale
21 boost for staff and you also explain that as
22 Commissioner you were one of the partners of the
23 strategic oversight group, along with Police Scotland,
24 the SPA and COPFS. You were tasked with progressing the
25 recommendations at a strategic level and, in addition,

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1 you were part of the ministerial group which had
2 oversight of the progress of the recommendations.

3 And if we could look at paragraph 16. So far as
4 implementation is concerned, you've explained that:

5 "Where the PIRC were the lead partner, they have
6 implemented all recommendation that don't require
7 legislation..."

8 A. Yes.

9 Q. "And you're confident that the recommendations
10 implemented have achieved the intended outcomes."

11 Before we go any further, perhaps you could explain
12 what you mean by "the lead partner" in relation to her
13 recommendation?

14 A. Yes, there was obviously, I think, 81 recommendations.
15 There were a specific number of recommendations, about
16 30 that related were directed toward PIRC. There were
17 some that were joint recommendations, but the ones I'm
18 talking about where it was directed are the ones that
19 was directed so primarily to PIRC to take them forward.

20 Q. And you say that the PIRC has implemented all
21 recommendations not requiring legislation?

22 A. We have.

23 Q. How many require legislation to be progressed?

24 A. The ones requiring legislation are now being taken
25 forward in the Police (Ethics, Conduct and Scrutiny)

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1 Bill. They don't necessarily marry up what's now in the
2 bill and how many the recommendations there were. There
3 has been a transition between the actual recommendations
4 and what's in the provisions in the bill, so they don't
5 actually -- I couldn't actually tell you how many
6 legislative ones there were, but all the non-legislative
7 were completed last year.

8 Q. And those that require legislation you say that
9 legislation is now in progress?

10 A. It is.

11 Q. To the extent that there is now a bill?

12 A. There is.

13 Q. Thank you.

14 So let's look now at the recommendations that Lady
15 Angiolini made that prompted the creation of the PIRC
16 guidelines and I wonder if we can pull up Lady
17 Angiolini's 2020 report, that's SBPI 00501, and this
18 should be page 235 of the PDF. If we could scroll down
19 to paragraph 14.105:

20 "Diversity and Discrimination.

21 "The PIRC should ensure that discrimination issues
22 are considered as an integral part of their work. A
23 systemic approach should be adopted across the
24 organisation and in all cases investigators should
25 consider if discriminatory attitudes have played a

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1 part."

2 And if we can scroll down to the next paragraph,
3 please:

4 "I have raised with the Commissioner the question of
5 guidance available to PIRC investigators. She has
6 confirmed that PIRC does not currently have any specific
7 guidance for investigations on race and discrimination,
8 but is planning to adapt the IOPC's guidelines for
9 handling alleges of discrimination for their own use."

10 So the Commissioner referred to there, that would be
11 yourself?

12 A. That's me.

13 Q. Not your predecessor?

14 A. No.

15 Q. And you had advised Lady Angiolini that the PIRC didn't
16 currently have specific guidance for the investigations
17 of race and discrimination, but was planning to adapt
18 the IOPC Guidelines.

19 And if we can scroll to what I think should be page
20 254 of the PDF, please, so we can see the actual
21 recommendation. Perfect. So this is recommendation
22 14.169:

23 "The PIRC should ensure that discrimination issues
24 are considered as an integral part of the work, a
25 systemic approach should be adopted across the

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1 organisations and in all cases investigators should
2 consider if discriminatory attitudes have played a
3 part."

4 So the guidelines were a response to this particular
5 recommendation?

6 A. They were, yes.

7 Q. Can we take it then that they were intended to ensure
8 that discrimination issues are considered as an integral
9 part of the work of the PIRC and that in all cases
10 investigators should consider whether discriminatory
11 attitudes have played a part?

12 A. Yes, that was the intention.

13 Q. Okay. And when the recommendation says "in all cases",
14 does that mean literally every case that is investigated
15 by the PIRC or does it mean every case in which an
16 allegation of discrimination is made?

17 A. I think in the guidance to staff it was a general
18 guidance about being live to the potential of
19 discrimination and if there was particular allegations,
20 this applies to the review side of the business as well,
21 not just investigation, then they should have regard to
22 these guidelines before undertaking the investigation or
23 the complaint handling review, but it was -- but it was
24 all the staff were to have a general awareness of the
25 guidelines and have regard to them.

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1 Q. Is this an expectation then that staff should be live to
2 the possibilities of discrimination, even if a formal
3 complaint about discrimination hasn't been made by the
4 complainer or next of kin in the case of death?

5 A. I suspect at the time it was more directed towards where
6 there was an obvious concern raised either in the
7 complaint or in the investigation and where perhaps the
8 victim or complainer or, if it was in relation to an
9 investigation into a death, the deceased came from a
10 minority ethnic community.

11 Q. Thank you. Who drafted the guidelines?

12 A. So as indicated, they were predicated on the existing
13 guidelines by the IOPC and, in that regard, I had spoken
14 with the then directors at the time of IOPC and asked
15 his consent for us to adapt them for our own legislation
16 and the PIRC practices and procedures and that was
17 granted. I was aware that they had been through quite a
18 number of levels of quality assurance in the IOPC, so it
19 seemed sensible to take them as a starting point.

20 I initially asked Mr McSporran to go through the
21 guidelines to ensure that the legislation was relevant
22 for Scotland at that time, I didn't have an in-house
23 solicitor myself, and also to reflect PIRC practices as
24 opposed to the practices -- IOPC practices and we have
25 quite substantial differences.

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1 So once that was done, basically I draft -- I edited
2 the guidelines and I incorporated some PIRC examples and
3 I left some of the IOPC examples, generic examples, in
4 there and, yes, it was largely myself, but it was very
5 much taking and amending existing guidelines that were
6 there.

7 Q. Okay. Let's have a look at the guidelines now. They're
8 PIRC 04724. As I mentioned earlier, Ms Macleod, there
9 is a copy in your folder if you find it easier to work
10 from hard copy.

11 Let's begin at the beginning with the front page,
12 please, and if we scroll down, we'll see that these are
13 the PIRC guidelines for dealing with allegation of
14 discrimination when undertaking investigations and
15 complaint handling reviews.

16 Should we understand the title of the guidelines
17 reflect these two desperate functions of the PIRC, to
18 carry out investigations and that would include
19 investigations at the direction of the crown --

20 A. Yes.

21 Q. -- for example. And also their role in carrying out
22 reviews of the way that complaints have been handled by
23 Police Scotland or the SPA?

24 A. Exactly.

25 Q. So these are two separate functions that these

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1 guidelines apply to alleges of discrimination, whether
2 those allegations manifest themselves in the course of
3 an investigation or a complaint?

4 A. Yes.

5 Q. Now, the final page suggests, I think, that these
6 guidelines were published in November of 2021, I think
7 that's page 48 if we can quickly scroll to the end
8 please. Here we are. Version V2 summary of last
9 modification first draft version modified by yourself,
10 I think, on 3 November 2021.

11 Can you help us to understand which version these
12 are, when were they first published?

13 A. These are the November 2021 -- yes, these are the ones
14 that were initially published. We actually -- I see
15 there's a review date. They weren't reviewed in 2022,
16 but they're actually subject review at the moment to
17 incorporate the new hate crime legislation, so they're
18 currently being revised at present with a view to
19 actually updating them and making sure we have got all
20 the up-to-date legislation included in them.

21 Q. This is the first version?

22 A. Yes.

23 Q. Okay. And V2 then that doesn't -- that's not of any
24 particular significance?

25 A. Sorry. Mr McSporran did a draft and then the version 2

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1 is mine as the final version.

2 Q. I see. So the last modification we see "first draft
3 version" so Mr McSporran prepared a draft that would
4 have been V1?

5 A. Yes.

6 Q. You revived that draft and that is V2?

7 A. Yes.

8 Q. But V2 was the first published version published in
9 November 2021 and you've explained that although there
10 was a review date 12 months hence that didn't happen,
11 but there is now a review underway?

12 A. Yes.

13 Q. Why wasn't there a review in November 2022?

14 A. Partly in October 2021 we -- as a result of one other of
15 Lady Angiolini's recommendations, we experienced a
16 substantial increase in our workload and effectively
17 there was -- the capacity to do this was limited at that
18 time. I am now -- I have an in-house legal staff and
19 that enables us to do things and review the policies in
20 accordance with our desired timetable, but I think at
21 the time there just was a lack of capacity to review it.

22 Q. Okay. Thank you. Can we return to the top of the
23 document, please, and just for the avoidance of doubt,
24 should we understand that prior to the November 2021
25 there were no guidelines, certainly no written

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1 guidelines, available to the PIRC as to how to approach
2 allegations of discrimination?

3 A. No, not that I was aware of anyway.

4 Q. If we could scroll, please, to beyond the contents page
5 to what I think is page 3 of the PDF, "The
6 Commissioner's Forward" and you acknowledge here at the
7 outset that:

8 "It's crucial for public confidence in the
9 independent investigation and review of complaints that
10 allegations of discrimination against the police are
11 handled properly. Values-based policing which reflects
12 and represents our communities is vital to secure the
13 consent from which policing draws its legitimacy.
14 Unfair or unlawful discrimination fundamentally
15 undermines the ability of policing to operate by
16 consent."

17 And you go on to explain or acknowledge in
18 paragraph 3 that:

19 "Investigating and resolving allegations of
20 discrimination can be challenging. Nonetheless, the
21 police complaints system and those who review the
22 handling of police complaints or undertake
23 investigations into the actions or omissions of the
24 police, including criminal allegations, must be able to
25 meet this challenge to retain the confidence of all

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1 communities and groups."

2 And you concluded by saying that:

3 "The guidelines set the standards that complainers,
4 nearest relatives and other interested parties should
5 expect from the PIRC when allegations of discrimination
6 are made against the police. They're also standards
7 that you will apply when conducting your investigations
8 and complaint handling reviews."

9 If we can move through the document, please, to
10 chapter 1, which we'll find on page 4, and it's headed
11 up "Professional Standards and Ethics" and I wonder if
12 we might just look at the first paragraph here:

13 "The framework that sets out standards of police
14 officers and staff behaviour includes the Convention
15 Rights incorporated into the Human Rights Act 1988,
16 Police Scotland's code of ethics and Police Scotland's
17 standards of professional behaviour. The code of ethics
18 is based on the values of integrity, fairness, respect
19 and human rights. It specifically provides that
20 constables act with fairness and impartiality and do not
21 discriminate unlawfully or unfairly."

22 And if we could perhaps move to the next page, page
23 5, and at the very bottom of page 5 there's a definition
24 leer of "complainer" and you say:

25 "The term 'complainer' is used throughout these

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1 guidelines. However, the same principles apply to
2 nearest relatives or other interested persons in
3 relation to investigations into death or serious injury
4 or other serious incidents or any matters raised in
5 respect of reviewing the handling of complaints."

6 So should we understand then that in the context of,
7 let's say, a death following police contact where a the
8 language "complainer" is used in the guidelines, the
9 principles apply equally to liaison with next of kin and
10 to their rights and interests --

11 A. Yes.

12 Q. -- in the investigation?

13 Can we move on to the next page, page 6, please.
14 This is chapter 2 and chapter 2 asks the question:
15 "What is discrimination?" It begins with the Equality
16 Act 2010 and say that:

17 "The Act defines unlawful discrimination and
18 specifically prohibits discrimination relating to the
19 protected characteristics."

20 Which are listed in full, but perhaps of particular
21 relevance for our purposes we see that those protected
22 characteristics include race, which in turn includes:

23 "Colour, nationality and ethnic or national origins
24 and also religion or belief, any religion or religious
25 or philosophical belief, including no such religion or

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1 belief."

2 And if we might scroll to the bottom of page, so
3 this chapter "What is discrimination?" begins with the
4 Equality Act and then at the bottom of the page
5 highlights again that:

6 "The standards of professional behaviour say that
7 police officers must not discriminate unfairly."

8 So there's the legislative framework, then there are
9 at the standards of behaviour in addition to that.

10 And if we could perhaps move on to page 7. Having
11 look at the legislative framework and the standards of
12 behaviour, the guidelines then go on to consider the
13 human rights angle under the heading "Discrimination and
14 human rights."

15 I wonder if we can look at this, because we have
16 heard quite a lot of evidence about Article 14 in recent
17 weeks:

18 "Article 14 of the European Convention on Human
19 Rights also provides protection from discrimination.
20 This protection only applies where it is alleged that
21 discrimination has affected a person's ability to enjoy
22 one or more of the other human rights set out in the
23 Convention. For example, Article 14 would apply if an
24 allegation was made that discriminatory actions led to a
25 death in custody as a death in custody would engage

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1 Article 2 (the right to life) and also if there was an
2 allegation that discrimination played a part in an
3 allegation of inhuman or degrading treatment
4 (Article 3). For the purpose of Article 14,
5 discrimination is when a person is treated less
6 favourably than another person in a similar situation
7 and the treatment cannot be objectively and reasonably
8 justified. The application of Article 14 extends beyond
9 the protected characteristics in the Equality Act and so
10 it may apply to complaints of conduct matters that
11 involve allegations of unfair discrimination, as well as
12 those that involve allegations of unlawful
13 discrimination."

14 Now, a number of witnesses in recent weeks have
15 agreed with a number of propositions drawn from the case
16 law and Article 14 and they have agreed that when there
17 is a death of the hands of state agents, taking Article
18 14 in conjunction with Article 2, the state authorities
19 have a duty to take all reasonable steps to unmask any
20 racist motive and to establish whether or not ethnic
21 hatred or prejudice may have played a role in events and
22 to pursue that investigation with vigour, but would you
23 agree with those principles?

24 A. Yes.

25 Q. And would you also agree that the PIRC are subjects to

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1 that duty?

2 A. Absolutely.

3 Q. This chapter then looks at the statutory framework, the
4 Equality Act, it draws attention to the standards of
5 professional behaviour which require that officers must
6 not discriminate unfairly and then it concludes by
7 looking at discrimination from the perspective of the
8 ECHR and draw attention to Article 14 and also, for our
9 purposes, Article 2.

10 If we carry on to the bottom of this page, we see
11 that this particular chapter then goes on to set out
12 tests for discrimination?

13 A. Yes.

14 Q. Direct discrimination and later on indirect
15 discrimination, but I would like to focus on direct
16 discrimination and it begins with a definition:

17 "'Direct discrimination' is when someone is treated
18 less favourably than another person because of a
19 protected characteristic or characteristics. The key
20 elements of this test are less favourably treatment.
21 This means being treated differently or worse. It is
22 not necessary to show actual harm. It only needs to be
23 shown that it is reasonable that the person would prefer
24 not to have been treated differently in that way."

25 And we can carry on, please:

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1 "Less favourable treatment suggests a comparison, ie
2 less favourably than who. The 'who' is a person in the
3 same situation who does not have the same protected
4 characteristic. For example, you might compare the
5 treatment of a black person to how a white person would
6 have been treated in the same circumstances. Making
7 this comparison is a key part of the investigation or
8 review.

9 "'Because of the a protected characteristic', this
10 means that the characteristic needs to be a cause of the
11 less favourable treatment, but doesn't need to be the
12 only or even the main cause. Discrimination may relate
13 to more than one protected characteristic, e.g race and
14 religion or gender and sexual orientation, and in
15 determining whether there has been direct
16 discrimination, the question to ask is would the person
17 be treated in this way but for their protected
18 characteristic?"

19 And so the guidelines suggest that the process that
20 requires to be gone through involves a comparative
21 exercise where you might compare how an individual has
22 been treated and how a person who doesn't possess the
23 protected characteristic might have been treated in
24 similar circumstances. And the example that is given in
25 the Guidelines is that you might compare the treatment

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1 of a black person to how a white person would have been
2 treated in the same circumstances.

3 I wanted to ask you, because you have had a hand in
4 the drafting of these Guidelines and because you are the
5 PIRC, and because you have given an example here
6 involving a black man, if the allegation were one of
7 excessive use of force against a black man, perhaps
8 involving batons, sprays and restraint, how do you
9 anticipate the PIRC investigators would go about
10 carrying out that comparative exercise? What sort of
11 evidence would they need to then gather in order to
12 allow them to carry out that comparison?

13 A. Well, I think in relation to an investigation, I think
14 it's been discussed in the Inquiry, you would be looking
15 at, for example, were there other options available to
16 the police, were there deescalation options that they
17 could have undertaken, and you would be looking whether,
18 for example, they had gone to use of force prior to
19 being absolutely necessary in that characteristic. And
20 that is one aspect of looking at -- looking at
21 basically -- basically looking at the conduct of the
22 police officers.

23 I should say that the Guidelines were obviously
24 made -- are adapted to reflect Scottish procedure and
25 PIRC, but the bulk of the actual text came from the IOPC

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1 Guidelines and I think, as you have already alluded to,
2 and I won't pretend I was an expert in race, that was
3 why I asked specifically for them to be quality assured
4 by the Police Scotland's equality forums and I did get
5 back substantial feedback from them, which was really
6 helpful and I took that on board and amended the
7 Guidelines to reflect that. So I would just caveat it
8 with that's the starting point and that's where I went
9 to get quality assurance, but at the time I certainly
10 wasn't an expert in the Guidelines, but we took the best
11 we could at the time.

12 Q. So you say there if the allegation was one of excessive
13 force against a black man, then you might anticipate
14 that the PIRC investigators would consider what other
15 use of force options were available to the attending
16 officers, deescalation, was that considered, was that
17 tried, and whether the use of force was selected as an
18 option before other avenues had perhaps been exhausted
19 before it was necessary to use force.

20 As part of that comparison, because, as is
21 identified in the Guidelines, the "who" for the purposes
22 of this comparative exercise would be a white person.
23 Would you anticipate investigators considering whether
24 the officers in question had perhaps used similar level
25 of force against white subjects in similar

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1 circumstances?

2 A. The same considerations would be applied in relation to
3 actually any case that we were investigating. We would
4 be looking at those factors to determine whether the
5 actions of the police were lawful, proportionate and
6 necessary, so that's a factor that would be taken into
7 account in relation to any investigation.

8 Q. Thank you. Let's carry on moving through the
9 Guidelines. If we could begin at chapter 3 which begins
10 on page 12, please. Sorry up a bit to page 12, please.
11 Top of page 12. Lovely, thank you:

12 "Engaging with the Complainer.

13 "Discrimination and complaints will often involve a
14 complainer who already has very low levels of trust in
15 the police. Failure to engage effectively and
16 empathetically is likely to undermine confidence in the
17 PIRC complaints handling of the review process or
18 investigation. To build and retain confidence the
19 investigating or review officer should follow the
20 principles set out below."

21 And, sorry, if we could possibly go back to the top
22 of page 12, lovely, up a little bit, please, thank you.

23 So this chapter is headed "Engaging with the
24 complainer" but should we take it from what you said
25 earlier and from the definition of "complainer" earlier

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1 in the Guidelines that in the context of a death
2 following police contact, we should read "engaging with
3 complainer" as engaging with the next of kin.

4 A. Okay.

5 Q. And the same principles will apply?

6 A. Yes.

7 Q. Whether you are dealing with a complainer or perhaps the
8 family of a person who has passed away, there's a
9 recognition that a failure to engage effectively and
10 empathetically can undermine confidence in the process
11 and that in order to build and retain confidence a
12 number of principles are put forward that are
13 recommended to investigators.

14 Let's look then at the advice that is given to
15 investigators and if we look at the heading "Contact the
16 Complainer":

17 "Contact the complainer at the beginning of the
18 investigation to establish a clear understanding of the
19 allegation."

20 For our purposes, I think the Inquiry is perhaps
21 more interested in the investigation side of things --

22 A. Yes.

23 Q. -- than the complaint side of things, so I might miss
24 out the odd word to bring focus to the investigation
25 side of your functions:

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1 "In relation to an investigation, it should seek to
2 ascertain why the complainer feels that they have been
3 discriminated against. In particular, it should be
4 explored whether the person felt that assumptions had
5 been made because of my protected characteristic and why
6 the person believes that they were treated differently."

7 Again, if we can read "next of kin" for "complainer"
8 in the context of a death following police contact,
9 should we understand that following the death, for
10 example, of a black man following police contact, where
11 the family have expressed concerns that race may have
12 been a factor, then the Guidelines would require an
13 investigator to make contact with the family to
14 establish why they felt that race was a relevant factor,
15 whether they felt that assumptions had been made and why
16 the family felt their loved one had been treated
17 differently?

18 A. Yes.

19 Q. Okay. Can I ask who you would anticipate being in
20 contact with the family, would that be a FLO?

21 A. Yes, in the first instance it would be the FLOs that
22 would have that contact.

23 Q. You say in the "first instance", would there come a
24 point where an investigator who isn't a FLO would become
25 involved, because we've heard that FLOs are first and

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1 foremost investigators, they can serve both functions.

2 A. It would depend on the individual investigation. It may
3 be at some point in time it would be appropriate for
4 want senior investigator to meet with the family and
5 give them an update on the progress of the Inquiry. It
6 may be that it may be that the Director of Operations
7 would meet. It would depend on the circumstances and
8 what the family were looking for to some extent.

9 Q. Thank you. Can we move on to chapter 4, please, which
10 we'll find on page 16 of the PDF.

11 This chapter is headed "Understanding the Allegation
12 of Discrimination", and I would like to go through this
13 in a little detail. It explains that:

14 "Discrimination can be overt and expressed as open
15 hostility or use of offensive degrading language.
16 However, it is more than just these things. Direct
17 discrimination includes actions that are informed by
18 biased assumptions or prejudice in respect of a
19 protected characteristic, even if this is done
20 unconsciously. An investigation into this type of
21 allegation will need to test whether discriminatory
22 assumptions, prejudice or bias impacted on police
23 actions or behaviour. To do this the investigating or
24 review officer will need to have an understanding of
25 what these discriminatory assumptions might be."

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1 If we scroll down a little there is a heading "What
2 does the complainer say?"

3 "It is essential that the investigating or review
4 officer takes time to understand why the complainer
5 feels they have been discriminated against. This should
6 include exploring any prejudiced assumptions the
7 complainer feels the police made about them."

8 And again, we would substitute "next of kin" for
9 "complainer" in the context of a death following police
10 contact.

11 Further down the page under the heading "What do you
12 know?" The Guidelines suggest:

13 "Are there any stereotypes or common assumptions
14 made about the protected characteristic group that you
15 are aware of which might be relevant to consider? Does
16 this complaint fit with a pattern of previous complaints
17 about similar issues? Is there anything about the
18 policing context in the area or beyond e.g. relations
19 between police and relevant local communities, any high
20 levels of particular types of crimes or recent tensions
21 or significant events, which may impact on or inform
22 these types of assumptions?"

23 Where the Guidelines say "Are there any stereotypes
24 or common assumptions made about the protected
25 characteristic group that you're aware of?" does that

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1 suggest that here you're inviting investigators to draw
2 on their own experience of life and potentially their
3 experience within policing, the PIRC and any training
4 that they have received to put forward, as it were,
5 their own understanding of stereotypes and assumptions
6 that are potentially relevant to the case that they're
7 investigating?

8 A. It does, but what I would say is I have obviously had
9 the benefit of being at the Inquiry and watching a lot
10 of evidence and reading a lot of the literature and, in
11 relation to that, in particular some of the literature
12 that has been published by Inquest which we've had
13 regard to, and I'm conscious that in relation to that,
14 they have made -- they have made a recommendation in
15 relation to the investigations, particularly in relation
16 to deaths, and that recommendation is that in
17 considering the death, in particular obviously of a
18 minority ethnic person, it must be integral to the work
19 of the oversight agency, so PIRC in this case, that
20 consideration is given whether the role of race played
21 any part and I wasn't -- I haven't really been -- until
22 I was reading these documents, I hadn't had this level
23 of understanding myself and clearly if that's the case,
24 then I wouldn't anticipate my investigators might have
25 that level of understanding, but what --

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1 I know I am sidetracking and going off your question
2 here, but what we have put in place is I have asked the
3 in-house legal head of legal services to actually revise
4 their whole investigation template and we will have a
5 mandatory section in there which will -- if it's race,
6 it will be race, but if it's another protected
7 characteristic, it will be there and for her to draft
8 more detailed guidance that supplements this and give
9 examples of what we're talking about when we say
10 "stereotypes" or if there's any bias that comes through
11 the statements. So reading the statements to ascertain
12 that, to take account of the officer's complaints and a
13 complaints history and disciplinary record. So we
14 anticipate that that is being put in progress and
15 anticipate supplementing this to give more explicit
16 guidance on what we actually mean what we say
17 "stereotypes", "racial tropes" and the kind of implicit
18 biases that may appear.

19 So looking at that, I accept probably this -- what
20 is not detailed enough for to really -- it wasn't as
21 detailed as it could have been for investigators and so
22 we have now taken a decision and that will mean in every
23 report and obviously the final reports and deaths always
24 come through myself. There will be a mandatory section
25 where they will have to specify what they have actually

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1 done and in that regard, having this discussion
2 recently, my head of investigations has put forward that
3 it may be beneficial for us to invest in some of our
4 staff becoming particularly trained to be experts in
5 this and then there would be even an opportunity to have
6 an independent person review the case after the
7 investigator.

8 So the Guidance is there but as part of the evidence
9 that this Inquiry and part of the literature which I
10 have read that's come through this Inquiry, I concede
11 that it probably isn't detailed enough and it isn't
12 explicit enough and we will now be adding to that to
13 make it clearer for investigators.

14 What maybe I should say since I have been in post,
15 and I think there has been about 131 death
16 investigations that PIRC have undertaken during that
17 time, we don't -- up until last month, we don't record
18 race as a matter of fact although we will be doing that
19 going forward, but we are aware generally, because I see
20 all the reports, of the number of deaths involving
21 persons from a minority ethnic community. We have only
22 had one death that actually was where the police --
23 there was use of force involved and that was the case
24 that you alluded to earlier. The other nine cases, nine
25 deaths, were all what we call "indirect contact with the

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1 police", so there was no direct contact with the police.

2 So in terms of actually having to look at this, we
3 haven't -- it's never come to me because I have never
4 yet had to -- apart from the case involving Mr Bosh in
5 Glasgow, I have never had to look at that and it was a
6 slightly different type of case. And maybe if I had had
7 a case like that it might have prompted us to think
8 about it earlier if we had enough guidance there, but we
9 are aware of that and live to that now and we
10 certainly -- I'm going to accept that recommendation
11 that's been made by Inquest and ensure that that is
12 integral to our work and we will put more training and
13 guidance what that actually means, so we do hopefully
14 satisfy that recommendation. So hopefully that might
15 assist.

16 Q. Thank you. So should we understand that as a result of
17 documentation that you have read through your
18 involvement with this Inquiry, and in particular
19 documentation that has come from Inquest, you have
20 identified a need to go further than the PIRC already
21 go --

22 A. Yes.

23 Q. -- even these detailed Guidelines and to provide more
24 detailed guidance to your investigators. Will? That
25 separate guidance or is this Guidance being reviewed?

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1 You mentioned it was currently under review because of
2 the bill that's presently going through parliament.
3 Will it be part of the same review or will there be
4 separate supplementary guidance?

5 A. Our discussion and the discussion that is anticipated
6 that, as I say, we will amend the investigation template
7 and this will be prompts in there, but it will be
8 supplemented with bespoke guidance, but that's a fair
9 point. It could maybe be incorporated into the actual
10 Guidance we have got here. The mechanism, we could
11 consider that as the mechanism, but I think probably, in
12 the first instance, we would want to probably give quite
13 specific examples and maybe even have some kind of
14 training or just discussion with certainly the senior
15 death investigators and the deputy senior investigators
16 in the first instance, but, yes, it may be that we
17 supplement this with it, but any first instance I think
18 we would just want to draw attention to what's required
19 in relation to what we need to investigate.

20 Q. Here, for example, under this heading "What do you know?
21 Are there any stereotypes or common assumptions made
22 about the protected characteristic group that you're
23 aware of?" rather than relying on your investigator's
24 own lived experience and any training they might have
25 had the benefit of through PIRC, you're going to go

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1 further I think?

2 A. Yes.

3 Q. And provide examples in relation to, for example, a
4 black person, common racial stereotypes and tropes so
5 that if there is a deficit within the cadre of
6 inspectors and if they happen to be unfamiliar with
7 certain of these racist stereotypes or tropes, then they
8 will be very much put on their radar?

9 A. Yes, I mean we have embarked on a suite of training
10 programs in relation to EDI and unconscious bias issues
11 and we have had feedback from investigators and from our
12 staff that we've had great interest and enthusiasm, but
13 we've had feedback that they're anxious, they don't feel
14 that they have got that expertise, it's not an area that
15 they've been particularly familiar with, despite having
16 the training courses, understanding what direct
17 discrimination, indirect discrimination, but we probably
18 haven't got that level of detail.

19 And I think I said in my statement that what we
20 tried to source for quite a long time was lived
21 experience training, because I think I had that many
22 years ago and I found it the most impactful when a
23 person who's actually got the lived experience can
24 explain how things affect them. In the same way as we
25 watch documentaries about maybe a person in a wheelchair

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1 and we go through a day in the life and see all the
2 barriers, how you don't even imagine the difficulties
3 they have, that's the kind of input we have been trying
4 to source unsuccessfully. We thought we had someone
5 from IOPC, but unfortunately they left before it was
6 delivered.

7 So that's kind of level of detail is I think what my
8 staff are looking for and the confidence then to be able
9 to identify that. So I think they're familiar with the
10 concepts, they are familiar with the requirements of the
11 equality legislation, but it's more about having more
12 detailed knowledge on what that actually looks like when
13 you're getting a statement and that's where maybe we'll
14 invest in trying to even get some ambassadors that have
15 that expertise and we'll consider how to do that.

16 Q. So is there an anxiety then amongst your investigators
17 that perhaps because they don't have this lived
18 experience themselves and because they're not experts,
19 they might miss something?

20 A. Yes.

21 Q. And you have explained the ways that you were looking to
22 fill that gap to allow them to fulfill their functions
23 with a greater degree of confidence?

24 A. Yes, I think there's no doubt that how we investigate
25 race needs to be more nuanced and, yes, just more

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1 nuanced and more informed.

2 Q. Okay. Thank you. Can you bear with me a moment. We
3 sometimes take a break at around about 3 o'clock?

4 LORD BRACADALE: Take a break for 15 minutes.

5 (3.02 pm)

6 (A short break)

7 (3.22 pm)

8 LORD BRACADALE: Ms Thomson.

9 MS THOMSON: Thank you. I wonder if we can bring the
10 Guidelines back up on the screen, please. We were on
11 page 16 "Understanding the Allegation of Discrimination"
12 and we were looking at the various matters that an
13 investigator should consider. Page 16, please. And we
14 have looked at "What does the complainer say?" and "What
15 do you know?" and we can perhaps now move on to the
16 third question in the Guidelines that an investigator
17 might ask themselves, "What do you need to find out?"

18 "In more serious cases or critical incidents it may
19 be appropriate to seek external expertise, for example,
20 from an independent advisory group, a relevant community
21 or advocacy organisation, or from a legal or academic
22 expert. The investigating or review officer may also be
23 able to usefully draw on findings from relevant
24 inquiries, research or reports about discrimination."

25 In the case of the death of a black man following a

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1 police contact, would you expect your investigators to
2 seek external expertise?

3 A. As I intimated, we have not had that type of
4 investigation since I have come to post, but, yes, it is
5 something that obviously learning from this Inquiry that
6 we would consider.

7 Q. When you review your guidelines or consider issuing
8 supplementary guidelines, do you think there might be a
9 benefit in including suggestions as to where this
10 expertise might be found?

11 A. Yes, I think -- well, I think the first stage for us to
12 do is to try and identify where we can find that
13 expertise, but, yes, once we have done that then,
14 obviously, that would be included.

15 Q. And would you expect your investigators to draw on
16 findings from inquiries' research and reports, again, in
17 a case involving the death of a black man in police
18 custody?

19 A. I think that's very much in line with the guidance that
20 I was talking about that we are planning to draft in
21 relation to -- in relation to or new requirement to have
22 this addressed within our investigation, so that would
23 be the type of guidance that we would be intending to
24 issue to staff.

25 Q. And again, would there be an intention on your part to

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1 perhaps signpost particular reviews, the results of
2 inquiries and inquests that might be relevant in
3 particular contexts, such as the death of a black man, a
4 black person, following police contact?

5 A. I think the Guidance will be operational in the sense
6 that it assists the investigators to actually respond to
7 the specific areas that we signpost that we ask them to
8 consider, but an overview will be available which will
9 explain the background why we have added this
10 requirement in, what I have type of information we're
11 looking for and certainly we'll provide an overview and
12 an explanation so that it makes sense.

13 We have an EDI group and I would envisage that they
14 would help, again, with that pulling together that
15 overview and then disseminating it and explaining it to
16 staff.

17 Q. Thank you. If we can return to the Guidelines, we're on
18 page 17, if we can scroll down a little, here we are:

19 "Examples of the type of investigation that may be
20 required in relation to some of the protected
21 characteristics are provided below."

22 There then follow a number of examples and the first
23 is "Racism":

24 "In the context of complaints of race
25 discrimination, it includes any discrimination relating

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1 toll race, ethnicity or nationality. The types of
2 racist assumptions or prejudices that should be
3 considered in a discrimination investigation will vary
4 greatly depending on the particular race, ethnicity or
5 nationality and the context of the incident."

6 There then follows an example and I wonder if we
7 might look at this example paragraph by paragraph:

8 "Allegation of racism made by a black man.

9 "Mr A is a 19-year-old Asian man who suffers from
10 Asberger's Syndrome and autism. Mr A says that when he
11 was arrested by the police they questioned him about why
12 he had come to the United Kingdom from Pakistan. He
13 also complained that he was assaulted by the police when
14 he was arrested. He considers that the police
15 questioning him about his reasons for coming to the UK
16 was motivated by racism and that his Asberger's and autism
17 meant that he was unable to effectively engage with the
18 police, which contributed to the reason for his arrest."

19 That's the scenario given in this example. The
20 example then reads:

21 "To address the allegation of race discrimination,
22 the investigating officer should ask themselves... "

23 And here are the suggested questions in line with
24 the general principles set out in the Guidelines so:

25 "Firstly, what types of assumptions, prejudices or

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1 bias might lead to an Asian man with Asperger's Syndrome
2 and autism being treated differently due to his race and
3 resulting in the use of excessive force? Would a white
4 man with similar issues acting in the same way be
5 treated by those officers in the same way?"

6 So there are two questions there really for the
7 investigating officer to consider. Firstly,
8 assumptions, prejudices and bias that might have led to
9 this young man being treated differently and to the use
10 of excessive force and then, secondly, whether a white
11 man with Asperger's and autism would have been treated
12 in the same way. So the focus here is on race, so the
13 "who" if you like is a white man with autism and
14 Asperger's, rather than a white man who doesn't have
15 those diagnoses. So the Guidelines appear to encourage
16 a focus on looking at assumptions and prejudices and
17 bias that could potentially account for differential
18 treatment and then they encourage this comparative
19 exercise where you look at how this individual was
20 treated, set against how a white man who didn't have
21 these particular characteristics might have been
22 treated.

23 And so perhaps just taking a slightly different
24 example, but working through how it might look from the
25 investigator's perspective and the sort of questions

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1 they might and themselves, if we had a scenario that
2 involved a death following restraint by the police of a
3 black man who was intoxicated or potentially
4 experiencing a mental health crisis, what sort of
5 questions might the investigator be asking themselves?
6 Would they again and themselves about assumptions and
7 prejudices and biases that might have led to this
8 individual being treated differently?

9 A. The investigator -- what is envisaged is the
10 investigator will look at all the evidence that's been
11 gathered and will look to see if there's particular
12 language used that would provide inferences. They would
13 look at the conduct of the officers and, as I already
14 alluded to, they would perhaps look at the complaint and
15 disciplinary record, conduct record, of officers to see
16 if we have got other examples or comparative examples
17 where they have acted in that manner.

18 They would look at all the evidence that's then
19 gathered in an investigation, because that's all the
20 information that they've got to do that. So it's not
21 about the investigators making assumptions, it's about
22 looking at the evidence that they can gather to see if
23 there's any legitimate, as I say, stereotypes or
24 assumptions that were coming through from the evidence
25 in the same manner perhaps as there has been in looking

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1 at the statements in this case.

2 Q. Okay. And that would involve the investigators being
3 alive to stereotypes to begin with and, as you have
4 already explained, you're looking to develop the
5 guidelines --

6 A. Yes.

7 Q. -- to ensure that where there's perhaps a deficit in
8 lived experience or professional experience and training
9 to date then the investigators will understand the
10 different types of stereotypes that are associated with
11 the different protected characteristics?

12 A. Yes, as I have said, we're going to supplement the
13 training that's already been rolled out by having more
14 nuanced training on what exactly kind of language we're
15 talking about, what kind of assumptions are we talking
16 about, what should they be looking for, and providing
17 more operational guidance than just saying, look out for
18 stereotypes.

19 Q. Thank you. Returning to the example:

20 "Mr A has made an allegation of race discrimination.
21 He has also complained that he was discriminated against
22 because of his Asperger's Syndrome and autism. This
23 should be recorded and considered as part of the
24 investigation with attention given whether Mr A was
25 treated less favourably because of both his race and

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1 Asperger's Syndrome and autism."

2 So here the investigator is being encouraged to
3 consider whether there has been discrimination on
4 grounds of race and potentially also differential
5 treatment because of the individual's Asperger's
6 Syndrome and autism.

7 And again, if we were to use a subtly different
8 example, the death of a black man following restraint
9 who was intoxicated and potentially also experiencing a
10 mental health crisis, would you anticipate investigators
11 looking both for evidence of race discrimination and
12 also differential treatment because of the individual's
13 state of mind at the time?

14 A. I envisage going forward that in the death of a person
15 from a minority ethnic group that we'll be looking in
16 relation to all of those aspects.

17 Q. Thank you. That paragraph reads that:

18 "This should be recorded [that is the gentlemen's
19 complaint of discrimination] and considered as part of
20 the investigation with attention given to whether he was
21 treated less favourably because of both his race and his
22 Asperger's Syndrome and autism."

23 Where are these matters, these concerns, recorded?
24 You mentioned earlier the existence of templates? Is
25 there a particular proforma to an investigation report?

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1 A. Yes, yes, the investigation report is a proforma with
2 different fields that have to be completed so
3 background -- I'm talking about a criminal one -- the
4 background of the offence, the charge, the evidence,
5 CCTV evidence, airwaves, et cetera analysis of evidence,
6 obviously concluding with a conclusion, whether there's
7 sufficient evidence in relation to criminality.

8 So we have templates that we have adapted since I
9 have been there incorporating different fields and
10 different aspects of the investigation, so that would be
11 where it would be recorded in the actual body of the
12 investigation as because that's the appropriate place
13 for it to be recorded. So that's where it would --
14 where I envisage -- that's where it would be naturally.
15 What we're doing is making a specific field that
16 actually focuses people's mind and that we expect in
17 such cases that we will undertake an investigation
18 taking account of these kind of factors and there will
19 be something recorded in the investigation.

20 Whether that concludes that there was no evidence of
21 any of that, that should be recorded and what the basis
22 for that is as well.

23 Q. And is that a work in progress, the revisal of the --

24 A. Yes, this is something, as I indicated, that we have
25 discussed following reading some of the literature

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1 that's come out and it's really an attempt to try and
2 address that recommendation to show -- to try and make
3 it part of our integral investigation to identify any --
4 to identify racism and, thereafter, to respond to that
5 in terms of that.

6 I think that's -- certainly a starting point for us
7 would be to have it in the body of our template and then
8 that will be implemented with guidance of what kind of
9 thing -- what are we looking for evidentially, where can
10 you draw these inferences from and that's the bit that
11 still has to be drafted and maybe quality assured by
12 experts. But that's -- I think that's my first -- my
13 first effort at trying to meet that so that it is
14 included in reports and, as I say, we have for these
15 kind of cases there's a quality assurance process that
16 we'll go through Head Investigations Director of
17 Operations and then ultimately myself so we would
18 expect -- by the time it gets to me, I would expect
19 there to be that part of the template completed so
20 that's where we think we can -- that makes more sense
21 because it is part of the investigation if we want it to
22 be integral part.

23 Q. And do you have a timescale in mind for the revision of
24 the template and also for the issuing of your
25 supplementary revised guidelines?

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1 A. The revisal of the template is straightforward. I think
2 making sure we get the Guidelines right and then having
3 some kind of quality assurance process will take a bit
4 longer. I haven't got a fixed timescale in mind, but it
5 has been agreed that we will do that with the senior
6 management team so it will be taken forward, in the
7 first instance, by the Head of Legal Services.

8 Q. Thank you. And in relation to the template, do you
9 envisage one proforma template that applies across the
10 board to all investigations which will have a section
11 intended to ensure that the investigator has addressed
12 their mind to the possibility of discrimination or is it
13 the case that there is a separate template for cases in
14 which an allegation of discrimination has been made
15 where that will be explored in more detail?

16 A. No, it would be in all of the templates. We have a
17 different template for investigation of deaths and
18 investigation of allegations of crime. It would on all
19 the templates.

20 Q. So in every single case then there will be a requirement
21 for the investigator to consider whether there is a
22 possibility that discrimination is a relevant factor in
23 the case?

24 A. Just to make sure they're alive to that and then they
25 take that on board when they are ingathering evidence,

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1 that will -- that will be something that is there that
2 will hopefully ensure that that is undertaken and that
3 we go some way to addressing that. I'm not saying
4 that's the full way, it's where we're going to start.

5 Q. Thank you. Let's return to the example in the
6 Guidelines. We're at the very bottom paragraph on this
7 page:

8 "This is a serious allegation and the investigating
9 officer is aware that the case has similarities with a
10 number of high-profile cases involving issues of
11 restraint, health and race. Given this, the
12 investigating officer puts in place support measures to
13 ensure that he can effectively communicate his
14 complaints."

15 Would you envisage support measures being put in
16 place where a black man has died following a restraint
17 by the police and concerns have been raised by his
18 family that race was a factor? Is that the sort of case
19 where support measure might be put in place for the
20 family and if so, what would you envisage?

21 A. In the case you've described, we would obviously employ
22 FLOs and part of the responsibility of the FLO is to
23 provide support and be a conjugate for information to go
24 from the family back and forth and they are the
25 mechanism for the family to express concerns. Again, as

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1 I have said, depending on the circumstances of the
2 incident, it may be that the senior investigator or
3 someone dealing more directly with the case, the family
4 may wish to speak to them.

5 So we will put in all cases the FLOs and we would
6 like to think that they would be able to support the
7 family, but we would take into account individual
8 circumstances.

9 Q. Thank you. Again, returning to the example:

10 "Drawing on background information and the details
11 of the discrimination allegation provided by the
12 complainer, the investigating officer identifies a
13 number of questions to be addressed through the
14 investigation."

15 So the Guidelines are certainly that they're working
16 through the Guidelines in this example and envisage the
17 investigating officer setting themselves questions that
18 require to be answered and, in this example, these
19 questions include:

20 "Where officers aware or could they have reasonably
21 expected to be aware that Mr A had difficulty engaging
22 at times of stress due to his Asperger's Syndrome and
23 autism?"

24 And I'm wondering, again, if we come back to the
25 alternative example of a black man who has died

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1 following restraint by the police who was intoxicated
2 and potentially also in mental health crisis, whether
3 the sort of question that an investigator ought to ask
4 himself here might be along the lines of whether the
5 officers could have reasonably been expected to be aware
6 that this individual was intoxicated, whether they could
7 reasonably have been expected to be aware that they were
8 potentially experiencing a mental health crisis?

9 A. Yes, these are questions that are asked in death
10 investigations at present.

11 Q. Thank you. Returning to the example, another question
12 that the example suggests the investigating should ask
13 themselves is:

14 "What assessments were made to take account of
15 Mr A's Asperger's Syndrome and autism? How was this
16 reflected in the actions taken? In light of Mr A's
17 challenges, was it appropriate for Mr A to be arrested
18 and taken to a cell? Would a white man with similar
19 challenges also have been arrested in these
20 circumstances?"

21 And again, I wonder if we return to the scenario
22 that we have been discussing involving a black man,
23 whether the sorts of questions that the investigator
24 might be asking themselves here would be along the lines
25 of, what assessments were made of the individual

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1 individual's mental state, how was that reflect in the
2 action taken, was it appropriate for him to be
3 restrained in the manner in which he was, and would a
4 white man with similar issues have been arrested in
5 these circumstances?

6 A. These types of questions are asked in death
7 investigates. We look at in the death investigations
8 whether the officer could have taken other options and
9 we will ask why you've chosen this option, why did you
10 discount that option, et cetera. So that is something
11 that we regularly explore when we are doing a death
12 investigation. It's included in the report an
13 explanation of why, for example, use of taser wasn't
14 appropriate and why this was appropriate? So we will
15 floor the different uses of force and why they excluded
16 one and why they didn't?

17 So that is something that is currently something we
18 would take into account when there was a use of force
19 and we would look ourselves at that explanation. We may
20 have body-cam footage which allows us to kind of compare
21 what the officer said with what actually happened. So
22 that kind of investigation is something that we do as a
23 matter of an investigation of this nature anyway.

24 Q. Okay. Thank you.

25 Again, returning to the questions posed in this

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1 example:

2 "What assumptions were made that Mr A's behaviour
3 was as a result of drug taking, aggression or
4 criminality, rather than symptoms of Asperger's Syndrome
5 and autism and a reflection of vulnerability? Would
6 similar assumption have been made if he was a white
7 man."

8 And again, I'm wondering if we jump to the parallel
9 example we have been discussing involving a black person
10 who's died following a restraint, whether those
11 questions might translate along the lines of, were
12 assumptions made that his behaviour were as a result of
13 drug taking, aggression or criminality, rather than
14 mental health crisis and a reflection of vulnerability
15 and would similar assumption have been made if he was a
16 white man? Are those the sorts of questions you might
17 anticipate an investigator would be asking themselves?

18 A. These are questions that investigators do ask in
19 circumstances as you've described. In all
20 investigations I would say that they are seeking to
21 ascertain from the officers the reasons that they acted
22 in a particular way, what was their understanding of the
23 person's mental health, what was their understanding of
24 intoxication, et cetera. So that is something that
25 would be regularly addressed by investigators when

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1 they're speaking, what was your understanding, why did
2 you do this and the officer may say, I thought he was
3 intoxicated or he appeared to be on, you know, some kind
4 of illegal substance.

5 So these questions are something that we would ask
6 in general in relation to all death investigations.
7 Particularly if it related to something that person
8 ended up dying in custody, there's a very thorough
9 explanation that would be looked for. For every single
10 aspect of the time that they are in custody why did the
11 police take such actions? What were they doing in
12 relation to observations? So these kind of areas will
13 be explored by investigators and police officers will be
14 asked why certain -- what was their belief at that time,
15 because we're looking for them to explain why they did
16 certain things and then we can assess whether in terms
17 of, you know, the law and the circumstances whether that
18 was probably the right option or there was other options
19 that they could have taken. So these would be questions
20 that we would already be asking.

21 Q. Thank you. Returning, again, to the questions posed in
22 this example:

23 "Were assumptions made that Mr A posed a greater
24 threat or risk because he was Asian and did not
25 effectively communicate? Were assumptions made that he

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1 was particularly strong or more likely to resist or to
2 be violent? Would the same assumptions and risk
3 assessments have been made if he was white?"

4 And, again, are these the sorts of questions that an
5 investigator might be asking in the case of the death of
6 a black man following restraint by the police?

7 A. Yes, and I think this is the area that I've talked that
8 we will probably be providing further guidance on to
9 assist investigators assess whether the language does
10 reflect stereotypical language et cetera, so I think
11 this the area where we probably do need to supplement
12 our existing guidance.

13 Q. Thank you.

14 The next question posed in this example was:

15 "Is there any indication that the officers involved
16 hold negative views of Asian people or that Mr A was
17 targeted because of his race?"

18 And I'm wondering if in the parallel example we've
19 been discussing involving a black male whether you might
20 expect the investigating officer to be asking the
21 question, is there any indication that the officers
22 involved hold negative views of black people or that the
23 deceased was targeted because of his race? Is that the
24 sort of question you would expect them to ask?

25 A. I think -- I think they would be unlikely to get a

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1 response that would be helpful. I think more likely we
2 would be looking at the evidence. For example, we might
3 look at the officer's conduct record to see if there's
4 any parallels or any concerns that have been raised in
5 other cases. We may look at, as I say, conduct and
6 complaints that might be being made. Is there any
7 themes that we can draw out of that. So I think we
8 would be looking at the evidence as a whole to see if
9 there was an inference that could suggest that.

10 I'm not sure we would get much joy out of just
11 asking an officer if it was because they had a
12 particular -- sorry, an assumption or hold negative
13 views, but I think you would have to be slightly more
14 nuanced in how we do it.

15 Q. Sorry, perhaps I wasn't terrible clear there.

16 I understand that these are questions in this example
17 that the investigating officer should be asking
18 themselves?

19 A. Sorry, yes.

20 Q. I'm looking to address broadly in the course of the
21 investigation. I'm not suggesting that these particular
22 questions should be put to the officers concerned. It's
23 entirely my fault, if that wasn't clear.

24 A. No.

25 Q. But the question of the approach to be taken to

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1 questioning an officer I think is explored in the next
2 chapter so this might be a convenient point at which to
3 turn to chapter 6, which is headed up "Conducting an
4 Investigation." this starts on page 31.

5 So the purpose of that exercise, Ms Macleod, was
6 really just to look at the example given in the
7 Guidelines, which, if you like, brings the principles to
8 life and the example suggested that the investigating
9 officer should be asking questions of themselves and of
10 the investigation broadly. I was really just looking to
11 explore the sorts of questions they might be asking
12 themselves in the example that is more perhaps pertinent
13 for today's purposes concerning the death of a black
14 individual following restraint.

15 So let's look then at chapter 6 "Conducting an
16 Investigation":

17 "Investigating and review officers should have a
18 detailed understanding of equality and diversity issues
19 and an appropriate level of knowledge, skills and
20 experience to be able to apply these guidelines and
21 undertake effective investigations.

22 "The terms of references for an investigation into
23 a death or serious injury that raises issues of
24 discrimination should explicitly refer and address any
25 discrimination allegations raised. This includes where

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1 discrimination is alleged as an aggravating factor in
2 relation to separate criminal or complaint allegation or
3 where no specific allegation of discrimination has been
4 made, but it is apparent that discrimination may be a
5 relevant consideration."

6 So we see here it's set out in terms the expectation
7 that even if an allegation of discrimination has not
8 been made, an investigator should be alive to the
9 possibility of discrimination being a motivating factor
10 and if apparent discrimination may be a relevant
11 consideration, that should be captured within terms of
12 reference.

13 Now, who sets these terms of reference?

14 A. The crown do.

15 Q. The crown. So we're looking here in particular then at
16 crown-directed investigations?

17 A. Yes, in relation to death investigations, yes, the
18 crown --

19 Q. All right.

20 A. -- will set the terms of reference.

21 Q. Okay. And would you expect then that the need to
22 explore any possible or apparent discrimination, whether
23 that relates to race or another protected
24 characteristic, would be set out within the terms of
25 reference provided by the crown to the PIRC?

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1 A. Yes, the crown set out a number of questions that they
2 wish the investigation to examine and to include in
3 their findings and in the report that goes there. So
4 they set out various -- various questions that basically
5 we would have to address.

6 Q. Okay. And what would the PIRC do if it was apparent
7 that discrimination may be a relevant consideration, but
8 there was nothing in the terms of referencing?

9 A. We would raise that with the crown and explain that it
10 would be helpful if they just amended the terms of
11 reference. We have regular meetings at both strategic
12 and practitioners' level with the crown and we have
13 probably a very healthy dialogue about cases, so there
14 would be absolutely no issue in phoning and discussing
15 and saying, we think that may be it would be better to
16 include this in the terms of reference and I have no
17 doubt that that would be taken on board.

18 Q. Thank you. If we can return to this page and scroll
19 down a little, please. That's perfect. Just above the
20 heading in purple the text reads:

21 "All allegations of discrimination arising in
22 complaints, death and serious injury investigations or
23 criminal investigations should be dealt with according
24 to this guidance."

25 So this sets the standard, this sets the expectation

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1 that falls on the shoulders of every investigator who is
2 carrying out an investigation, in particular in relation
3 to a death, that they will comply with the terms of the
4 Guidelines.

5 If we move to the paragraph beneath the heading
6 "Understanding the Allegation of Discrimination":

7 "At the beginning of an investigation the
8 investigating officer should take steps to build their
9 understanding of the discrimination alleged, including
10 the types of assumptions, prejudice or bias that might
11 have informed the police officer's decisions, actions or
12 behaviour. This should inform the lines of inquiry for
13 the investigation or matters to be examined in the
14 complaints review."

15 So again, there's a focus here on the investigating
16 officer at the very outset taking steps, so proactively
17 taking action to build their understanding of the
18 discrimination alleged, including the types of
19 assumptions, prejudice or bias that might have informed
20 behaviour in actions and, as you have already explained
21 in some detail, you're looking to enhance the guidance
22 to give examples of the sorts of stereotypes that exist
23 in relation to assumptions and prejudice and bias around
24 race and other protected characteristics.

25 And if we can move on to the next page, please. At

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1 the top of that page under the heading "Conducting the
2 Investigation":

3 "The understanding acquired at the beginning of the
4 investigation to consider how the alleged discrimination
5 might present and what stereotypes and prejudicial
6 assumptions might have informed the officer's actions
7 should inform the key lines of inquiry."

8 So that early understanding is pivotal really in
9 terms of setting the direction of the Inquiry?

10 A. Indeed.

11 Q. And key lines of the Inquiry. If we can perhaps look
12 further down the page, I'll read it short, but if we
13 pause there, please, in fact scroll up just a little
14 bit, thank you. The paragraph at the top of the screen
15 highlights standard lines of inquiry in all cases to try
16 to find out what happened and why, so that involves
17 witness statements, CCTV evidence and gathering
18 productions and so on and so forth.

19 If we scroll beyond that:

20 "An investigation will need to consider whether
21 there is other evidence that supports the allegation of
22 Discrimination and this includes complaint history and
23 patterns of behaviour. Patterns of behaviour are
24 important to consider in discrimination cases as an
25 instance of discrimination may reflect an attitude or

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1 underlying prejudice that may arise in the person's
2 behavior across a range of situations."

3 And there's a suggestion that the investigating
4 officer might look at an officer's complaint history,
5 for example. And also if we carry on on to the next
6 page, please, so complaint history, patterns of
7 behaviour and also comparator evidence.

8 What's the value of looking at the complaints
9 history and patterns of behaviour and comparator
10 evidence?

11 A. Well, we already we do look at complaint history in our
12 investigations and the purpose is to see if there's a
13 course of conduct, to see if there's a pattern, as is
14 indicated in the Guidelines, of a particular officer
15 behaving in a particular way. There may be, for
16 example, the possibility of using Moorov doctrine and we
17 might look and see if there's the pattern there that
18 might inform whether there has been similar complaints
19 and we can assess whether we want to look and see if the
20 behaviour fits within the criteria for Moorov. But
21 mainly if there was a particular type of complaint that
22 was in there that was obviously indicative of a
23 particular assumption, then that would obviously raise
24 concerns and that was something that would be featured
25 in the report. So we do already look at complaint

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1 history when we're looking at investigating police
2 officers.

3 Q. Under the heading "Comparator Evidence" the Guideline
4 state:

5 "In most cases deciding if there has been
6 discrimination will involve comparing how the complainer
7 was treated against a person in the same situation who
8 does not have the same protected characteristic.
9 Investigating and review officers should look for
10 evidence that supports this type of comparison."

11 So I'm interested to understand, again, if we use
12 the example of a black man who has died following
13 restraint by the police and there has perhaps been an
14 allegation of excessive use of force made, would this
15 sort of comparative exercise perhaps involve looking at
16 how that officer or officers have responded in similar
17 situations involving white individuals?

18 A. No, that -- that -- there's no real mechanism to
19 identify similar cases if they've not come -- obviously
20 if we have cases reported to the same officer we can
21 look at those and look and compare and make inferences
22 from that behaviour, but if I have a report, there's no
23 way for me to know how that officer has behaved in
24 relation to similar circumstances involving a white
25 person, because, as I say, unless it's come in in

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1 relation to the officer and we can identify when that
2 does happen, so we have had cases like that, but, no,
3 I wouldn't have any mechanism to find out how they
4 behaved in relation to another person. In any of the
5 cases that come in there's no real mechanism for me to
6 do that.

7 Q. Would you have access to things like use of force forms?

8 A. We have use of -- we can -- we get use of force forms in
9 each of our investigations, but I wouldn't -- so if I'm
10 investigating an officer, I get the use of force form
11 for that particular investigation, but I don't know if
12 that officer had a use of force form in another case et
13 cetera. That's not something unless I have a case
14 before me. I can't just randomly go and ask for all the
15 use force forms in relation to a particular officer.
16 I would have to have some justification to do that, but
17 we've never considered that appropriate.

18 Q. Thank you. Can we move on to I think it's the next
19 page, page 34, and beneath the purple box there's a
20 heading "Discriminatory Language":

21 "As part of the consideration, the investigator and
22 reviewer should assess the language used, including
23 language used in any records relating to the incident in
24 question or arising from the complaint investigation.
25 This includes any use of obviously discriminatory

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1 language, but also more subtle indicators that a person
2 may have acted or made a decision based on prejudicial
3 assumptions. There are terms that are commonly
4 recognised as being offensive and officers and police
5 staff members should be expected not to use them.
6 However, there are other words and phrases which are
7 inoffensive in themselves, but when heard in court can
8 reasonably be thought of as discriminatory."

9 So should we understand then that the investigators
10 are encouraged to look at language that has been used by
11 officers and to examine any statements that might have
12 been given for the use of language that might suggest a
13 discriminatory attitude?

14 A. Yes, so that, as I've probably indicated, will be
15 covered in the guidance that's been drafted.

16 Q. Okay. I wonder if I might give you one or two examples
17 from the evidence that we've heard in connection with
18 the death of Mr Bayoh. I'm interested to know whether
19 these examples are the sorts of things that you would
20 expect an investigator to take into account. I'm not
21 looking to invite your comment on what they might make
22 of this language. I'm simply interested to know whether
23 it's the sort of language that you would expect to stand
24 out to them and be examined as part of their
25 investigation.

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1 So we have heard evidence that a Constable Walker,
2 who was one of the first two officers at Hayfield Road,
3 that he said it had crossed his mind that Mr Bayoh "was
4 doing this to get the police there, bearing in mind
5 we're on a severe threat level for an attack on the
6 police" and Constable Paton, similarly, said "It ran
7 through my mind that this male could be part of a
8 terrorist plot" and later in her evidence she said "I
9 kept thinking about the Lee Rigby boy, the soldier who
10 was killed".

11 Is that the sort of thing that you would expect your
12 investigators to consider as part of their examination
13 of the evidence and their consideration of whether there
14 had been discrimination?

15 A. Yes, these are an example that I understand that the
16 Inquiry has focus -- has focused on and is indicative of
17 maybe a bias in relation to the officers. So yes, in
18 terms of that that would be something that we would
19 signpost the investigators to why in particular was
20 that -- was there an assumption that that was going to
21 be a terrorist attack so, yes, it is. And the other --
22 as I say, I have listened to a lot of the Inquiry and I
23 recognise the examples that have been asked, various
24 witnesses -- that you have asked various witnesses which
25 in themselves on their own may be not, but when you push

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1 them together in relation to all of the other evidence
2 maybe form a picture so.

3 And it's on the basis of that that I think that we
4 need more nuanced guidance because that's not at the
5 moment contained some examples in the guidelines and
6 it's something that we probably need to just have more
7 guidance around. So yes, so I accept that some of the
8 terminology that's come out in the Inquiry is what we
9 would be looking to identify.

10 Q. Again, you may have heard this before, because I am
11 mindful that you have sat through much of the evidence
12 that the Inquiry has heard, but we have heard evidence
13 that some of the officers use language in their
14 statements such as "coloured", "zombie", "deranged",
15 "super human strength" and "the biggest male I have
16 seen" and that last comment was in the context of
17 Mr Bayoh being approximately half the body weight of
18 Constable Walker.

19 Again, is that the sort of language that you would
20 expect your investigators to pick up on and take into
21 account as part of their examination of whether there
22 was evidence that was suggestive of discrimination?

23 A. In relation to an investigation where there's -- where
24 there's an issue or race is in focus then, yes.

25 Q. Thank you, I wonder if we can return to the Guidelines,

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1 and go to page 35. I said we would return to the
2 guidance given in relation to taking a statement from
3 the officer who's the subject of the allegation of
4 discrimination and if we scroll down a little bit
5 further, please, to the heading "Probing the Officer's
6 Account." Here we are:

7 "In discrimination cases it is important to get an
8 account from the officer and to test and probe their
9 account. While the officer is not obliged to provide a
10 response, if they do not give their version of events,
11 the complaint may be upheld in absence of any other
12 material. Direct closed questions such as, did you
13 discriminate against the complainer or did you treat the
14 complainer differently because they were black, et
15 cetera, are unlikely to be very helpful."

16 And that's essentially what you were saying earlier
17 in your evidence when we were perhaps slightly at
18 cross-purposes:

19 "Investigating officers should refer back to the
20 thinking done at the beginning of the investigation to
21 consider what stereotypes or prejudicial assumptions
22 might have informed the officer or staff members'
23 actions. Questions should be asked to test whether
24 these sorts of assumptions informed their
25 decision-making."

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1 And if we go a little bit further, we'll see:

2 "The question should focus on why the officer
3 undertook the actions they did, what assumption were
4 made and what were the reasons for these? It's not
5 enough that an officer provides a reason for the
6 actions. The investigating officer needs to be
7 satisfied their reasoning is sound convincing and fair
8 and not informed by prejudiced assumptions."

9 And there's then an example and we'll look at this
10 briefly in the purple box below of the sorts of
11 questions that might be asked. So here we have a
12 scenario. It's an allegation of discrimination and use
13 of excessive force and the investigating officer is
14 looking to test whether a police officer made prejudiced
15 assumptions that the complainer, a Mr C, posed a greater
16 threat or risk because he was black:

17 "Questioning should look to probe what the basis of
18 the risk assessment was, whether this was reasonable in
19 the circumstances and whether the actions taken
20 appropriately matched the level of risk identified."

21 And questions are suggested which include:

22 "What was your first impression when you arrived at
23 the scene, how did you assess the risk of harm, what
24 things did you consider, how did you take into account
25 the level of risk in the way that you approached Mr C,

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1 what were your options and how did your thoughts about
2 likely risks impact on what you decided to do? When you
3 decided to restrain Mr C, what did you think this would
4 involve? Were you surprised by his response? Did
5 anything happen to change your risk assessment at any
6 stage?"

7 And if we could just scroll down a little but
8 please:

9 "If the risk assessment is found to be unreasonable
10 in a way which is consistent with the stereotype view of
11 black men as being more violent, unpredictable or
12 aggressive, the investigating officer will need to weigh
13 up the likelihood that the reason for this relates to Mr
14 C's race as opposed to any nondiscriminatory reason
15 offered for the officer's actions."

16 So again this is simply a worked-up example of the
17 principles in action, as it were. But again, using our
18 example of a black man who has died following restraint
19 by the police, are these all relevant questions or are
20 these the sort of questions you would anticipate your
21 investigators asking of the restraining officers?

22 A. These are all questions that would presently be asked in
23 relation to officers in a case where restraint was
24 involved. These -- I would be expecting these to
25 already be covered by investigators.

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1 Q. Thank you. You've sat through the evidence, Ms Macleod,
2 and you'll be aware that when the PIRC noted statements
3 from the officers involved in the restraint of Mr Bayoh
4 on 4 June of 2015, the interview strategy didn't touch
5 on race. Should we understand from what you said today
6 in your evidence that if a similar death occurred
7 tomorrow, your investigating officers in putting
8 together their interview strategy would be asking these
9 sorts of questions?

10 A. Yes, if in investigations now one of the -- and, yes,
11 you're right I have identified through the Inquiry that
12 there was implicit or explicit criticism of a lack of
13 analysis of the use of force. That is something that
14 I think would be addressed now.

15 One of the measures which we have done this year is
16 we have recruited a reports manager. She has a legal
17 background and in fact a background in the Fiscal
18 Service and her role specifically is to assist
19 investigators with analysis of evidence. She's got a
20 mentoring role with the investigators, but also a
21 quality assurance role. She started in March this year,
22 and specifically we have taken on board the criticism
23 that there was not enough sufficient analysis regarding
24 the use of force and if we had a similar case, I would
25 anticipate all of those matters being addressed.

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1 We also have recruited -- sorry, investigators who
2 have got specific skills in the interviews -- I can't
3 remember the terminology -- strategy and so I would
4 imagine that we would be in a better place to address
5 those questions.

6 Again, PIRC is really an investigative agency, it's
7 not full of lawyers. The crown makes the final decision
8 obviously on sufficiency of evidence, but we do wish to
9 increase the quality of our reports in relation to the
10 analysis of evidence. So that is one action that we've
11 done to do that and, hopefully, that mentoring will
12 permeate in the quality of our reports and we will ask
13 more detailed questions in relation to the use and more
14 comparative of the different statements that we have
15 from the officers. So that is something, again, that we
16 have been focused on, but also part of it has arisen
17 from listening to the evidence in this Inquiry.

18 Q. Thank you. Can we move to page 39, please. This is
19 headed up "Findings and Outcomes" and I'll perhaps read
20 this short, because I'm mindful of the time, but
21 essentially here it appears that investigators are being
22 encouraged to look at the evidence in the round in its
23 entirety and to return to the question whether a person
24 without the protected characteristic would have been
25 treated the same way and they have to provide an

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1 evidence-based response to that question.

2 I wanted to conclude with just a few questions
3 around the documenting of their conclusions. You've
4 mentioned templates, how were these decisions recorded?

5 A. Sorry, decisions in?

6 Q. A decision -- sorry, once the investigating officer has
7 completed their investigation into an allegation of
8 discrimination, how are their findings in relation to
9 that investigation recorded?

10 A. Okay. Well, investigation -- obviously, the complaint
11 handling review there's a report sent to the person so
12 there's a report and they have a full report of the
13 findings of the complaint handling review. An
14 investigation at the end of the report, if it's an
15 investigation into criminality, there's an analysis of
16 evidence which covers all aspects of the evidential
17 considerations in the case and, basically, the primary
18 purpose of that is to advise whether we believe there is
19 a sufficiency of evidence and perhaps to add commentary
20 whether there was any mitigation and commentary about
21 whether there was anything of this nature, which, as I
22 have explained, we now will have a mandatory section
23 which, if there is anything there, will be reflected in
24 the conclusion and the recommendations and that will go
25 to crown.

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1 Q. Thank you. How do you monitor compliance with the
2 Guidelines?

3 A. Well, probably -- as I indicated, since I have been
4 the Commissioner, we have only had one case that
5 involved force and restraint and it was -- it was a
6 particular set of circumstances. The other cases that
7 we've looked at, as I have already explained, were more
8 about indirect rather than direct contact with police
9 officers.

10 So in terms of looking at race, there's probably not
11 been -- the investigation report hasn't really had to
12 focus on that aspect, because there hasn't been, as I
13 say, any direct contact with the officers. In fact, in
14 many of the cases the officers didn't know what race the
15 person was.

16 So for example, if I can just give you a quick
17 example, we may investigate if somebody has called in
18 distress to the police what the response type is, how
19 they graded the call, how they actioned it, et cetera,
20 we might be asked by crown was that appropriate, et
21 cetera, because the person may have been found deceased
22 elsewhere so the police haven't actually come in contact
23 with the person. We're looking at whether they could
24 have taken different actions and there could have been
25 preventative behaviour there.

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1 So we haven't really had many cases that I could
2 really answer that question. There's more in the
3 complaints handling where there's more allegations of
4 discrimination and that can be along the lines of
5 many -- any of the protected characteristics, there's
6 more variety -- variety, but there is more scope for
7 people to claim that they have got discriminated because
8 of one of the other protected characteristics, so in
9 that section there is a section in the complaints
10 handling where somebody can record that they think they
11 have been discriminated due to a protected
12 characteristic and that will, obviously, be taken
13 account by the review officer and, as I say, at the end
14 of the day, the product from there is a report which
15 goes back to the person.

16 But we're looking at how the police handle it. We
17 weren't looking how they've investigated it. So I think
18 there's probably more example of that in relation to the
19 complaints handling side of our work than there is in
20 the investigation side.

21 Q. Thank you. One final question: we've heard evidence
22 about the composition of your workforce in 2015
23 particularly amongst the cadre of investigators. How
24 many or what proportion of your current investigators
25 have a policing background?

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1 A. 62 per cent of the investigators have a policing
2 background and 45 per cent in PIRC as a whole have a
3 policing background. Now, that could be policing or it
4 could be military police or it could be other policing
5 bodies as well, it's not entirely made up from
6 Police Scotland, but that's the percentage that I was
7 informed that we are currently sitting at.

8 Q. Thank you. Can you bear with me a moment, please? I
9 have no further questions, thank you.

10 LORD BRACADALE: Are there any rule 9 applications?

11 Ms Macleod, I wonder if you withdraw to the witness room
12 while I hear a submission.

13 (Witness leaves room)

14 Submission by MS MITCHELL

15 Thank you, it's one very brief issue. We heard in
16 earlier evidence from investigators that there was a
17 system of self referral if they had former working
18 relationships or worked together or were member of the
19 same group or associations as the people who were being
20 referred to them to be investigated and what I would
21 like to ask this witness is to ensure that there's a
22 procedural safeguard to ensure proper independence,
23 would it be helpful to have a register of interests to
24 ensure that when cases are being considered by
25 investigators, you can see independently that they are

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1 independent from those they're investigating?

2 LORD BRACADALE: Thank you, I shall allow you to ask that.

3 Mr Scullion, do you wish to pursue any lines of --
4 thank you.

5 Very well, have the witness back, please.

6 (Witness returns to room)

7 LORD BRACADALE: Ms Macleod, Ms Mitchell KC who represents
8 the families of Sheku Bayoh has a matter after you.

9 Questions by MS MITCHELL

10 MS MITCHELL: There's just one issue I would like to raise
11 with you. It touches on the fact that former police
12 officers make up 62 per cent of your investigators.
13 We've heard in evidence before that the way somebody
14 identifies whether or not there might be a conflict of
15 interest between the thing that's being investigated and
16 the investigator, be it a former work relationship they
17 had or a membership of the same group or association,
18 that matter is one of self referral. The investigator
19 thinks about it, decides whether or not it's going to be
20 problematic and would flag that up and someone else
21 would be assigned the job. First of all, is that still
22 the same, is it still a matter of self referral?

23 A. Yes, well, there's a code of conduct that specifically
24 states if you have any connection that you have to
25 excuse yourself. In addition to that, the allocation of

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1 cases and the head of investigations is aware of the
2 background of all of the investigators so if there was
3 an allegation in a relatively small area where we knew
4 one of our investigators had been located that they
5 would deliberately ensure that they weren't asked to go
6 and take over that investigation. We're a pretty small
7 team, 65, so there's a good knowledge of the background
8 of all of the investigators -- in fact, not 65 former
9 police, whatever 62 per cent of that is -- so there's
10 awareness but they are aware that they have to excuse
11 themselves if they have any relationship or knowledge or
12 association with any of the people that are involved in
13 the investigation.

14 Q. So what the person who's allocating the work does is
15 they know to a degree what that person's work was, where
16 they may have worked, et cetera, and try to avoid that.
17 Would it also be helpful to have a register of interests
18 to ensure that there's a properly safeguard in place so
19 that can be independently considered?

20 A. What?

21 Q. A register of interest so that what you can do is
22 identify when a -- if someone is a member of a club or a
23 group or have worked somewhere for a particular time or
24 worked in a certain area, then that is independently
25 written down so that if it comes to checking whether or

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1 not there could be any connection between people,
2 there's some independent way of doing that rather than
3 relying on self referral or relying on what someone
4 knows about somebody who has been in the police force.

5 A. I understand but I'm struggling to contemplate if there
6 was -- if there was a register of numbers of clubs or
7 places they had been when we get to an investigation and
8 we don't know the officers, you know, how to marry that,
9 I'm struggling to find how that would be operate -- how
10 we would operate that.

11 Q. Just for example if an officer from a certain division
12 within Police Scotland is referred and the officer who
13 is looking at their inquiry isn't from the same group,
14 doesn't have any connection with them but is perhaps
15 member of the same, I don't know, bowling club or
16 something like that, I'm just providing an example,
17 would it be a good idea to have a register of interest
18 so that it would (a) focus the mind of the person that's
19 considering the matter and (b) be allowed to be able to
20 be checked independently of that person making the
21 decision or the person the source of knowledge is
22 allocating the work?

23 A. I understand where you're coming from but the difficulty
24 would be that we would know that the senior investigator
25 was a member of this bowling club but we would have no

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1 idea from the paperwork that the officer we're
2 investigating was the same -- you know, was a member of
3 that bowling club. I think and what I would say in my
4 experience is I think I have only had one incident where
5 we were -- I had concern about who had allocated to the
6 case and we because -- and it was precisely because of
7 that area they had worked there and it was a small town
8 and we thought even though none of the people that were
9 being investigated were anybody he knew, we thought for
10 proprietary, we thought it was better that it was given
11 to someone else. Again the numbers are really small in
12 PIRC and there's 16,000 police officers so the actual
13 times where this has become a concern has been I could
14 count on one hand or less than that and I know it's
15 reliant on sort of people identifying that but I do have
16 confidence in the investigators that they understand
17 their need for independence and they understand their
18 obligations and as I say, I haven't had a situation and
19 it wasn't was because I had any concerns about the
20 officer, it was just because how of -- the perception of
21 it and that he had worked there that I decided that it
22 was probably better that somebody else take over that.

23 MS MITCHELL: No further questions.

24 COURT: Thank you, Ms Macleod, thank you very much for
25 coming to give evidence to the Inquiry, I'm very

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